

Notice of Public Scoping for Possible Changes to Regulation that Requires Health Care Insurers to Pay Out-Of-Network Health Care Providers for a Covered Service or Supply at No Less Than the 80th Percentile of Charges in the Geographical Area

The Alaska Division of Insurance (division) seeks public input concerning whether the provision under [3 AAC 26.110](#), commonly known as the "80th percentile rule" (rule), should be amended, repealed, or remain unchanged. Additionally, if the rule were to be amended or repealed, the division seeks public input on ways the division could provide for the same or greater consumer protections that the rule currently provides.

[3 AAC 26.110\(a\)](#) in relevant part provides: "A person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall... determine the final payment for a covered service or supply based on an amount that...is equal to or greater than the 80th percentile of charges [based on a statistically credible profile for each geographical area] for the health care services or supplies." Please note that federal agencies regulate self-funded health benefit plans that many large employers in the state have established on behalf of their employees. Because the division does not regulate self-funded health benefit plans, the rule does not apply to them.

The intent of the rule is to reduce the balance billing that a consumer receives from an out-of-network health care provider by requiring health care insurers to pay claims for health care services and supplies based on an amount that is equal to or greater than the 80th percentile of charges in a geographical area. Balance billing occurs when out-of-network providers bill a patient for the difference between the amount they charge and the amount that the consumer's insurer pays under the consumer's policy.

The rule, however, has been criticized for influencing the health care market in a manner that drives up the cost of health care in the state. Specifically, the Alaska Health Care Commission, in their *Findings and Recommendations 2009-2013*, felt that the rule "exacerbated" relative health care provider leverage in pricing stating: "Since many providers have over 20% of their market share, this implies that those providers can ensure that their charges are below the 80th percentile and therefore, receive payment for their full billed charges."

The division is in the information gathering stage and seeks comments and recommendations from members of the public through this scoping process before a decision is made on whether to make changes to [3 AAC 26.110](#). The division is not currently proposing any changes to the regulations. There are no draft regulations to review.

The division invites you to attend public hearings to be held on **January 6, 2017** from 10:00 a.m. to 12:00 p.m. (noon), and from 5:30 p.m. to 7:30 p.m. to share your oral or written comments on the rule and the rule's effect on consumers, balance billing, and health care costs. The hearing shall be simultaneously held at the following locations:

Anchorage

Atwood Building, 1st Floor, Room 102, located at 550 West 7th Avenue, Anchorage, Alaska.

Juneau

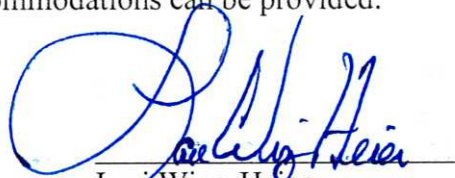
State Office Building, 9th Floor, Conference Room A, located at 333 Willoughby Avenue, Juneau, Alaska.

The hearings may be extended to accommodate those present before 12:00 p.m. or 7:30 p.m. who did not have an opportunity to comment. If you are unable to attend a hearing in person and would like to participate by teleconference, please call 1 (800) 315-6338 and enter access code 42070 followed by the # (pound sign).

You are also invited to submit written comments to the Alaska Division of Insurance, Attention Chip Wagoner, P.O. Box 110805, Juneau, AK 99811-0805; by email to chip.wagoner@alaska.gov; or by fax to (907) 465-3422. All comments must be received no later than 8:00 p.m., **January 6, 2017**.

If you are a person with a disability who needs a special accommodation in order to participate in the process, please contact Chris Napoleon at chris.napoleon@alaska.gov or (907) 269-7892 (voice) or Alaska Relay assisted communications at 1 (800) 770-8973 or 711 no later than January 4, 2017 to ensure any necessary accommodations can be provided.

DATE: December 2, 2016



Lori Wing-Hefer
Director