



DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 138

**TO: INSURERS, HEALTH SERVICE CORPORATIONS, AND
MANAGED CARE ORGANIZATIONS THAT DELIVER OR
ISSUE FOR DELIVERY IN THIS STATE INDIVIDUAL AND
GROUP INSURANCE POLICIES OR PLANS SUBJECT TO
REGULATION UNDER TITLE 18 OF THE DELAWARE
CODE.**

**RE: IMPLEMENTATION OF REGULATION 1322
REQUIREMENTS FOR MANDATORY MINIMUM PAYMENT
INNOVATIONS IN HEALTH INSURANCE**

DATED: March 15, 2023

What is the purpose of this Bulletin?

This Bulletin describes the procedures to be used by insurers and other entities subject to Regulation 1322 when completing the 2023 Affordability Standards Data Submission (ASDS) template. Regulation 1322, Requirements for Mandatory Minimum Payment Innovations in Health Insurance (18 DE Admin. Code 1322), became effective on August 11, 2022. Background on the regulation and on the underlying statute may be found in the public notices in which the Department proposed the new regulation, which were published in the *Register of Regulations* (see 25 DE Reg. 684 (January 1, 2022) and 25 DE Reg. 828 (March 1, 2022)). This Bulletin provides information on updates to the process for completing and submitting the ASDS template.

Which Carriers Are Required to Complete the ASDS Template?

Any carrier making rate filings for health benefit plans, as defined in 18 Del. C. §§ 3342A(a)(3)a. and 3559(a)(3)a. Please note that carriers with fewer than 250 members in a market segment and “expat plans” may request a waiver of the data submission completion requirement by emailing OVBHCD@delaware.gov.

How has the ASDS template been updated?

The Department’s Office of Value Based Health Care Delivery (OVBHCD) has updated the ASDS template in the following ways:

- Included dashboards in the Overview that identify when there are errors within and across worksheets of the template.
- Included data checks within worksheets to identify errors.
- Updated information collected to understand carrier compliance with Section 5.2 of Regulation 1322 on reimbursement of primary care providers, their care teams, and

organizations for provision of primary care and chronic care management services provided to Delaware residents on a non-fee- for-service basis.

- Revised the worksheet used for carriers to report on progress toward achieving 75 percent of Delaware primary care providers and care team members with attributed patients participating in eligible care transformation activities by 2026 as outlined in Section 6.2.2.2 of Regulation 1322. This worksheet will serve as the report described in Section 6.2.2.2 of Regulation 1322.
- Added a worksheet to capture membership and demographic information.
- Updated certain definitions including Non-Claims: Primary Care Incentive Programs and Non-Claims: Primary Care, Care Management for clarity.

Has the code set used to define primary care services, providers or places of service changed this year?

No.

What is the price growth limit for non-professional services for plan year 2024?

Compliance with Section 7.0 of 1322 dictates that the Carrier's price trend for non-professional services must not exceed **5.76%** for plan year 2024.

What information is needed to meet the requirements of Section 8.1 of Regulation 1322?

The Department requires that carriers continue to provide the OVBHCD with information regarding fixed payment methodology or methodologies implemented with provider organizations in Delaware.

As the Department noted in Domestic and Foreign Insurers Bulletin No. 130, there are services that are not amenable to fixed payment, episode-based or population-based payment methodologies and will remain paid on a fee-for-service (or percentage of charge basis).

What guidance should carriers follow regarding Section 5.1 of Regulation 1322?

Section 5.1 of Regulation 1322 outlines that a carrier shall not use business rules or any other mechanism to discount a reimbursement rate such that the resulting payment would be less than the Medicare payment that would have been made had the Medicare rate been utilized. Since the Centers for Medicare and Medicaid Services (CMS) allows the following business rules, they will be permitted:

- Modifiers applied, such as when multiple services were provided in a single day
- Advanced Practice Practitioner provided the service

The OVBHCD will not permit the following business rules based on its interpretation of Regulation 1322 and its underlying statutory guidance:

- Limitation to a line charge when a provider is billing less than the Medicare rate related to a carrier contract
- Provider paid below Medicare fee schedule for some codes but, on average, above it

What is the Process for Completing and Submitting the ASDS Template?

Carriers must complete the ASDS template annually, for each line of business and submit the completed ASDS template to the OVBHCD as part of their rate filing.

A draft template and detailed instructions for completing the template are attached to this Bulletin and are also posted on the OVBHCD website. Questions regarding the template or its

completion should be submitted to OVBHCD Director at OVBHCD@delaware.gov.

No later than the applicable completed ASDS template submission deadline, carriers should send a copy of the completed template via secure email to the OVBHCD Director at OVBHCD@delaware.gov. Carriers are encouraged to submit the ASDS template before the deadline, even if their full rate filing is not complete.

What are the completed ASDS template submission deadlines?

The completed ASDS template submission deadlines are as follows:

Line of Business	Deadline
Individual	June 15, 2023
Small Group	June 15, 2023
Large Group	September 1, 2023

The OVBHCD will evaluate each carrier's compliance with Regulation 1322. Details on the evaluation of carrier-specific compliance with the regulation will be included in the OVBHCD annual report.

Questions concerning this bulletin should be emailed to: OVBHCD@delaware.gov.

This bulletin shall be effective immediately and shall remain in effect unless otherwise withdrawn or superseded by subsequent law, regulation or bulletin.



Trinidad Navarro
Delaware Insurance Commissioner