

RCW 48.49.135 Determining the adequacy of provider networks—

Required considerations. (1) When determining the adequacy of a proposed provider network or the ongoing adequacy of an in-force provider network, the commissioner must review the carrier's proposed provider network or in-force provider network to determine whether the network includes a sufficient number of contracted providers of emergency medicine, anesthesiology, pathology, radiology, neonatology, surgery, hospitalist, intensivist[,] and diagnostic services, including radiology and laboratory services at or for the carrier's contracted in-network hospitals or ambulatory surgical facilities to reasonably ensure enrollees have in-network access to covered benefits delivered at that facility.

(2) (a) When determining the adequacy of a proposed provider network or the ongoing adequacy of an in-force provider network, the commissioner may allow a carrier to submit an alternate access delivery request. The commissioner shall define the circumstances under which a carrier may submit an alternate access delivery request and the requirements for submission and approval of such a request in rule. To submit an alternate access delivery request, a carrier shall:

(i) Ensure that enrollees will not bear any greater cost of receiving services under the alternate access delivery request than if the provider or facility was contracted with the carrier or make other arrangements acceptable to the commissioner;

(ii) Provide substantial evidence of good faith efforts on its part to contract with providers or facilities. If a carrier is submitting an alternate access delivery request for the same service and geographic area as a previously approved request, the carrier shall provide new or additional evidence of good faith efforts to contract associated with the current request;

(iii) Demonstrate that there is not an available provider or facility with which the carrier can contract to meet the commissioner's provider network standards; and

(iv) For services for which balance billing is prohibited under RCW 48.49.020, notify out-of-network providers or facilities that deliver the services referenced in the alternate access delivery request within five days of submitting the request to the commissioner. Any notification provided under this subsection shall include contact information for carrier staff who can provide detailed information to the affected provider or facility regarding the submitted alternate access delivery request.

(b) For services for which balance billing is prohibited under RCW 48.49.020, a carrier may not treat its payment of nonparticipating providers or facilities under this chapter or P.L. 116-260 (enacted December 27, 2020) as a means to satisfy network access standards established by the commissioner unless all requirements of this subsection are met.

(i) If a carrier is unable to obtain a contract with a provider or facility delivering services addressed in an alternate access delivery request to meet network access requirements, the carrier may ask the commissioner to amend the alternate access delivery request if the carrier's communication to the commissioner occurs at least three months after the effective date of the alternate access delivery request and demonstrates substantial evidence of good faith efforts on its part to contract for delivery of services during that three-month time period. If the carrier has demonstrated substantial evidence of good faith efforts on its part to contract, the commissioner shall

allow a carrier to use the dispute resolution process provided in RCW 48.49.040 to determine the amount that will be paid to providers or facilities for services referenced in the alternate access delivery request. The commissioner may determine by rule the associated processes for use of the dispute resolution process under this subsection.

(ii) Once notification is provided by the carrier to a provider or facility under (a) of this subsection, a carrier is not responsible for reimbursing a provider's or facility's charges in excess of the amount charged by the provider or facility for the same or similar service at the time the notification was provided. The provider or facility shall accept this reimbursement as payment in full.

(3) When determining the adequacy of a carrier's proposed provider network or the ongoing adequacy of an in-force provider network, beginning January 1, 2023, the commissioner shall require that the carrier's proposed provider network or in-force provider network include a sufficient number of contracted behavioral health emergency services providers. [2022 c 263 § 18; 2019 c 427 § 25. Formerly RCW 48.49.150.]

Effective date—2022 c 263: See note following RCW 43.371.100.