



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

DIVISION OF INSURANCE

PUBLIC SCOPING HEARING DISCUSSION OF THE “80TH PERCENTILE RULE” REGULATION

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Mission Statement

The mission of the Division of Insurance is to regulate the insurance industry to protect Alaska consumers.



What is the 80th Percentile Rule?

3AAC 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.”



History of 80th Percentile Rule

- In Alaska, the general methodology for calculating reimbursement for out-of-network provider claims using a credible database of billed charges has been in place since 1989.
- The Alaska Division of Insurance updated the governing regulation in 2004 and added the minimum 80th percentile rule as the minimum standard for claims reimbursement at the time.
- The regulation was originally adopted to protect consumers from excessive bills.



Intent of the 80th Percentile

- 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.



How does the 80th Percentile work?

Different health care providers may charge different amounts for the same health care service. When these different charges are listed from the lowest charge to the highest charge, the 80th percentile would be the data point where 80 percent of the number of listed charges fall below the data point and 20 percent of the number of listed charges fall above the data point.

- **The 80th percentile is not the same as 80 percent of the billed charges.**



Who does the 80th Percentile Rule Apply to?

- The Rule applies to insurance plans in the individual, small group and large group markets.
- The Rule does not apply to self-funded health benefit plans typically established by large employers.



Purpose of Scoping Hearing

The rule has been criticized for influencing the health care market in a manner that drives up the cost of health care in the state.

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.”



Example of the 80th Percentile

Payment Methodology	Provider (to illustrate billing range)	Procedure Code ⁽¹⁾	Billed Charge	Allowed Amount	Co-Insurance (consumer pays 40%)	Insurer's Amount Paid ⁽²⁾	Consumer Responsibility
80th Percentile	Provider A	45385	\$2,200.00	\$2,522.00	\$880.00	\$1,320.00	\$880.00
	Provider B	45385	\$3,000.00	\$2,522.00	\$1,008.80	\$1,513.20	\$1,486.80
200% Medicare	Provider A	45385	\$2,200.00	\$719.24	\$287.70	\$431.54	\$1,768.46
	Provider B	45385	\$3,000.00	\$719.24	\$287.70	\$431.54	\$2,568.46

⁽¹⁾Removal of polyps or growths

⁽²⁾Insurer pays 60%

source: fairhealthconsumer.org for zip 99501



Example of the 80th Percentile

Payment Methodology	Provider (to illustrate billing range)	Procedure Code ⁽¹⁾	Billed Charge	Allowed Amount	Co-Insurance (consumer pays 40%)	Insurer's Amount Paid ⁽²⁾	Consumer Responsibility
80th Percentile	Provider A	27447	\$9,000.00	\$10,299.99	\$3,600.00	\$5,400.00	\$3,600.00
	Provider B	27447	\$14,000.00	\$10,299.99	\$4,120.00	\$6,179.99	\$7,820.01
200% Medicare	Provider A	27447	\$9,000.00	\$3,568.26	\$1,427.30	\$2,140.96	\$6,859.04
	Provider B	27447	\$14,000.00	\$3,568.26	\$1,427.30	\$2,140.96	\$11,859.04

⁽¹⁾Knee repair

⁽²⁾Insurer pays 60%

source: fairhealthconsumer.org for zip 99501



Public Comment Period

- 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 regulation.
- Should the division seek changes, the division would adhere to the state regulatory process and stakeholders would have additional opportunities to provide input.



Conclusion

Questions?