



**Date:** March 7, 2022

**To:** Coordinated Care Organizations  
Dental Care Organizations

**From:** Dave Inbody, CCO Operations Manager

**Subject:** Update on enforcement of Payer-to-Payer Data Exchange

This communication is regarding the Payer-to-Payer Data Exchange policy in the Centers for Medicare and Medicaid Services (CMS) [Interoperability and Patient Access final rule](#).

On December 10, 2021, CMS issued a [notification](#) in the Federal Register to alert the public that it was "...exercising its discretion in how it enforces the payer-to-payer data exchange provisions. As a matter of enforcement discretion, CMS does not expect to take action to enforce compliance with these specific provisions until we are able to address certain implementation challenges." This includes the payer-to-payer data exchange provisions at 42 CFR § [438.62\(b\)\(1\)\(vi\)](#) applicable to Medicaid managed care plans. Coordinated Care Organizations (CCOs) and Dental Care Organization (DCOs) – collectively, Managed Care entities (MCEs) – are subject to these federal requirements.

The Oregon Health Authority (OHA) is mirroring the position taken by CMS and deferring enforcement of the payer-to-payer sections of its own interoperability rules at OAR [410-141-3591](#)(9). This decision reflects feedback gathered in OHA's recent Payer Interoperability Collaborative workgroup meetings in which participants and organizers struggled to identify viable implementation strategies in the absence of a required standard or specification for data exchange. Although OHA is deferring *enforcement* of the payer-to-payer requirements, the expectation for MCEs to comply with the requirements is unchanged. MCEs should be alert to future notice from CMS and/or OHA about resolution of the implementation challenges and expiration of enforcement discretion.

As stated by CMS in its [FAQs](#), OHA encourages impacted payers that have already developed FHIR-based API solutions that support payer-to-payer data exchange to continue to move forward with implementation and to make this functionality available. However, impacted payers that are not capable of making data available in a FHIR-based API format should hold for further guidance from CMS in the form of rulemaking expected during calendar year 2022.

In anticipation of future rulemaking, OHA seeks feedback from CCOs and DCOs to understand the level of interest in convening a workgroup to discuss payer-to-payer data exchange implementation as well as high-value use cases such as Transition of Care as specified in OAR [410-141-3850](#). Please contact David Ballantyne, CCO Operations and Policy Analyst, at [David.R.Ballantyne@dhs.oha.state.or.us](mailto:David.R.Ballantyne@dhs.oha.state.or.us) by March 31, 2022, to express your interest in the future workgroup.

As noted in the OHA [memo](#) dated August 5, 2020, the Interoperability and Patient Access final rule includes two other payer policies: Patient Access Through APIs and API Access to Published Provider

Directory Data. These are in OHA's interoperability rules at OAR [410-141-3591](#)(3-8). CMS exercised enforcement discretion for both policies until July 1, 2021. OHA expects MCEs to be in compliance with the requirements.

### **Questions?**

If you have general questions about this communication, please contact Cheryl Henning, CCO Contracts Administrator and Interim DCO Contracts Administrator, at [Cheryl.L.Henning@dhsoha.state.or.us](mailto:Cheryl.L.Henning@dhsoha.state.or.us).

Thank you for your continued support of the Oregon Health Plan (OHP) and the services you provide to OHP members.