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Bulletin 22-08

Date: June 28, 2022

To: All Life & Health Insurers; Nonprofit Health Service Plans; Health Maintenance Organizations and Managed Care Organizations

Re: Section 15-1008(c)(ii): Retroactive denial of health claims

The purpose of this Bulletin is to remind carriers of their obligation to promptly acknowledge responsibility for a covered health service when requested to do so by another carrier seeking to coordinate benefits under Md. Ann. Code, Ins. § 15-1008(c)(ii).

Section 15-1008 of the Insurance Article was enacted in 1997 to address retroactive denials of health claims. Chapter 452 of the Laws of 2007 added managed care organizations to the definition of "carrier" found in § 15-1008(a)(2). In 2008, the Maryland Insurance Administration (the Administration) issued Bulletin 08-30 to address issues related to the retroactive denial of claims. Bulletin 08-30 included this question and answer:

> *4. In order to retroactively deny payment because of coordination of benefits, is it sufficient that the carrier provides the name and contact information of the entity that is or may be responsible for the health care service?*
>
> No. Section 15-1008(c)(2)(ii) requires a carrier, that wants to utilize retroactive reimbursement when coordinating benefits, to provide the health care provider the name and contact information of the entity that has acknowledged responsibility for the health care service. A carrier violates this section when a carrier has not obtained an acknowledgment of responsibility from the responsible entity.

The Administration continues to enforce § 15-1008 in accordance with the position stated in Bulletin 08-30. If a carrier asserts that another payer entity is primary under coordination of benefits rules, it is not sufficient for the carrier to merely confirm that the member had coverage for health benefits from the other payer at the time in question. A carrier must also confirm that the other payer has acknowledged its obligation to pay the claim in whole or part, as per the terms of its obligation to the member. If the other payer does not acknowledge responsibility for the claim in whole or in part, the carrier may not retroactively deny the claim based on coordination of benefits. A carrier that retroactively denies the claim without an acknowledgment of

responsibility from the primary payer entity would be in violation of § 15-1008, and may be subject to administrative action, including an order requiring restitution or monetary penalties.[1]

An entity that is responsible for payment as the primary payer under coordination of benefits provisions may not unreasonably withhold an acknowledgment of responsibility and is expected to promptly acknowledge responsibility where it exists. The timeliness of the claim under the terms of the policy or contract ***is not*** a basis on which the primary payer may deny acknowledgement of responsibility if the request for acknowledgment is made within the 18-month period described in§ 15-1008. Section 15-1008(f) allows a health care provider a minimum of six months from the date of a retroactive denial to file a claim with the primary carrier, Maryland Medical Assistance Program, or the Medicare program that is responsible for payment. A carrier that denies a claim as untimely during this six-month period may be in violation of § 15-1008(f).

A primary payer that misrepresents its obligations under a policy or contract may be in violation of § 27-303(a) of the Insurance Article, even if the misrepresentation is made to another health plan or carrier.

Any questions about this Bulletin may be directed to the Market Regulation and Professional Licensing Division at 410-468-2236 or to mary.kwei@maryland.gov.

Kathleen A. Birrane
Commissioner

By: signature on original
Mary M. Kwei
Associate Commissioner

[1] The bases for the Administration's position is set forth in MIA Ex. Rel. Washington Adventist Hospital d/b/a White Oak Medical Center (N.P.) v. Amerigroup Maryland, Inc., MIA 2021-04-012, issued on April 18, 2022, which may be accessed https://insurance.maryland.gov/Documents/orders/MIA-2021-04-012-Amerigroup.pdf. The Respondent in that administrative action has filed a petition for judicial review in the Circuit Court for Baltimore City.