BULLETIN

TO: Health Maintenance Organizations and Healthchoice Managed Care Organizations

FROM: Steven B. Larsen, Insurance Commissioner

RE: Implementation of Chapter 323, Acts of the General Assembly of 2000 Downstream Risk Regulation

DATE: December 22, 2000

Bulletin No.: 00-26

The Administration previously issued Bulletin No. 00-13 on June 7, 2000, relating to the registration of contracting providers, (also known as downstream risk providers), who enter into administrative service provider contracts. This Bulletin addresses issues relating to the establishment and maintenance of the segregated Fund under the new provisions of Chapter 323 which are codified in 19-712 and 19-713.2 of the Health-General Article, Annotated Code of Maryland.

I. Form of Segregated Fund

Chapter 323 reiterates that the form of the segregated fund may include withheld funds, escrow accounts, letters of credit, or similar arrangements but clarifies that the particular form of the segregated fund shall be approved by the Commissioner. The Insurance Administration will review, and must approve, the particular form and the terms of any such instrument, arrangement, or method used to comply with the law. For example, the fact that a letter of credit is being used to satisfy the statutory obligation does not obviate the need for Maryland Insurance Administration approval merely because letters of credit are on the list of generic items which may be used. Surety bonds or similar arrangements will be reviewed on a case by case basis. Parental guarantees will generally not be accepted for approval as these instruments have proven ineffective and unreliable in achieving the statutory purpose of the segregated fund.

Amount of Segregated Fund

Chapter 323 requires that the Maryland Insurance Administration approve the amount of the segregated fund. Through the course of market conduct examinations and litigation resulting from prior insolvencies of contracting providers, it has been the experience of the Maryland Insurance Administration that one month of capitation has been inadequate to fund obligations to external providers under the law. However, several factors impact the amount which may be needed to fund an HMOs obligations under the legislation.

Prompt Pay Compliance

First, if payments are being made promptly by the HMO or its contracting provider to external providers, the risk that external providers will not be paid in the event a contracting provider is unable to pay is lessened. Generally, Maryland law requires claims to be paid within thirty (30) days of receipt with some exceptions. See Insurance Code 15-1005. However, recent market conduct examinations have revealed that in many cases claims are not paid promptly in accordance with Maryland law. Rates of non-compliance have ranged between 15% and 60% for some contracting providers.

As a general rule, if an HMO can demonstrate to the satisfaction of the Maryland Insurance Administration that claims are paid promptly in accordance with the law, the segregated fund may be established at a level equal to one and one-half months payments to the contracting provider, including capitation, averaged over the immediately preceding six month period. For the purpose of this bulletin, prompt pay compliance shall be considered the payment of 95% of claims in accordance with the prompt-pay law. Internally generated spreadsheets may not necessarily be satisfactory evidence of prompt pay compliance. The Maryland Insurance Administrations experience has been that such documentation is not always reliable or accurate. Independent audits, or internal audits which include reliable statistical sampling techniques and which are made available to the Maryland Insurance Administration will be acceptable. In the absence of satisfactory documentation of prompt pay practices, an amount equal to 2 months of capitation and other payments will be required, except as provided below.

Reliance on External Providers

Chapter 323 clarifies the responsibility of HMOs for claims or payments to external providers in the event a contracting provider fails, or is unable, to pay. The extent of that obligation in any given relationship between an HMO and a contracting provider will depend on the extent to which the contracting provider relies on external providers for the provision of service. Assuming compliance with Maryland's prompt pay laws, if an HMO establishes to the satisfaction of the Maryland Insurance Administration though historical data and/or reasonable and reliable projections that less than 25% of the amount of monthly capitation and other payments made to a contracting provider are paid monthly to external providers for services to HMO members, then the HMO may establish a segregated fund equal to one half months of the capitation and other payments to the contracting provider. In the absence of compliance with Maryland's prompt pay laws, one months capitation and other payments will be required. Assuming the prompt payment of claims where less than 10% of monthly capitation and other payments are paid to external providers for services, no segregated fund is required. As with the case under (A) above, the amount of payments will be reviewed by the Maryland Insurance Administration for the immediately preceding 6 month period. In the case of new contracts, the Maryland Insurance Administration may review projections and revise accordingly.

C. External Providers Owner or Controlled by the Contracting Provider

Chapter 323, 19-713.2(e), provides:

In determining the sufficiency of a segregated fund, the Commissioner may consider whether external providers are owned or controlled by the contracting provider.

While this section does not provide an exemption from the segregated fund obligation where an external provider is owned or controlled by a contracting provider, it permits, but does not require, the Maryland Insurance Administration to adjust the amount required for a segregated fund.

In general, the fact that an external provider is owned or controlled by a contracting provider will not normally merit relief from the requirement that a segregated fund be established. While Chapter 323 clearly placed the obligation on the HMO for the ultimate payment of claims to external providers, the segregated fund is a means to ensure the availability of funds for the HMO to meet its obligation if the contracting provider is unable to do so. Relief under this section would only be granted where some aspect of the relationship between the external provider and the contracting provider serves to lessen the likelihood that claims to external providers will go unpaid, or obviate the obligation of the HMO to pay unpaid claims, if the contracting provider fails to do so. For example, where by virtue of a contracting providers ownership of an external provider, or by virtue of the joint control of both contracting provider and external provider by a third entity, an external provider voluntarily waives any right to obtain the right to payment by a Health Maintenance Organization if the contract provider is unable to pay the provider under 19-712 and 19-713.2 of the Health General Article, then the segregated fund may be reduced or waived at the discretion of the Administration. Such a reduction or waiver will be recognized only in cases of such ownership and will not be recognized in other circumstances where there is no control or ownership of the external provider. Documentation of any such waivers must be supplied to the Maryland Insurance Administration.

D. Other

Other methods to document or estimate the claims liability of a contracting provider and the HMO with which its contracts, such as independent actuarial analysis of claims liabilities, may be considered by the Maryland Insurance Administration as a factor in reducing the amount of the segregated fund on a case by case basis.

Summary

The following chart summarizes the guidelines discussed above:
Assuming compliance with prompt pay requirements:

Percent of Capitation paid to External Providers Amount of Segregated Fund Required< 10%011% - 25% Month of Capitation> 25%1 Months of Capitation

Assuming non-compliance with prompt pay requirements:

Percent of Capitation and other payments paid to External Providers Amount of Segregated Fund Required< 10% Month of Capitation11% - 25%1 Month of Capitation> 25% 2 Months of Capitation

Exceptions

The Maryland Insurance Administration has received inquiries in which the inquiring party technically satisfies the definition of a contracting provider under the statute but because of a deminimus level of payments to external providers, seek exemption from the registration requirements in the law. Chapter 323 does not grant the Maryland Insurance Administration discretionary authority to waive the statutory registration requirements. As noted above, It does, however, grant discretion concerning the amount of any segregated fund which may be required under the statute.

The Maryland Insurance Administration offers the following examples as guidance for contracting providers:

A Primary Care Physician (PCP) or group of physicians need to register if: (1) the PCP or practice group accepts payment from an HMO for the provision of health care services to be provided to the HMOs members; (2) the PCP or practice group then arranges for certain services to be provided by other providers; and (3) the PCP or group administers the payments to the other providers. For example, registration is required when capitation is paid to PCP by HMO to provide primary care services and obstetrical services, and the PCP administers payment to the hospital for the cost of the delivery and the hospital is not under contract with the HMO.

Registration is required where a vision vendor provides a network of Optometrists for routine vision exams and eyewear, and the optometrists do not contract with the HMO directly. Payment is made to the vendor by the HMO on a captitated basis, and the vendor in turn pays its network of optometrists for services on a capitated or Fee-For-Service basis.

A Pharmacy Benefit Manager (PBM) must register if the PBM accepts payments from an HMO for health care services to be provided to members of the HMO, and the PBM arranges for all or some of those services to be provided by external providers.

These examples are illustrative only. Questions regarding registration should be addressed to Wendy Taparanskas, Associate Commissioner, Life & Health Unit, 525 St. Paul Place, Baltimore, Maryland 21202, (410) 468-2201. Questions regarding the amount and form of the segregated fund should be addressed to Lester Schott, Associate Commissioner, Examination & Auditing Unit, 525 St. Paul Place, Baltimore, Maryland 21202, (410) 468-2119.

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Steven B. Larsen
Maryland Insurance Commissioner