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BULLETIN 11-09

Date: May 4, 2011
To: Health Maintenance Organizations Operating in Maryland
Re: HMO Payments to Non-Participating Providers
§19-710.1 Health-General Article and COMAR 31.12.08

The purpose of this bulletin is to provide clarification to HMOs operating in Maryland regarding the appropriate payment amounts required by HMOs for covered services provided by non-participating providers.

Health-General Article, §19-710.1, Annotated Code of Maryland, sets forth the statutory requirements for payments by HMOs to non-participating providers. As required by §19-710.1, the Commissioner adopted *COMAR 31.12.08 Payments to Nonparticipating Providers*. These regulations were adopted as emergency regulations on January 1, 2010, and adopted permanently effective March 8, 2010.

For other than evaluation and management services, COMAR 31.12.08.06 requires that the payment amount for non-participating providers be based on a percentage of the rate for the covered service in the *annual rate schedule* applicable to similarly licensed providers in the same geographic area. Regulation .04 of COMAR 31.12.08 describes the rules that HMOs are required to follow in establishing the annual rate schedule each year.

COMAR 31.12.08.04C describes how the annual rate schedule for each similarly licensed provider in each geographic area is to be determined. In general, the annual rate schedule is developed for each CPT code or HCPCS code and is based on the rates paid by the HMO to similarly licensed participating providers in the same geographic area. It has come to the Maryland Insurance Administration's attention that COMAR 31,12.08.04C did *not* address how the annual rate schedule should be calculated for a particular CPT code or HCPCS code when an HMO does not have any occurrences of the CPT code or HCPCS code for a similarly licensed participating provider in the same geographic region.

One HMO, as a part of its annual certification filing required by COMAR 31.12.08.04D, indicated that if it received a bill for a CPT code or HCPCS code from a non-participating

provider for which it had no occurrences of the CPT code or HCPCS code for a similarly licensed participating provider in the same geographic area, it would pay 125% of the average contracted rate that the HMO holds with a similarly licensed provider of the same specialty and geographic area. The Maryland Insurance Administration's position is that such a calculation follows the spirit and intent of the statute and regulation.

The Maryland Insurance Administration intends to amend COMAR 31.12.08.04 in the near future to address the calculation of the annual rate schedule for a CPT code or HCPCS code when there are no occurrences of the CPT code or HCPCS code for similarly licensed participating providers in the same geographic area.

Questions about this bulletin may be directed to the Life/Health Section of the Maryland Insurance Administration at 410-468-2170.

Signature on file with original

Brenda A. Wilson
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Life and Health Section