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BULLETIN 18-20

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To: Insurers and Nonprofit Health Service Plans That Offer, Issue, or Deliver Medical Stop-Loss Insurance Contracts in Maryland

Re: Private Review Agent Certifications for Medical Stop-loss Carriers

It has come to the attention of the Maryland Insurance Administration that medical stop-loss carriers are increasingly engaging in activities that meet the definition of “utilization review” under Maryland law.¹ The purpose of this Bulletin is to remind medical stop-loss carriers that the private review agent certification requirements under Title 15, Subtitle 10B of the Insurance Article, Annotated Code of Maryland, are applicable to entities performing utilization review under medical stop-loss insurance contracts in Maryland.²

Medical Stop-Loss Insurance and Utilization Review

There are fundamental differences between medical stop-loss insurance and other types of health insurance. For example, rather than directly insuring an individual against a personal loss, medical stop-loss insurance insures a person who is obligated to provide health care coverage to other individuals who incur a loss. The “insured” under a medical stop-loss policy is typically an employer who provides a self-funded health benefit plan to its employees. If the medical claims under the self-funded health benefit plan reach catastrophic levels, the medical stop-loss insurance policy will assume liability for certain amounts in excess of claim “attachment points” that are specified in the medical stop-loss contract. Benefits under a medical stop-loss policy are not paid directly to an individual receiving a health care service or to a provider performing a health care service. Nonetheless, medical stop-loss benefits are contingent on the occurrence of medical claims for which the insured policyholder is liable to the treating health care provider or to the individual receiving the health care service.

¹ Utilization review” is defined in § 15-10B-01(m) of the Insurance Article as “a system for reviewing the appropriate and efficient allocation of health care resources and services given or proposed to be given to a patient or a group of patients.”

² “Medical stop-loss insurance” is defined in § 15-129 of the Insurance Article as “insurance, other than reinsurance, that is purchased by a person, other than a carrier or health care provider, to protect the person against catastrophic, excess, or unexpected losses incurred by that person’s obligations to third parties under the terms of a health benefit plan.”

Although medical stop-loss contracts are not regulated in the same manner as insured health benefit plans, medical stop-loss insurance is still considered a type of “health insurance” under § 1-101(p)(2)(iii) of the Insurance Article and must be sold by a carrier that is authorized to sell policies of medical stop-loss insurance in the State. Therefore, if a claim determination under a medical stop-loss policy includes any consideration of the medical appropriateness of the health care services that gave rise to the stop-loss claim, utilization review is being performed under the stop-loss contract. This includes any prospective or retrospective assessment of whether a health care service is or was elective, cosmetic, experimental, investigational, medically necessary, appropriate, or efficient, if the assessment may result in the stop-loss claim being denied. Generally, this does not include a review by the stop-loss carrier of the terms and conditions of the underlying self-funded plan to determine whether the health benefit plan properly adjudicated the original claim. For example, it is not a utilization review determination if the stop-loss carrier denies a stop-loss claim on the grounds that the claim is related to a health care service that was excluded by name or specific description in the plan document for the underlying self-funded plan and, therefore, the service should not have been covered by the self-funded plan. On the other hand, if the terms and conditions of the underlying self-funded plan include a requirement that a service must be medically necessary in order to be covered, a re-examination by the stop-loss carrier of the underlying plan’s medical necessity determination is considered utilization review.

Private Review Agent Certification

In accordance with § 15-10B-03(a) of the Insurance Article, a private review agent may not conduct utilization review in Maryland unless the Commissioner has granted the private review agent a certificate.³ A medical stop-loss carrier is required to obtain a private review agent certificate if the insurer intends to base stop-loss claim decisions in whole or in part on the stop-loss carrier’s own determinations of the medical appropriateness of the underlying health care services that are the basis for the stop-loss claims. Certification is not required if the stop-loss carrier performs no independent reviews for medical appropriateness. For example, certification is not required if the stop-loss carrier defers to the medical necessity determinations made by the treating provider or the underlying self-funded health plan. Certification is also not required if the stop-loss carrier contractually delegates all utilization review functions to an entity that has obtained a private review agent certificate in Maryland.

An entity seeking to obtain a private review agent certificate must submit an application to the Maryland Insurance Administration, accompanied by a filing fee of \$1,500.00. The private review agent application form and a checklist summarizing the utilization review requirements under Maryland law may be downloaded from the Maryland Insurance Administration’s website at: <http://insurance.maryland.gov/Insurer/Pages/MedicalDirectorsandPras.aspx>. The checklist is not required to be submitted with the application, but it should be reviewed prior to submitting the application to ensure that all Maryland-specific requirements have been addressed.

³ The definition of “private review agent” from § 15-10B-01(k) of the Insurance Article includes “a nonhospital-affiliated person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of (i) a Maryland business entity; or (ii) a third party that pays for, provides, or administers health care services to citizens of this State.”

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

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signature on original

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