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BULLETIN 11-11

Date: May 17, 2011
To: Insurers and Nonprofit Health Service Plans
Re: Assignment of Benefits to Nonpreferred Providers—Notice of Modifications to Proposed Regulations—COMAR 31.10.41

On May 2, 2011, the Maryland Insurance Administration issued Bulletin 11-08, which included an attachment of draft regulations that had been submitted for publication as *COMAR 31.10.41 Assignment of Benefits to Nonpreferred Providers*.

After review by the Administrative, Executive, and Legislative Review committee staff, the proposed regulations have been modified. It is the position of the Maryland Insurance Administration that the modifications from the version included with Bulletin 11-08 are non-substantive.

Attached to this bulletin is an updated version of the draft regulations.

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
Associate Commissioner
Life and Health Section

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 10 HEALTH GENERAL

Chapter 41 Assignment of Benefits to Nonpreferred Providers

Authority: Insurance Article, §§2-109(a)(1), 14-205.2 and 14-205.3, Annotated Code of Maryland

.01 Applicability.

This chapter applies to preferred provider insurance policies that are issued, renewed or delivered by a carrier in the State on or after July 1, 2011.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Allowed amount" has the meaning stated in Insurance Article, §14-201, Annotated Code of Maryland.*
- (2) "Assignment of benefits" has the meaning stated in Insurance Article, §14-201, Annotated Code of Maryland.*
- (3) "Carrier" means an insurer or nonprofit health service plan.*
- (4) "Covered service" has the meaning stated in Insurance Article, §14-201, Annotated Code of Maryland.*
- (5) "Explanation of benefits" means the document that is provided by a carrier to an insured that explains the claims paid, reduced or denied by the carrier.*
- (6) "Hospital-based physician" has the meaning stated in Insurance Article, §14-201, Annotated Code of Maryland and does not include an on-call physician.*
- (7) "Insured" has the meaning stated in Insurance Article, §14-201, Annotated Code of Maryland.*
- (8) "Insurer" has the meaning stated in Insurance Article, §1-101, Annotated Code of Maryland.*
- (9) "Nonpreferred provider" has the meaning stated in Insurance Article, §14-201, Annotated Code of Maryland.*
- (10) "Nonprofit health service plan" means a person who has a certificate of authority to operate as a nonprofit health service plan in Maryland.*
- (11) "On-call physician" has the meaning stated in Insurance Article, §14-201, Annotated Code of Maryland.*
- (12) "Preferential basis" has the meaning stated in Insurance Article, §14-201, Annotated Code of Maryland.*
- (13) "Preferred provider insurance policy" means a policy or insurance contract issued or delivered in the State by a carrier under which health care services furnished by a preferred provider are paid on a preferential basis.*

.03 Assignment of Benefits--On-Call Physicians.

A. A nonpreferred provider who is an on-call physician may accept an assignment of benefits under a preferred provider insurance policy.

B. A nonpreferred provider who is an on-call physician and accepts an assignment of benefits under a preferred provider insurance policy shall:

(1) Accept the carrier's allowed amount as payment in full for the covered services provided; and

(2) Collect or attempt to collect from the insured only the monies for the items identified in Insurance Article, §14-205.2 (b)(3), Annotated Code of Maryland.

C. A nonpreferred provider who is an on-call physician and who accepts an assignment of benefits under a preferred provider insurance policy shall:

(1) Submit to the carrier the uniform claims form required by COMAR 31.10.11.03 and indicate acceptance of the assignment of benefits in box 27 of the CMS 1500 form, or its successor to satisfy the notice requirements under Insurance Article, §14-205.2(a)(3), Annotated Code of Maryland; and

(2) Designate CPT code 99026, or its successor, on the uniform claims form.

D. A carrier shall:

(1) Accept as evidence that a nonpreferred provider who is an on-call physician obtained an assignment of benefits from an insured if the nonpreferred provider submits the uniform claims form required by COMAR 31.10.11.03 and indicates acceptance of the assignment of benefits in box 27 of the CMS 1500 form or its successor; and

(2) Reimburse a nonpreferred provider who is an on-call physician and who has accepted an assignment of benefits in accordance with the provisions in Insurance Article, §14-205.2 (c), Annotated Code of Maryland.

.04 Assignment of Benefits--Hospital-Based Physicians.

A. A nonpreferred provider who is a hospital-based physician may accept an assignment of benefits under a preferred provider insurance policy.

B. A nonpreferred provider who is a hospital-based physician and accepts an assignment of benefits under a preferred provider insurance policy shall:

(1) Accept the carrier's allowed amount as payment in full for the covered services provided; and

(2) Collect or attempt to collect from the insured only the monies for the items identified in Insurance Article, §14-205.2 (b)(3), Annotated Code of Maryland.

C. A nonpreferred provider who is a hospital-based physician and who accepts an assignment of benefits under a preferred provider insurance policy shall submit to the carrier the uniform claims form required by COMAR 31.10.11.03 and indicate acceptance of the assignment of benefits in box 27 of the CMS 1500 form to satisfy the notice requirements of Insurance Article, §14-205.2(a)(3), Annotated Code of Maryland.

D. A carrier shall:

(1) Accept as evidence that a nonpreferred provider who is a hospital-based physician has obtained an assignment of benefits from an insured if the nonpreferred provider submits the uniform claims form required by COMAR 31.10.11.03 and indicates acceptance of the assignment of benefits in box 27 of the CMS 1500 form, or its successor; and

(2) Reimburse a nonpreferred provider who is a hospital-based physician and who has accepted an assignment of benefits in accordance with the provisions in Insurance Article, §14-205.2 (d), Annotated Code of Maryland.

.05 Assignment of Benefits--Nonpreferred Providers.

A. This regulation applies to carriers who receive claims for services provided by physicians who are nonpreferred providers but are not on-call physicians or hospital-based physicians.

B. A carrier shall permit a nonpreferred provider described in §A of this regulation to accept an assignment of benefits under a preferred provider insurance policy offered by the carrier.

C. Except as provided in Insurance Article, §14-205.3(g), Annotated Code of Maryland, a carrier that receives a claim for services provided by a nonpreferred provider described in §A of this regulation who accepts an assignment of benefits under a preferred provider insurance policy shall pay the nonpreferred provider directly if the nonpreferred provider:

(1) Provides a copy of the disclosure set forth in Regulation .06 of this chapter to an insured before performing a health care service for the insured; and

(2) Submits a copy of the signed disclosure set forth in Regulation .06 of this chapter to the carrier as an attachment to the uniform claims form adopted by the Commissioner under COMAR 31.10.11.03.

.06 Required Disclosure for Nonpreferred Providers Seeking Assignment of Benefits.

A. Except for a nonpreferred provider who is an on-call physician or a hospital-based physician, a nonpreferred provider who is a physician shall provide a copy of the disclosure set forth in §B of this regulation to each insured before performing a health care service for the insured in order to qualify for an assignment of benefits under a preferred provider insurance policy.

B. The disclosure text required by §A of this regulation shall be printed in at least 12 point type and shall read as follows:

"IMPORTANT NOTICE REGARDING YOUR HEALTH INSURANCE

Your doctor is not a part of your health insurer's network. You may pay more for the services provided by your doctor because:

- Your doctor's charge may be higher than the amount your health insurer will pay and, if so, you may be required to pay the difference; and
- Your coinsurance, deductible and out-of-pocket maximum may be higher because your doctor is not in your health insurer's network.

Your doctor may charge you for services not covered under your health insurance contract.

Your doctor will provide you with the following information before performing the services for you:

- An estimate of the cost of the services;
- Any payment terms that apply; and
- Whether your doctor will charge you interest on any unpaid balance, and the amount of the interest, if any.

I, [patient's name] _____ received the information above and authorize my health insurer to reimburse my doctor directly for the services provided [today's date] _____."

.07 Notice to Insureds by Carriers.

A. A carrier shall provide the information listed in §B of this regulation with the payment to the insured for health care services if:

(1) The carrier receives a claim for health care services provided by a physician who is a nonpreferred provider and who is not an on-call physician or a hospital-based physician; and

(2) The insured did not provide an assignment of benefits to the physician who provided the health care services.

B. The information required by §A of this regulation shall include:

(1) The specific claim covered by the payment;

(2) The amount paid for the claim;

(3) The amount that is the insured's responsibility; and

(4) A statement instructing the insured to use the payment to pay the nonpreferred provider in the event the insured has not paid the nonpreferred provider in full for the health care services rendered by the nonpreferred provider.

C. If the payment for a claim is sent to the insured by the carrier with an explanation of benefits, the carrier shall include the information required to be provided under §A and §B of this regulation on the explanation of benefits or on a separate page included with the explanation of benefits.

D. If the payment for a claim is sent to the insured by the carrier separately from the explanation of benefits, the carrier shall include the information required under §A and §B of this regulation with the payment of claim.

E. The carrier may modify the text of the statement required by §B(4) of this regulation to be consistent with the terminology used by the carrier in its nonpreferred provider insurance policy.