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BULLETIN 04-3

To: Presidents, Health Maintenance Organizations and Managed Care Organizations

Re: Downstream Risk Regulation - Pharmacy Benefit Managers (PBMs)

Date: February 6, 2004

On December 22, 2000, the Maryland Insurance Administration issued Bulletin No. 00-26, *Implementation of Chapter 323, Acts of the General Assembly of 2000, Downstream Risk Regulation*, addressing issues related to the form and amount of segregated funds established for Administrative Services Provider Contracts (ASPCs). Since the issuance of Bulletin No. 00-26, the Administration has received numerous inquiries about the necessity of establishing segregated funds for ASPCs with Pharmacy Benefits Managers (PBMs) in the amounts required by Bulletin No. 00-26. In order to address these inquiries, the Administration has issued this Bulletin.

Bulletin No. 00-26 provides appropriate guidance for segregated fund amounts needed for most ASPCs. However, the Administration recognizes the unique nature of ASPCs with PBMs. First, the time from the date of claims funding by a Health Maintenance Organization (HMO) or Managed Care Organization (MCO) to the date the PBM pays the claims are generally shorter than is typical of other ASPCs. Typically, pharmacy claims are electronically submitted to the PBM at the time the prescriptions are filled. Claims received in approximately two-week cycles are accumulated, and the HMO or MCO provides funds in that amount to the PBM. The PBM then pays the network pharmacies for the claims submitted. As a result, claims submitted by network pharmacies are generally paid within two weeks of submission, and payments are thus in compliance with prompt pay laws. Second, PBMs generally provide the HMO or MCO with proof of claims payment before the PBM receives its next claims funding. As a result, there is a reduced likelihood that significant time could pass before an HMO or MCO became aware of non-payment of claims by a PBM. As a result, the Administration believes that, in the presence of appropriate controls, PBM contracts present a limited exposure that external providers will fail to receive amounts due.

In recognition of the unique nature of PBM contracts, the Administration has determined that it may be appropriate to establish a smaller segregated fund for a PBM contract that functions essentially as described above. In order for a smaller segregated fund to be appropriate, an HMO or MCO must implement appropriate controls to monitor the PBM's payments to external providers. Appropriate controls would include at least the following:

- The HMO or MCO must ensure, through an initial review and its quarterly review and inspection process, that the PBM pays at least 95% of its claims in compliance with Maryland's prompt pay law.

- The contract must require the PBM to provide the HMO or MCO acceptable proof of claims payment (in a form agreed to in the contract) for the last payment cycle before the HMO or MCO provides the PBM its next claims funding.

- The HMO or MCO must review the proof of claims payment documents to determine if it appears that all claims for the last payment cycle were paid.

- The HMO or MCO must ensure, through its quarterly review and inspection process, that payments of claims were in fact made by the PBM as reported on the proof of claims payment documents.

In the presence of controls of this nature, the amount of the segregated fund may be established at a level equal to one-half of one month's payments to the PBM averaged over the immediately preceding six-month period. In the absence of appropriate controls, the provisions of Bulletin No. 00-26 related to the amount of segregated funds will apply.

Signature on file with original document
Lester C. Schott
Associate Commissioner