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BULLETIN 90-6

PAYMENTS BY SECONDARY PLAN UNDER
COORDINATION OF BENEFITS

The purpose of this Bulletin is to provide guidance to third party payers concerning their obligations as secondary plans of health coverage under O.R.C. Sections 3902.11 to 3902.14. As secondary payers, some plans have often been paying their beneficiaries less than they are entitled to receive.

I. TOTAL ALLOWABLE EXPENSES

Some health plans have been avoiding the requirements of O.R.C. Section 3902.13. These plans incorrectly claim that as secondary payers their only obligation is to pay the difference between the amount paid by the primary plan and the amount they would have had to pay if they had been primary payers.

Example 1: Improper Coordination Method

Mr. and Mrs. Smith are both employed. Both have family coverage through their respective employers' group plans. Mrs. Smith has Plan A, Mr. Smith has Plan B. The two plans have identical benefits, paying 80% of Usual, Customary and Reasonable (UCR) charges. Mrs. Smith receives treatment and files a claim with both plans. The UCR for this claim is $100.00. As the primary payer, Plan A pays $80.00 ($100 x 80% = $80.00). As the secondary payer, Plan B determines its payment by subtracting Plan A's payment ($80.00) from the amount Plan B would have paid if it had been primary ($80). Plan B then pays $0. The result is that the insured, who is covered by two plans, receives little or no benefit from the secondary plan.

This reimbursement method is contrary to O.R.C. Section 3902.13 and is an Unfair and Deceptive Practice under O.R.C. Section 3901.20.

O.R.C. Section 3902.13 states that the secondary plan "acts to provide benefits in excess of those provided by the primary plan." The statute further states that, when combined with the amount paid by the primary plan, the secondary payer must reimburse the beneficiary up to "one hundred percent of expenses

allowable under the provisions of the applicable policies and contracts."

"Expenses allowable" is the amount the plan uses to calculate what it will pay under the contract, and is often more than the amount the plan actually pays. Plans sometimes only pay a portion of the allowable expenses because of deductibles, copayments or benefit maximums. If a plan pays on the basis of Usual, Customary and Reasonable (UCR) charges, the allowable expense is the UCR. The combined payments by both plans cannot be more than the allowable expense (UCR). Therefore, if the primary plan pays less than the UCR, the secondary plan must pay the balance of the UCR.

EXAMPLE 2: Proper Coordination Method

Mr. and Mrs. Smith are both employed. Both have family coverage through their respective employers' group plans. Mrs. Smith has Plan A, Mr. Smith has Plan B. The two plans have identical benefits, paying 80% of Usual, Customary and Reasonable (UCR) charges. Mrs. Smith receives medical treatment and files a claim with both plans. The UCR for this claim is $100. As the primary payer, Plan A pays Mrs. Smith $80.00 ($100 UCR x 80% = $80). Absent Plan A, Plan B would also have paid $80 ($100 UCR x 80% = $80). However, coordination of benefits limits the total of all payments to the "expenses allowable" ($100). So, Plan B determines its payment by subtracting Plan A's payment ($80) from the allowable expense ($100). Plan B then pays $20.

II. PHANTOM PLANS

Some plans of health coverage also claim to be secondary to coverage which does not exist (plans in which a dependent beneficiary chose not to enroll). This is often referred to as coordination with a "Phantom Plan."

EXAMPLE 3: Improper Coordination With a Phantom Plan

Mrs. Smith has family coverage with Plan A, which pays 80% of UCR. Mr. Smith's employer offers identical family coverage, but Mr. Smith has chosen not to enroll because he is covered under his wife's family coverage as a dependent. Mr. Smith receives medical treatment and files a claim with Plan A. The UCR for his claim is $100.

Plan A ignores the fact that Mr. Smith is not really covered by his employer's health plan and pretends that he has enrolled in his employer's plan (the Phantom Plan). When it receives the claim for Mr. Smith, Plan A acts like a secondary payer, "coordinating" with the Phantom Plan. Although no

payments are or can ever be made by the Phantom Plan, Plan A pretends that Mr. Smith's employer's plan has paid its maximum benefits ($80). Plan A then subtracts the imaginary payment ($80) from the allowable expense (UCR) for the claim ($100). Subtracting $80 from $100, Plan A pays $20, and Mr. Smith must pay the remaining claim amount from his own pocket.

As a result, Mr. Smith, who is actually enrolled under his wife's family coverage, receives little benefit from that family coverage.

O.R.C. Section 3902.13 does not permit coordination with a plan in which a person is not actually enrolled. A primary plan is one which "covers a person," and a person cannot be covered if the person is not enrolled.

Attempts by plans of health coverage to coordinate with Phantom Plans are Unfair and Deceptive Practices under O.R.C. Section 3901.20.

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Date

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