



OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

RALPH T. HUDGENS
COMMISSIONER OF INSURANCE
SAFETY FIRE COMMISSIONER
INDUSTRIAL LOAN COMMISSIONER

SEVENTH FLOOR, WEST TOWER
FLOYD BUILDING
2 MARTIN LUTHER KING, JR. DRIVE
ATLANTA, GA 30334
(404) 656-2056
www.oci.ga.gov

DIRECTIVE 14-EX-4

TO: Qualified Health Plan Issuers

FROM: Ralph T. Hudgens
Insurance & Safety Fire Commissioner

DATE: July 8, 2014

RE: Grace Period Notification Required by 45 CFR § 156.270(d)(3), Pending the Payment of Claims, and the Georgia Prompt Pay Law (O.C.G.A. § 33-24-59.5)

It has come to my attention that there is a lack of clarity regarding the interplay between the 45 C.F.R. § 156.270, which is a regulation promulgated to implement the Affordable Care Act (“ACA”), and Georgia law. The purpose of this directive is to provide clarity to insurers, providers, and most importantly to the insuring public.

GRACE PERIOD CLAIMS – CLAIMS PENDING AND NOTIFICATION REQUIREMENT

The ACA partially preempts state law relating to termination of Qualified Health Plans (“QHP”) in circumstances where the policyholder¹ receives an advance payment of the premium tax credit (“premium subsidy”). The relevant federal regulations are, in pertinent part, as follows:

(d) *Grace period for recipients of advance payments of the premium tax credit.* A QHP issuer must provide a grace period of three consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one full month's premium during the benefit year. During the grace period, the QHP issuer must:

¹The terms “policyholder” and “enrollee” are used throughout this directive. Policyholder means the enrollee who is responsible for premium payments. Enrollee includes the policyholder and all other individuals covered under a QHP.

(1) Pay all appropriate claims for services rendered to the enrollee during the first month of the grace period and may pend claims for services rendered to the enrollee in the second and third months of the grace period;

(2) Notify HHS of such non-payment; and,

(3) Notify providers of the possibility for denied claims when an enrollee is in the second and third months of the grace period.

[...]

(i) *Effective date of termination of coverage.* QHP issuers must abide by the termination of coverage effective dates described in § 155.430(d) of this subchapter.

45 CFR § 155.270. (emphasis added).

(d) *Effective dates for termination of coverage.*

[...]

(3) In the case of termination in accordance with paragraph (b)(2)(ii)(A) of this section, the last day of coverage will be the last day of the first month of the 3-month grace period.

45 CFR § 155.430. (emphasis added).

Thus, the ACA requires an insurer to provide a policyholder a 3-month grace period if the insurer received at least one month of the full premium from the policyholder and the policyholder receives a premium subsidy (“Grace Period”). The insurer *may* pend claims for services rendered to enrollees during the second and third months of the Grace Period and *must* provide notice to providers of the possibility that claims for services rendered during the second and third months of the Grace Period may be denied. Where a policyholder does not pay the premium due within the Grace Period the insurer can terminate the QHP and any Grace Period pended claims can be denied.

DEPARTMENT GUIDANCE – PENDING CLAIMS AND PROVIDING NOTICE

Pending Claims – An insurer may pend claims for medical services rendered by a provider during the second and third month of the Grace Period. An insurer may not, however, pay the claim during the Grace Period and seek to recover the claim amount from the provider through a post claim audit.

Exception to Insurer Right to Pend Claims – An insurer must provide “Adequate Notice” (defined below) that an enrollee is subject to the Grace Period. Additionally, an insurer shall not pend a claim where the provider is required to provide a medical service during the second and third month of the Grace Period by the relevant network agreement (“Mandatory Service Clause”). If the insurer does not provide Adequate Notice or the provider is subject to a Mandatory Service Clause, then the insurer must pay the relevant claim. Lack of Adequate Notice is curable and the insurer only needs to pay the claims associated with services rendered by a provider prior to the insurer providing Adequate Notice.

Adequate Notice of Grace Period – For the purposes of this Directive, “Adequate Notice” means a written and/or oral communication from an insurer to a provider, which clearly notifies providers that an enrollee is in the second or third month of the Grace Period. Below are a couple of examples of a sufficient Adequate Notice policy is as follows:

THE OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN,
SEX, RELIGION, AGE OR DISABILITY IN EMPLOYMENT OR THE PROVISION OF PROGRAMS OR SERVICES

Oral Notice

Insurer X notifies all contracted providers in writing (which includes email if that is the typical mode of notice) that all providers may confirm the coverage of an enrollee through a verification of benefits (or pre-certification if relevant) or similar process. The confirmation of coverage will also include notice of the fact that an enrollee is in the second or third month of the Grace Period.

Written Notice

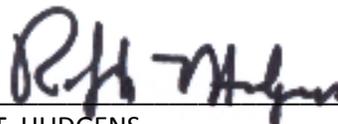
Insurer X notifies all contracted providers in writing (which includes email if that is the typical mode of notice) that all providers may determine if an enrollee is in the second or third month of the Grace period through a webportal set up to provide this notice. The webportal will provide real time information.

These examples are not exhaustive and any policy that is reasonably designed to provide prior or contemporaneous notice will be deemed Adequate Notice. Insurers are encouraged to contact the Department for clarification if necessary.

APPLICABILITY OF PROMPT PAY LAW

The interest required under the prompt pay law will not accrue while claims are in pended status as long as the claims were pended in a manner that is consistent with this directive. The interest required under the prompt pay law will accrue on all other claims.

Should you have any questions regarding this directive, please contact the Office of the Commissioner of Insurance, Insurance and Financial Oversight Division, Market Regulation Section, Suite 602, West Tower, Floyd Building, 2 Martin Luther King Jr. Drive, Atlanta, Georgia 30334, or call 404-657-7277, or email dpeirce@oci.ga.gov.



RALPH T. HUDGENS
INSURANCE AND SAFETY FIRE COMMISSIONER
STATE OF GEORGIA