



South Carolina Department of Insurance

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BULLETIN 2016-15

TO: All Life, Accident and Health Insurers Writing Supplemental Cancer and Other Specified Disease Policies in South Carolina

FROM: Raymond G. Farmer
Director of Insurance 

RE: Compliance with S.C. Code Ann. Section 38-71-242 after South Carolina Supreme Court's decision in *Kirven v. Central States*

DATE: December 22, 2016

I. PURPOSE

This Bulletin withdraws, supersedes and replaces Bulletin 2008-15. It is intended to provide guidance on the applicability of Section 38-71-242 to supplemental or other specified disease health insurance policies following the South Carolina Supreme Court's decision referenced above.

II. DISCUSSION

South Carolina Department of Insurance Bulletin 2008-15 was issued after the enactment of 2008 S.C. Act No. 265 which codified the definition of the term *actual charges*. Section 38-71-242 reads as follows:

(A)(1) When used in any individual or group specified disease insurance policy in connection with the benefits payable for goods or services provided by any health care provider or other designated person or entity, the terms "actual charge", "actual charges", "actual fee", or "actual fees" shall mean the amount that the health care provider or other designated person or entity:

(a) agreed to accept, pursuant to a network or other agreement with a health insurer, third-party administrator, or other third-party payor, as payment in full for the goods or services provided to the insured;

(b) agreed or is obligated by operation of law to accept as payment in full for the goods or services provided to the insured pursuant to a provider, participation agreement, or supplier agreement under Medicare, Medicaid, or any other government administered health care program, where the insured is covered or reimbursed by such program; or

(c) if both subitems (a) and (b) of this subsection apply, the lowest amount determined under these two subitems...;

(B) This section applies to any individual or group specified disease insurance policy issued to any resident of this State that contains the terms “actual charge”, “actual charges”, “actual fee”, or “actual fees” and does not contain an express definition for the terms “actual charge”, “actual charges”, “actual fee”, or “actual fees”.

(C) Notwithstanding any other provision of law, *after the effective date of this section, an insurer or issuer of any individual or group specified disease insurance policy shall not pay any claim or benefits based upon an actual charge, actual charges, actual fee, or actual fees under the applicable policy in an amount in excess of the “actual charge”, “actual charges”, “actual fee”, or “actual fees” as defined in this section. See S.C. Code Ann. § 38–71–242 (2015).*

According to the language of the statute, insurers... shall not pay any claim or benefits based upon an actual charge, actual charges, actual fee or actual fees under the applicable policy in an amount in excess of the actual charge, actual charges, actual fee or actual fees as defined in Section 38-71-242. The South Carolina Supreme Court opined in *Kirven v. Central States Health and Life Company of Ohio*, 409 S.C. 30, 760 S.E.2d 794 (2014) (hereinafter *Kirven v. Central States*) that despite the temporal (retroactive) language in Section 38-71-242 (C) that the definition of actual charges cannot be applied to insurance contracts that were entered into *prior* to the statute’s effective date because that constituted an impairment of contract in violation of the state and federal constitutions. Please note that the Court did not find that statute unconstitutional. However, this decision prohibits the statute’s application to those insurance contracts that existed prior to the statute’s effective date. Section 38-71-242 applies to insurance contracts issued *after* June 4, 2008 (i.e., the statute’s effective date). *See* S.C. Code Ann. § 38–71–242 (2015).

III. QUESTIONS

Questions concerning this bulletin should be submitted via email to lahmail@doi.sc.gov and include the company name and primary point of contact (with phone number and email address) for follow up.

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