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BULLETIN 2013-09

To: All Health Maintenance Organizations and Health Benefit Plans Offering Medical Eye Care or Vision Care Benefits

From: Raymond G. Farmer
Director *R.G.F.*

Subject: Allegations of Unfair Discrimination by Optometrists that Medical Doctors (Ophthalmologists) are reimbursed at a Higher Rate than Optometrists

Date: September 13, 2013

I. Purpose

It has come to the attention of the South Carolina Department of Insurance (Department) that some Health Maintenance Organizations (HMO) and Health Benefit Plans offering medical eye care or vision care benefit plans are reimbursing Ophthalmologists at a higher rate than Optometrists for the same eye care services. This practice violates South Carolina Law. The purpose of this Bulletin is to remind insurers and HMOs of the requirements of S.C. Code Ann. § 38-71-440(C).

II. Discussion

Section 38-71-440(C) provides:

“(C) No health maintenance organization or health benefit plan which maintains or contracts with a network of ophthalmologists or optometrists, or both, to provide medical eye care or vision care benefits, or both, excepting all self-funded health benefit plans as defined under the Federal Employee Retirement Income Security Act (ERISA) of 1974, shall discriminate against optometry, as a class, or ophthalmology, as a class, with respect to the terms, conditions, privileges, and opportunity of participation or **compensation for the same eye care services** provided in this section.”(*Emphasis Added.*)

Section 38-71-440 (C) expressly prohibits Health Benefit Plans and HMOs from reimbursing Ophthalmologists at a higher rate than Optometrists for the exact same service provided. To do so, is discriminatory and violates the requirements of §38-71-440 (C).

Some HMOs and Health Benefit Plans engaging in this practice appear to be relying upon S.C. Code Ann. § 38-71-440 (I) which reads as follows:

“(I) Nothing in this plan may be construed to prohibit a health maintenance organization or health benefit plan from professionally credentialing and evaluating all individual optometrists or Ophthalmologists within a network or plan *in a nondiscriminatory manner*. Nothing in this section may be construed to prohibit any health maintenance organization or health benefit plan from limiting the number of Optometrists or Ophthalmologists *in a nondiscriminatory manner* or to prohibit a health maintenance organization or health benefit plan from negotiating individually with optometrists or ophthalmologists for individual rates and eye care services *in a nondiscriminatory manner*.” (*Emphasis Added.*)

Although 38-71-440(I) permits HMOs and Health Benefit Plans to negotiate individually with Optometrists or Ophthalmologists, the negotiations must be conducted in a nondiscriminatory manner. Based on the operative language of § 38-71-440 (I), individual negotiations still must be conducted “in a nondiscriminatory manner.” Accordingly, based upon the plain and express language of the statute, the results of an individually negotiated contract cannot be that Optometrists are paid less for the same eye care service provided by an Ophthalmologist within the same geographic rating area.

Any HMO or Health Benefit Plan engaging in this practice must cease and desist immediately. If the Department determines that an HMO or Health Benefit Plan insurer is violating these insurance laws, then the Department will institute the appropriate disciplinary action in accordance with S.C. Code Ann. §38-2-10. Nothing in this bulletin is intended to preclude the use of geographic rating so long as optometrists and ophthalmologists’, within the same geographic rating area, are paid the same amount for the same services.

III. Questions

Any questions regarding the content of this bulletin should be directed to the attention of David E. Belton, Senior Associate General Counsel at the following email address dbelton@doi.sc.gov .
