



Arkansas Insurance Department

Mike Huckabee, Governor

Mike Pickens, Commissioner

BULLETIN NO. 06-2003

Monday, August 18, 2003

TO: ALL HEALTH MAINTENANCE ORGANIZATIONS, ACCIDENT AND HEALTH INSURERS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: APPLICABILITY OF THE "EQUAL REIMBURSEMENT STATUTE" (ACA 23-79-114) TO HEALTH MAINTENANCE ORGANIZATIONS

Questions have arisen related to the applicability of Ark. Code Ann. §23-79-114 (the "Equal Reimbursement Statute") to health maintenance organizations ("HMOs"). Ark. Code Ann. §23-79-114 provides a variety of medical specialists, who are not licensed under the Arkansas Medical Practices Act under Ark. Code Ann. §17-95-201, with a right to be equally reimbursed by accident and health insurers for services the carrier would cover or pay for if performed by a licensed physician. Recently, Act 1455 of 2003 added audiologists to the list of medical specialists, required to be paid equally to licensed physicians, through the Equal Reimbursement Statute. The Department has frequently fielded several questions related to whether the Equal Reimbursement Statute requires health maintenance organizations to provide the medical specialists, listed in the Equal Reimbursement Statute, with payment or reimbursement on an equal basis to licensed physicians, if the policy or contract covers such service or benefit.

HMOs are subject to the Equal Reimbursement Statute. Ark. Code Ann. §23-76-104 defines those parts or sections of the insurance code to which HMOs are subject. Ark. Code Ann. §23-76-104 provides, under section (12), that HMOs are subject to: "(12) Sections 23-79-101-23-79-107, 23-79-109-23-79-128, 23-79-131-23-79-134, and 23-79-202-23-79-210, referring to insurance contracts." The Equal Reimbursement Statute, Ark. Code Ann. §23-79-114, therefore is clearly included as a section in the insurance code the legislature intended to apply to HMOs. Ark. Code Ann. §23-76-104 does provide an exception to applying those insurance code provisions listed in its purview, "if the Insurance Commissioner determines that the nature of health maintenance organizations, health care plans, and evidences of coverage renders such sections clearly inappropriate." The Commissioner has no evidence to conclude that the Equal Reimbursement Statute would be "clearly inappropriate" to HMOs. The intent of the state legislature in both Ark. Code Ann. §23-76-104 and §23-79-114 is to apply the equal reimbursement provisions to HMOs. Throughout Ark. Code Ann. §23-79-114, references are made to apply equal reimbursement to the listed medical specialists "notwithstanding any provision of any individual or group policy of accident and health insurance or any provision of a policy, contract, plan, or agreement for hospital or medical service or indemnity," a phrase clearly broad enough to encompass HMO contracts. In addition, there is no explicit or implicit language in the Equal Reimbursement Statute providing an exception to its requirements for HMOs.

Although the Equal Reimbursement Statute applies to HMOs, the Department reminds the medical specialists, subject to Ark. Code Ann. §23-79-114, that the right to reimbursement or payment is merely equal to what the policy or contract would pay a licensed physician for that service or benefit. The Equal Reimbursement Statute does not provide and is not intended to enlarge coverage, payment, or mandate network participation or affiliation to medical specialists for services or benefits not covered in the policy or HMO contract. If the policy or contract would not pay or reimburse a licensed physician for that service, the medical specialist is obviously not entitled to payment either. This limitation also applies to reimbursement, coverage and payment restrictions when the service is performed by a medical specialist "out of network," or by a "non participating provider." If the policy or contract does not provide payment or reimbursement to a licensed physician, when incurred out of network, neither would service required to be paid to a medical specialist, incurred out of network. All questions regarding this Bulletin should be directed to Booth Rand, Associate Counsel, Legal Division, at 501-371-2820 or booth.rand@mail.state.ar.us.

A handwritten signature in blue ink, appearing to read "Mike Pickens".

August 18, 2003

MIKE PICKENS
INSURANCE COMMISSIONER

DATE