



GOVERNMENT OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

March 19, 2010

RULING LETTER NO.: 2010-110-PP

TO ALL INSURERS AND HEALTH SERVICES ORGANIZATIONS THAT
UNDERWRITE MEDICARE ADVANTAGE PLANS IN PUERTO RICO

**APPLICABILITY OF CHAPTER 30 OF THE PUERTO RICO INSURANCE CODE TO
THE PAYMENT OF CLAIMS FOR SERVICES PROVIDED UNDER A MEDICARE
ADVANTAGE PLAN**

Dear Sirs and Madams:

As you are aware, Public Law. No. 104, enacted on July 19, 2002, known as the "Prompt Payment of Health Services Provider Claims Act," amended the Puerto Rico Insurance Code to include Chapter 30 (hereinafter Chapter 30 or the Prompt Payment Act). Said Chapter set the terms for payment by insurers and health services organizations to their participating providers and the procedures and applicable exclusions, among other matters, were regulated.

Rule No. 73 of the Regulations of the Puerto Rico Insurance Code (Rule No. 73), which was subsequently promulgated by this Office, established more specific guidelines to insure strict compliance with Chapter 30. Both Chapter 30 and Rule No. 73 are intended to propitiate prompt payment to participating providers, with a view to guaranteeing better health services for the people of Puerto Rico.

Since Chapter 30 and Rule No. 73 went into effect on January 15, 2003, we have issued several Ruling Letters and Circular Letters for the purpose of establishing guidelines, to advise you of the interpretations made by this Office regarding certain matters, and to establish the corresponding enforcement procedures.

It has recently come to our attention that there are questions that have arisen regarding the scope of Chapter 30 in terms of the payments for services provided to subscribers of Medicare Advantage plans in Puerto Rico. In view of this, we have been asked to clarify whether the provisions of Chapter 30 and Rule 73 apply to the payment of said claims.

The following is an analysis our Office has made of this matter, in the light of federal legislation and the regulations promulgated by the Centers for Medicare and Medicaid Services (CMS).

CMS regulations require that all contracts between providers and insurers or health services organizations (hereinafter “the parties”) include a provision regarding prompt payment of claims. The requirement is based on the provisions of 42 C.F.R. 422.520 (b)(1) and (2), which read as follows:

"(b)(1) Contracts between MA organization and providers and suppliers-contracts or other written agreements between MA organizations and providers must contain a prompt payment provision, the terms of which are developed and agreed to by both the MA organization and the relevant provider.

(2) The MA organization is obligated to pay contracted providers under the terms of the contract between the MA organization and the provider."

To comply with this requirement, the contracts shall include a provision establishing the terms for payment of claims by the participating providers (“contracted providers”). It should be noted that for participating providers federal regulations do not establish a specific term during in which payment shall be made.¹ What is required is that the parties establish in their contracts, by mutual agreement, the term that the insurer or health services organization have to pay the participating providers for services rendered to subscribers under a Medicare Advantage plan. When this requirement is satisfied, the above paragraph (2) provides that payment of claims will be governed by the agreement between the parties. That is to say, the insurer or health services organization shall be subject to the fulfillment of the contractual terms.

Because the parties have the power to establish the prompt payment terms that they have seen fit to negotiate, it is valid that the parties stipulate in the contract the terms and provisions of state law, which in the case of Puerto Rico would be Chapter 30. In view of the fact that our Office is the government agency charged with enforcing the provisions of Chapter 30, when the parties agree to submit to the provisions of this Chapter, or, in other words, the Prompt Payment Act, our Office has jurisdiction to enforce the agreement. It should be noted that in this scenario the parties voluntarily choose to be covered by the Prompt Payment Act.

¹ Federal regulations only establish payment terms for claims by non-contracted providers. See 42 C.F.R. 422.520 (a), that establishes that:

"(a) Contract between CMS and the MA organization.

- (1) The contract between CMS and the MA organization must provide that the MA organization will pay 95 percent of the 'clean claims' within 30 days of receipt if they are submitted by, or on behalf of, an enrollee of an MA private fee-for-services plan or are claims for services that are not furnished under a written agreement between the organization and the provider.
- (2) The MA organization must pay interest on clean claims that are not paid within 30 days in accordance with sections 1816(c)(2)(B) and 1842(c)(2)(B).
- (3) All other claims from non-contracted providers must be paid or denied within 60 calendar days from the date of the request."

Furthermore, Chapter 30 is also applicable when the contract between the parties does not contain a provision for the prompt payment of claims or when, in spite of the existence of such a provision, the clause is not clear or does not specify the time within which the insurer or health services organization should pay provider claims. It should be noted that the purpose of requiring the inclusion of a prompt payment provision in the contracts is precisely to establish payment terms for provider claims, regardless of what those terms may be. When this requirement is met, the contractually established terms in this become "the law between the parties." Nevertheless, if the requirement to establish a prompt payment clause is not met, there are no parameters for this matter, since federal regulations do not establish the term in which claims submitted by participating providers must be paid. Therefore, in these cases, the Puerto Rico Prompt Payment Act shall be applied in a complementary manner.

In addition, contracts that do not contain any provision for the prompt payment of claims will be referred by our Office to CMS for investigation, since, as we have stated, federal regulations expressly requires that contracts include a provision in that regard.

In conclusion, pursuant to the above, for claims submitted under a Medicare Advantage plan, this Office will exercise its jurisdiction to enforce the Prompt Payment Act, only in two instances:

1. When the parties to the contract have expressly agreed to adopt the Prompt Payment Act to govern the procedures for paying claims;
2. When the contract does not contain a prompt payment provision, or when, if there is such a provision, the provision is not clear or fails to define a specific time in which the insurer or health services organization should pay provider claims.

All insurers and health services organizations that underwrite Medicare Advantage plans in Puerto Rico shall act according to the guidelines set forth above in processing provider payments.

Very truly yours,

(Signed)

Ramón L. Cruz-Colón, CPCU, ARe, AU
Commissioner of Insurance