



September 27, 2010

To: Third party payers

Re: Recent change in Ohio law governing electronic payment by third party payers of health care claims

This letter is intended to give general guidance regarding how the Ohio Department of Insurance (“Department”) intends to regulate the conduct of carriers in complying with the requirement that payers must pay electronically for claims received electronically. The revision to R.C. § 3901.381<sup>1</sup> becomes effective October 16, 2010. The statute provides that when third party payers receive claims electronically from contracted providers they are required by law to pay those claims electronically, and providers are prohibited by law from refusing to accept payments on the basis that they were transmitted electronically. Third party payers should work with providers to address their concerns and resolve them in a mutually agreeable and timely manner.

The Department has been asked whether administrative action would be taken against a carrier if the carrier fails to pay an electronic claim electronically because the contracted provider does not give the carrier information needed to pay the claim electronically. The Department will expect carriers to demonstrate by proper documentation that they have made a good faith effort to obtain the needed information and, despite this effort, the contracted provider has not given the information.

As you know, the Department enforces Ohio’s prompt payment law through market conduct examinations. When the Department conducts such an examination, it will review a carrier’s files to determine if claims submitted electronically were paid electronically. If an examination shows that a carrier has failed to pay electronic claims electronically despite having the necessary information to do so, we likely will find a violation. On the other hand, if an examination shows the carrier has failed to pay electronic claims electronically despite good faith efforts to obtain necessary information from a provider who refused to share the necessary information, we likely will not take administrative action. We will require proper documentation to verify the facts of each case. Examples of acceptable documentation of a good faith effort to obtain a provider’s banking information are an acknowledgement form signed and dated by the physician indicating that he/she is unwilling to provide the needed information to receive electronic payments or other evidence, such as a note contained in the claim or other file, that the information was requested from the physician but never received. Any note should include all

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<sup>1</sup> (F) A third party payer shall transmit electronically any payment with respect to claims that the third party payer receives electronically and pays to a contracted provider under this section and under sections 3901.383, 3901.384, and 3901.386 of the Revised Code. A provider shall not refuse to accept a payment made under this section or sections 3901.383, 3901.384, and 3901.386 of the Revised Code on the basis that the payment was transmitted electronically.

relevant information such as dates of requests, who made the requests and to whom requests were sent.

If a contracted provider does not give the carrier information needed to pay the claim electronically, the carrier should timely pay the claim using the same method (for example, by mailing a check) it used to pay a claim prior to October 16, 2010.

Please also note that R.C. § 3901.381(B)(2)(a) outlines when requests for additional information can delay payment to 45 total processing days. Delay is permitted only when supporting information is needed to establish the third-party payer's responsibility to make a payment. Information needed to supply an electronic payment would not be classified as needed to establish the third-party payer's responsibility to make a payment. Nor would the claim be considered materially deficient because identifying the provider on a claim does not include their electronic payment information.

The Department has heard that electronic payments create two concerns for providers. First, providers are concerned that carriers intend to directly withdraw overpayments from the provider's account. Please note that the Department would consider direct withdrawals by a third-party payer from a provider's account which is used to receive electronic payments a violation of ORC 3901.388. Please consult ORC 3901.388(B) for the correct process to be used by third-party payers to collect overpayments made to providers.

Second, the Department has heard that electronic payments create difficulties for some providers in reconciling payments to the explanations of benefits. Third-party payers should work with providers to develop payment and explanation of benefits procedures that make recording and reconciliation of payments to the underlying documentation efficient and cost-effective.

Please do not hesitate to contact me for further information.

Sincerely,



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