

Bulletin 304

AN ACT TO UPDATE AND AMEND THE PREFERRED PROVIDER ARRANGEMENT

The following additions and revisions to the Preferred Provider Arrangement Act, Title 24-A M.R.S.A. Chapter 32 and the Health Plan Improvement Act, Title 24-A M.R.S.A Chapter 56-A, Subchapter III, were enacted by the Maine Legislature this past session and signed into law (PL 609) by the Governor on April 27, 2000. Unless otherwise specified, the requirements of the new law go into effect on August 11, 2000. Carriers are responsible for complying with all requirements of the new law whether or not listed in this bulletin. Copies of the law may be requested from:

Office of the Revisor of Statutes

Engrossing Division

7 State House Station

Augusta, Maine 04333-0007

Web Site: www.janus.state.me.us/legis/statutes

Telephone: (207) 287-1649

An Act to Update and Amend the Preferred Provider Arrangement (LD 2029 - PL 609) addresses both preferred provider arrangements and downstream risk arrangements. The purpose of the law was to update and subject preferred provider arrangements to the same regulatory oversight and reporting requirements that similarly licensed managed care organizations receive from the Bureau of Insurance. The downstream risk provisions authorize the Bureau to review and analyze downstream risk relationships between insurance carriers and downstream entities. The downstream risk provisions require carriers and downstream entities to file a licensing waiver request if the arrangement fails to meet the safe harbor provisions of this statute.

Title 24-A M.R.S.A. Chapter 32 The Preferred Provider Arrangement Act

1. Definition of Administrator - 24-A MRSA § 2671 (1)

Administrator is defined to mean any person, other than a carrier that administers a preferred provider arrangement.

2. Definition of Preferred Provider Arrangement - 24-A MRSA § 2671 (7)

A preferred provider arrangement is defined as a contract, agreement or arrangement between a carrier or administrator and a provider in which the provider agrees to provide services to a health plan enrollee whose plan benefits include incentives for the enrollee to use the services of that provider.

3. Filing requirements - 24-A MRSA § 2673-A (1)

Carriers or administrators offering a preferred provider arrangement shall annually file with the Bureau the following information:

- proposed agreements
- rates
- geographic service areas
- provider network directories
- filing requirements consistent with chapter 56-A, and
- Rule 850

4. Separate approval required - 24-A MRSA §2673-A (2)

Carriers that offer plans in different geographic service areas or having preferred providers in one plan who are nonpreferred providers in another plan offered by the same carrier must separately file and obtain approval for each arrangement. Plans that offer multi-tier preference tiers for preferred providers must also be registered as a separate preferred provider arrangement.

5. Registration as insurance administrator - 24-A MRSA § 2674-A (5)

Preferred provider administrators who directly or indirectly transfer funds, manage funds, adjust claims or assert control over the transfer of funds for the purpose of payment of provider services are required to register as insurance administrators pursuant to chapter 18.

6. Risk Transfer - 24-A MRSA § 2676

Preferred provider arrangements that comply with chapter 56-A, subchapter III may embody risk transfer between carriers and providers.

7. Benefit Level- 24-A MRSA § 2677-A (2)

The benefit level between preferred providers and nonpreferred providers may not exceed 20% of the allowable charge for the service rendered. Compliance with this requirement may be demonstrated on an aggregate basis. A qualified actuary who is a member of the American Academy of Actuaries or its successor organization must certify that the aggregate analysis complies with the 20% requirement.

Title 24-A M.R.S.A Chapter 56-A, Subchapter III Downstream Risk

1. Definitions - 24-A MRSA § 4331 (3)

Downstream entity means a person other than a carrier that has assumed all or part of the insurance risk of one or more health plans under a contractual relationship with a carrier or another downstream entity. An employer exempt from the applicability of this chapter under the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Sections 1001 to 1461 (1998) is not considered a downstream entity.

2. Definitions - 24-A MRSA § 4331 (4)

Downstream risk arrangement means any compensation arrangement between a carrier and a downstream entity that may directly or indirectly have the effect of reducing or limiting services furnished to enrollees of the carrier.

3. Definitions - 24-A MRSA § 4331 (9)

Risk-sharing arrangement means an arrangement between a carrier and a downstream entity in which the carrier continues to pay providers for a defined set of services subject to an annual reconciliation process in which costs incurred by the carrier are compared with budgeted or targeted amounts for such services and that may, if payments are different than the budgeted amount, create financial liability of the downstream entity to the carrier or the carrier to the downstream risk entity provided the carriers holds or retains control of any funds in excess of those required to satisfy current claims obligations or direct payment to providers for services rendered pending reconciliation.

4. Safe Harbor and Waiver - 24-A MRSA § 4332 (1)

Arrangements between carriers and downstream entities that accept a limited degree of insurance risk are permitted and are not deemed to be engaging in the business of insurance if the arrangements meet the following criteria:

- Do not involve substantial insurance risk as defined at § 4334 (1)
- Do not involve substantial enrollment risk as defined at § 4334 (2)
- Complies with the contractual provisions required in § 4335
- Complies with the disclosure requirements in § 4336.

5. Waiver Required for Downstream Risk Arrangements that Exceed the Risk Thresholds established in the Safe Harbor Provisions - 24-A MRSA § 4332 (2)

Carriers and downstream risk entities that exceed the risk thresholds described in § 4334 may jointly request that the superintendent grant a waiver to allow the downstream risk entity to accept a limited degree of insurance risk without being licensed as an insurer. The waiver request must include a plan for managing financial exposure based on enrollment and utilization projections, contractual provisions specified at § 4339, parties and features of the arrangement sufficient to quantify in dollars per quarter per annum all elements of the downstream risk to be assumed by the downstream entity.

6. Carrier Obligation to Subscribers - 24-A MRSA § 4332 (3)

Carriers contracting with a downstream entity remain obligated to their subscribers for the delivery of health care benefits consistent with existing state law.

7. Certain incentives prohibited - 24-A MRSA § 4332 (4)

Downstream risk arrangements may not contain incentives to limit or deny medically necessary care to enrollees.

8. Requirements still applicable - 24-A MRSA § 4332 (5)

Downstream entities subject to the safe harbor or waiver provisions of Chapter 56-A Subchapter III, are not exempt from any other applicable licensure requirement, including but not limited to utilization review licensure, insurance administrator licensure or preferred provider arrangement registration.

9. Limitations on premium transfer - 24-A MRSA § 4341 (3)

The superintendent may deny a request for waiver from insurance licensure where the carrier proposes to transfer 30% or more of its annual aggregate premium with respect to a contract, plan or product to a single downstream entity.

The superintendent may deny a request for waiver from insurance licensure where the carrier enters into multiple contracts by which 75% or more of the carriers annual aggregate premium with respect to a contract plan or product is transferred to one or more downstream entities.

10. Related provisions that may result in denial of a waiver request - 24-A MRSA § 4342

The superintendent may deny any request for a waiver based on any of the following arrangement characteristics:

- The downstream risk entity has control of the carrier.
- The carrier transfers claims processing, claims payment or claims adjudication functions to the downstream risk entity.
- The downstream risk entity assumes managerial control of the carriers information system.
- There is an overlap between the directors and officers of the carrier and the downstream risk entity.
- The downstream risk entity receives more than 1/12 of the annual capitated payments at one time from the carrier.

11. Section 21 Transition

By February 6, 2001 carriers with existing downstream risk arrangements must file applications for waivers from licensure with the superintendent consistent with the requirements of this statute.

Individuals wanting additional information regarding this bulletin or Public Law 609 are encouraged to contact the Bureau of Insurance at 1-800-300-5000.

DATED: September 6, 2000 _____

ALESSANDRO A. IUPPA

Superintendent of Insurance

NOTE: This bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties or privileges nor is it intended to provide legal advice. Readers are encouraged to consult applicable statutes and regulations and to contact the Bureau of Insurance if additional information is needed.