

BULLETIN 365

Savings Offset Payments

Health insurance carriers, third-party administrators, and employee benefit excess insurance carriers have been required to pay quarterly savings offset payments (“SOP”) to the Dirigo Health Agency (“DHA”) pursuant to former 24-A M.R.S.A. § 6913. This obligation is enforced by the Superintendent pursuant to 24-A M.R.S.A. § 6913(5). The SOP is calculated as a percentage of paid claims, at a level established annually by the DHA Board of Trustees (the “Board”). This requirement took effect in 2006 and has recently been replaced by a requirement to pay access payments pursuant to 24-A M.R.S.A. § 6917, which was enacted this year by 2009 Public Law, Chapter 359 (effective October 1, 2009). *See* L.D. 1264 (124th Legis. 2009). The final SOP installment will be due December 1, 2009, and will reflect claims paid in July and August of 2009.¹

On December 18, 2008, the Board established an SOP level of 2.14% of paid claims for the December 2009 installment.² That determination was based on the Superintendent’s approval of aggregate measurable cost savings (“AMCS”) on September 30, 2008, No. INS-08-900 (the “Superintendent’s Decision”). There has been some uncertainty, as the result of a recent court decision vacating the Superintendent’s Decision, as to the amount of the SOP that is payable in December 2009. *See Maine Automobile Dealers Association Insurance Trust v. Superintendent of Insurance*, KENSC-AP-08-71, 08-72, 08-73 & 08-74 (Me. Sup. Ct., Ken. Cty., Aug. 31, 2009) (Jabar, J.). Granting an appeal of the Superintendent’s Decision by intervenors in the proceeding, the court remanded the case back to the Superintendent “with the order that it disapprove the AMCS determination submitted by the Board” and further ordered the Superintendent to remand the matter back to the Board to re-determine the AMCS. The amount of AMCS re-determined by the Board could be higher than, the same as, or less than the previous AMCS amount approved by the Superintendent’s Decision, and would then be subject to review by the Superintendent and the courts.

The court did not invalidate the Board’s SOP order, nor did it rule on the SOP in any way. Therefore, unless a revised SOP is established by the Board before December 1, 2009, the expectation is that health insurance carriers, third-party administrators, and employee benefit excess insurance carriers will pay the SOP due December 1, 2009, at the currently established level of 2.14% of paid claims. It is possible, because the AMCS has not yet been definitively established, that the SOP percentage could ultimately be determined to exceed the amount permissible under 24-A M.R.S.A. § 6913(2)(C), which prohibits the SOP from exceeding the AMCS. In the event that this happens, any overpayments would be addressed by DHA through the reconciliation process under 24-A M.R.S.A. § 6913(3)(H), or some other appropriate procedure.

¹ Pursuant to P.L. 2009, ch. 359, § 7, the final SOP installment continues to be governed by the terms of former 24-A M.R.S.A. § 6913.

² This SOP percentage would also have applied to the remainder of the 2009–2010 assessment year, had the Legislature not subsequently terminated the SOP process.

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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 should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.