

STATEMENTS OF POLICY

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 259]

Statement of Claim for Recipients in Managed Care

Purpose

The purpose of this statement of policy is to clarify how the Department of Public Welfare (Department) will compute statements of claim for reimbursement of Medical Assistance (MA) funds from liable third parties when clients receive MA through a managed care organization (MCO) under contract with the Department.

Scope

This statement of policy applies to all providers enrolled in the MA Program and all managed care plans under contract with the Department.

Background

Section 1902(a)(25) of the Social Security Act (42 U.S.C.A. § 1396a(a)(25)), requires the Department to operate a program to recover the costs of MA expenditures from liable third parties. Section 1912(b) of the Social Security Act (42 U.S.C.A. § 1396k(b)), requires that third-party liability reimbursement be pursued for MA services provided on behalf of an individual client. When MA services are delivered through MCOs, Federal policy requires that either the Department or the MCO fulfill Federal third-party liability requirements.

Discussion

The Department's contracts with MCOs throughout this Commonwealth give the Department responsibility for pursuing casualty related postpayment recoveries from third parties who are liable for medical costs paid by the MA program. However, since MCOs are paid by the Department on a capitated basis it is impossible to directly compute a statement of claim for MA expenditures attributable to a specific illness or injury. Accordingly, the Department must implement a methodology to estimate the liability of third parties when services are paid for by an MCO.

The Department has considered and rejected the option of recovering only the amount of the capitation payment paid by the Department to the MCO. The capitation fee is a discounted estimate of average per member costs across the entire MA population. Use of the capitation fee to compute liability in injury cases would not fairly allocate increased costs resulting from injuries in individual cases to the liable third parties. Additionally, section 1912(b) of the Social Security Act requires the Department to seek reimbursement from third parties for the cost of care attributable to individual MA clients. The capitation fee is an inappropriate statistic to estimate the costs attributable to an individual MA client.

In computing its claim for services paid through an MCO, the Department will use the amount of the payment made by the MCO to the medical provider as a reasonable estimate of the actual MA costs which are the responsibility of a third party. If the MCO makes a capitated payment to the provider, the Department will use its analogous fee schedule amount as a reasonable substitute for the actual amount attributable to a particu-

lar service. The Department interprets State law provisions found in section 1409(b)(7)(i) and (8) of the Public Welfare Code (62 P.S. § 1409(b)(7)(i) and (8)) to be consistent with this approach. The Department considers an MCO under contract with the Department to be an agent of the Department for the purposes of making MA expenditures subject to recovery under section 1409. Accordingly, expenditures of the MCO will be considered to be expenditures of the Department for purposes of applying section 1409(b)(7)(i) and (8).

If the MCO fails to provide the Department with information necessary to compute the statement of claim within contractual deadlines, the Department will use the amount of the capitation payments made to the MCO since the date of the injury as its claim against the third party until sufficient information is provided to compute a statement of claim in accordance with the foregoing policy. When the Department is forced to use the capitation payment to compute its statement of claim, the MCO will be liable to the Department for the amount of the Department's diminished recovery in accordance with the terms of the MCO's contract with the Department.

Effective Date

This statement of policy takes effect upon publication in the *Pennsylvania Bulletin* and applies retroactively to February 1, 1997.

Contact Person

Comments and questions regarding this statement of policy should be directed to: Third Party Liability Section, Department of Public Welfare, P. O. Box 8486, Harrisburg, PA 17105-8486, (717) 772-6257.

(*Editor's Note:* The regulations of the Department, 55 Pa. Code, are amended by adding a statement of policy in § 259.1 (relating to statement of claim; managed care organizations—statement of policy).)

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-BUL-55. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart G. RESTITUTION AND REIMBURSEMENT

CHAPTER 259. THIRD-PARTY LIABILITY

§ 259.1. Statement of claim; managed care organizations—statement of policy.

(a) With respect to claims against third parties for the costs of Medical Assistance (MA) services delivered through a Managed Care Organization (MCO) contract, the Department will recover the actual payment to the hospital or other medical provider for the service. If no specific payment is earmarked by the MCO for the service, such as in the example of a capitated payment to physicians, the Department will recover its fee schedule amount for the service.

(b) If the MCO fails to provide the Department with information necessary to compute the statement of claim within contractual deadlines, the Department will use the amount of the capitation payments made to the MCO since the date of the injury as its claim against the third

party until sufficient information is provided to compute a statement of claim in accordance with subsection (a). When the Department is forced to use the capitation payment to compute its statement of claim, the MCO will be liable to the Department for the amount of the Department's diminished recovery in accordance with the terms of the MCO's contract with the Department.

[Pa.B. Doc. No. 98-1100. Filed for public inspection July 10, 1998, 9:00 a.m.]

Title 64—SECURITIES

SECURITIES COMMISSION

[64 PA. CODE CH. 604]

Internet Use

The Securities Commission (Commission) has adopted a statement of policy in § 604.020 (relating to broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives using the Internet for general dissemination of information on products and services—statement of policy) to read as set forth in Annex A.

A. Effective Date

The statement of policy shall be effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Reference

Section 301 of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-301) (act) requires registration with the Commission of persons acting as a broker-dealer, investment adviser, broker-dealer agent or investment adviser representative in this Commonwealth, subject to certain limited exemptions. Broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives increasingly are using the Internet, including individual home pages, to disseminate information on investment products and services which they offer. This information may be accessed by any Pennsylvania citizen with a computer and a connection to the Internet.

C. Summary and Purpose

The purpose of the statement of policy is to make available publicly the views of the Commission concerning when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives using the Internet to provide information on products and services are subject to the registration requirements of section 301 of the act. The statement of policy outlines the types of general information that may be disseminated on the Internet by broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives without registration under the act if certain disclaimers are stated and authorizations obtained. This statement of policy is identical to one adopted by the North American Securities Administrators Association (NASAA), an organization of state securities regulators. This uniform policy is intended to be adopted by all state jurisdictions and is similar to another NASAA position concerning securities offered on the Internet which the Commission adopted in § 203.190 (relating to certain Internet offers exempt).

M. JOANNA CUMMINGS,
Secretary

(Editor's Note: The regulations of the Securities Commission, 64 Pa. Code Chapter 604, are amended by adding a statement of policy in § 604.020 to read as set forth in Annex A.)

Fiscal Note: 50-111. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 64. SECURITIES

PART I. PENNSYLVANIA SECURITIES COMMISSION

Subpart F. ADMINISTRATION

CHAPTER 604. INTERPRETIVE OPINIONS OF COMMISSION—STATEMENT OF POLICIES

§ 604.020. Broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives using the Internet for general dissemination of information on products and services—statement of policy.

(a) Section 301(a) of the act (70 P.S. § 1-301(a)) provides that "[i]t is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under this act."

(b) Section 301(c) of the act provides that "[i]t is unlawful for any person to transact business in this State as an investment adviser unless he is so registered or registered as a broker-dealer under this act or unless he is exempted . . ." Section 301(c) further provides that: "[i]t is unlawful for any person to transact business in this State as an associated person unless he is so registered or exempted from registration . . ."

(c) The Commission acknowledges that the Internet, the World Wide Web and similar proprietary or common carrier electronic systems (collectively, the "Internet") have facilitated greatly the ability of broker-dealers, investment advisers, broker-dealer agents and associated persons of investment advisers to advertise and otherwise disseminate information on products and services to prospective customers and clients.

(d) The Commission also acknowledges that certain communications made on the Internet are directed generally to anyone having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter, "Internet Communications").

(e) The Commission further acknowledges that in certain instances, by distributing information on available products and services through Internet Communications available to persons in this Commonwealth, broker-dealers, investment advisers, agents and associated persons, as defined under section 102 of the act (70 P.S. § 1-102), could be construed as "transacting business" for purposes of section 301(a) and (c) of the act so as to require registration in this Commonwealth under section 301 of the act, since the Internet Communications would be received in this Commonwealth regardless of the intent of the person originating the communication.

(f) Broker-dealers, investment advisers, broker-dealers; agents (hereinafter BD agents) and associated persons (hereinafter IA reps) who use the Internet to distribute information on available products and services through Internet Communications directed generally to anyone having access to the Internet, will not be deemed to be "transacting business" in this Commonwealth for purposes of section 301(a) and (c) of the act based solely on that fact if all the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) The broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this Commonwealth if first registered, excluded or exempted from State broker-dealer, investment adviser, BD agent or IA rep registration requirements.

(ii) Follow-up, individualized responses to persons in this Commonwealth by the broker-dealer, investment adviser, BD agent or IA rep that involve either effecting or attempting to effect transactions in securities, or rendering personalized investment advice for compensation, will not be made absent compliance with State broker-dealer, investment adviser, BD agent or IA rep registration requirements, or an applicable exemption or exclusion.

(2) The Internet Communication contains a mechanism, including and without limitation, technical "fire walls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this Commonwealth, the broker-dealer, investment adviser, BD agent or IA rep is first registered in this Commonwealth or qualifies for an exemption or exclusion from the requirement. Nothing in this paragraph relieves a broker-dealer, investment adviser, BD agent or IA rep registered in this Commonwealth from any applicable securities registration requirement in this Commonwealth.

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities or the rendering of personalized investment advice for compensation in this Commonwealth over the Internet, but is limited to the dissemination of general information on products or services.

(4) In the case of a BD agent or IA rep, the following apply:

(i) The affiliation of the BD agent or IA rep with the broker-dealer or investment adviser is prominently disclosed within the Internet Communication.

(ii) The broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep.

(iii) The broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication.

(iv) In disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(g) The position expressed in this section extends to broker-dealer, investment adviser, BD agent and IA rep registration requirements within this Commonwealth only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(h) Nothing in this statement of policy affects the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this Commonwealth that is not subject to the jurisdiction of the Commission under the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290, 110 Stat. 3416), which will be codified in various sections of 15 U.S.C.

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