Pete Ricketts, Governor

COVER SHEET

CB-143
July 22, 2019

BULLETIN

SUBJECT: INTERPRETATION OF "COVERED SERVICE" IN NEW LAWS ABOUT DENTAL PLANS

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

Contents of CB-143 follow on next page.

Bruce R. Ramge, Director
Department of Insurance

1135 M Street, Suite 300
PO Box 82089
Lincoln, Nebraska 68501-2089

OFFICE 402-471-2201 **FAX** 402-471-4610
www.doi.nebraska.gov

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BULLETIN

SUBJECT: **INTERPRETATION OF "COVERED SERVICE" IN NEW LAWS ABOUT DENTAL PLANS**

On December 8, 2014, the Nebraska Department of Insurance issued a notice, "Interpretation of 'Covered Service' in New Laws about Dental Plans." In 2016, the Nebraska Legislature amended the Administrative Procedures Act to include a definition of a guidance document. Neb. Rev. Stat. § 84-901(5) defines a guidance document, in part, as any statement developed by an agency which lacks the force of law but provides information or direction of general application to the public to interpret or implement statutes or such agency's rules or regulations. A guidance document is binding on an agency until amended by the agency. Upon review, the Department has determined that the December 8 notice meets the definition of a guidance document and has been converted to the necessary format in Company Bulletin, CB-143.

Neb. Rev. Stat. § 44-3805(3) and § 44-7,105 prevent prepaid dental service plans, insurance policies, self-funded employee benefit plans, and prepaid limited health organization plans from dictating the price of dental services that they do not cover. Sections 44-3805 and 44-7,105 do not provide a definition of the term "covered service." Insurance and dental professionals implementing § 44-3805 and § 44-7,105 have discovered that "covered service" is subject to two interpretations.

1.   "Covered service" could be defined as any service for which the insurer or plan actually covered (paid) part of the dental provider's bill, with "noncovered service" defined as any service for which the insurer pays no money to the dental provider.

2.   "Covered service" could also be defined as any service covered in the contract, with "noncovered service" defined as any service for which the contract does not provide payment under any circumstances.

For example: Jane's dental policy provides maximum benefits of $1,000 per year. Jane already received the $1,000 in benefits this year, so she will pay out of pocket for any additional dental services. Jane goes to her dentist to have a tooth repaired. Fillings are covered under Jane's policy, but because Jane has exceeded her annual maximum, she will pay the entire bill. Under

definition (1), the filling is not "covered" because the insurer is not paying the bill, so Jane's insurer cannot dictate the fee Jane's dentist charges for the filling. Under definition (2), the filling is "covered" because the insurance policy pays for fillings when the patient has not exceeded annual benefit limits, so Jane's insurer can require the dentist to charge only the contracted rate for the filling.

The Department allows dental plans to use either definition of "covered service" in provider contracts. This approach is based on testimony describing "covered services" in the legislative history for LB 813 (codified at § 44-3805(3)) and LB 810 (codified at § 44-7,105).

The Department will continue to interpret § 44-3805(3) and § 44-7,105 to allow either definition of "covered services" until a definition is supplied by the Legislature or the courts.

Questions concerning this bulletin should be directed to the Department's legal division at 402-471-2201.

Bruce R. Ramge
Director