

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter B. Life, Health, and Accident
Part 123. Recoupment

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 1. Authority

This rule is issued under the authority of Ark. Code Ann. §§ 23-61-108, 23-63- 1806, 25-15-201, et seq., and any other applicable laws."

"Section 7. Effective Date

This Rule shall be effective May 1, 2006. The Rule shall apply to all payments made by health care insurers to providers on or after August 12, 2005, the effective date of Act 422 of 2005."

Subpart 1. Generally

23 CAR § 123-101. Definitions.

As used in this part:

(1) "Covered person" means a person on whose behalf a healthcare insurer offering health insurance coverage is obligated to pay benefits or provide services;

(2)(A) "Health insurance coverage" means benefits consisting of medical, pharmacy, optometric, or dental care, hospitalization, or other goods or services for the purpose of preventing, alleviating, curing, or healing human illness provided, directly or indirectly, through insurance, reimbursement, or otherwise, including items and services paid for under any policy, certificate, or agreement offered by a health care insurer.

(B) "Health insurance coverage" does not include policies or certificates covering only accident, credit, disability income, long-term care, hospital indemnity,

Medicare supplemental policy as defined in 42 U.S.C. § 1395ss(g)(1), a specified disease, other limited benefit health insurance, automobile medical payment insurance, or claims under the Workers' Compensation Law, Arkansas Code § 11-9-101 et seq., Public Employee Workers' Compensation Act, Arkansas Code § 21-5-601 et seq., or the Comprehensive Health Insurance Pool Act, Arkansas Code § 23-79-501 et seq.;

(3) "Healthcare insurer" means an entity subject to the insurance laws of this state or the jurisdiction of the Insurance Commissioner that contracts or offers to contract to provide health insurance coverage, including, but not limited to:

- (A) An insurance company;
- (B) A health maintenance organization; or
- (C) A hospital medical service corporation;

(4) "Healthcare provider" means any person or entity providing:

- (A) Medical, pharmacy, optometric, or dental care;
- (B) Hospitalization; or

(C) Any other services and goods used for the purpose or incidental to the purpose of preventing, alleviating, curing, or healing human illness or injury; and

(5) "Recoupment" means any action or attempt by a healthcare insurer to recover or collect payments already made to a healthcare provider with respect to a claim:

(A) By reducing other payments currently owed to the healthcare provider;

(B) By withholding or setting off the amount against current or future payments to the healthcare provider;

(C) By demanding payment back from a healthcare provider for a claim already paid; or

(D) In any other manner that reduces or affects the future claim payments to the healthcare provider.

Authority. Arkansas Code §§ 23-61-108, 23-63-1806.

23 CAR § 123-102. Time.

(a)(1) Except in cases of fraud committed by the healthcare provider, a healthcare insurer may only exercise recoupment from a provider during the eighteen-month period after the date that the healthcare insurer paid the claim submitted by the healthcare provider.

(2)(A) The exception for fraud means fraud that the insurer discovered after the eighteen-month period and could not have discovered prior to the end of the eighteen-month period by the exercise of reasonable diligence.

(B) It does not permit a healthcare insurer to extend the eighteen-month period under the rationale that it is still investigating a claim for fraud or any similar reason.

(b)(1) A healthcare insurer that exercises recoupment under this section shall give the healthcare provider a written or electronic statement specifying the basis for the recoupment.

(2) The statement shall contain, at a minimum, the information required by 23 CAR § 123-104.

(3)(A) The statement shall also include notice of any right to internal appeal by the provider.

(B) If the provider initiates an internal appeal, the healthcare insurer shall suspend its recoupment efforts for the alleged overpayment until such time as the healthcare insurer has prevailed after the provider has exhausted all available internal appeals.

(c)(1) "Exercise recoupment" means the commencement of recoupment together with the provision of the statement required by subsection (b) of this section and 23 CAR § 123-104.

(2) Once recoupment has been exercised, a healthcare insurer may continue the recoupment to its resolution.

Authority. Arkansas Code §§ 23-61-108, 23-63-1806.

23 CAR § 123-103. Persons not covered.

(a) If a healthcare insurer determines that payment was made for services not covered under the covered person's health insurance coverage, the healthcare insurer shall give written notice to the healthcare provider of its intent to exercise recoupment and may:

(1) Request a refund from the healthcare provider; or

(2) Make a recoupment of the payment from the healthcare provider in accordance with 23 CAR § 123-104.

(b)(1) Except in the case of fraud committed by the healthcare provider or as provided in subdivision (b)(2) of this section, subsection (a) of this section shall not apply if a healthcare provider or other party on its behalf verified from the healthcare insurer or its agent that an individual was a covered person and if the healthcare provider in good faith provided services to the individual in reliance on the verification.

(2)(A) A healthcare insurer has one hundred twenty (120) days from the date of payment to notify the provider of a verification error and the fact that services rendered will not be covered if the error was made in good faith at the time of the verification.

(B) If a recoupment notice is sent based upon a verification error, the healthcare insurer shall include a specific explanation of the error.

Authority. Arkansas Code §§ 23-61-108, 23-63-1806.

23 CAR § 123-104. Required disclosures.

If a healthcare insurer exercises recoupment, then the healthcare insurer shall provide the healthcare provider written documentation that specifies the:

(1) Amount of the recoupment;

(2) Covered person's name to which the recoupment applies;

(3) Patient identification number;

(4) Date or dates of service;

(5) Service or services on which the recoupment is based;

- (6) Pending claims being recouped or future claims that will be recouped; and
- (7)(A) Specific reason for the recoupment.

(B) Recoupment based upon medical necessity determinations, level of service determinations, coding errors, or billing irregularities must be reconciled to specific claims and provide specific reasons for recoupment.

(C) "Specific reasons" shall not consist of mere conclusionary statements such as "not medically necessary" but instead shall contain specific information from which the provider can:

- (i) Determine the basis for the recoupment; and
- (ii) Make a reasoned determination about whether to challenge the recoupment.

(D) If a healthcare insurer recoups based on a determination that the provider billed the wrong level of care, it shall state which level of care the insurer has determined would have been appropriate.

Authority. Arkansas Code §§ 23-61-108, 23-63-1806.

23 CAR § 123-105. Violations.

The failure to comply with any provision of Arkansas Code § 23-63-1801 et seq., shall be deemed an unfair trade practice under the Trade Practices Act, Arkansas Code § 23-66-201 et seq., and may be punished by the fines and penalties established under Arkansas Code §§ 23-60-108, 23-66-210, and 23-66-215.

Authority. Arkansas Code §§ 23-61-108, 23-63-1806.