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November 2, 2001

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OPINION COMMITTEE

RQ-0461-JC

FILE # ML-42274-01

I.D. # 42274

The Honorable John Cornyn
Office of the Attorney General
209 W. 14th St.
P.O. Box 12548
Austin, Texas 78711-2548

Dear Attorney General Cornyn:

This letter is to request an Attorney General Opinion concerning the Texas Insurance Code, Article 20A.18B and its companion Article 3.70-3C Sec. 3A.

The text of Art. 20A.18B of the Texas Insurance Code reads, in pertinent part, as follows:

(c) Not later than the 45th day after the date that the health maintenance organization receives a clean claim from a physician . . . the health maintenance organization shall:

- (1) pay the total amount of the claim in accordance with the contract . . .;*
- (2) pay the portion of the claim that is not in dispute . . .; or*
- (3) notify the physician . . . in writing why the claim will not be paid.*

(i) The health maintenance organization shall provide a participating physician or provider with copies of all applicable utilization review policies and claim processing policies or procedures, including required data elements and claim formats.

The text of Art. 3.70-3C Sec. 3A of the Texas Insurance Code reads, in pertinent part, as follows:

(c) Not later than the 45th day after the date that the insurer receives a clean claim from a preferred provider, the insurer shall:

- (1) pay the total amount of the claim in accordance with the contract . . .;*
- (2) pay the portion of the claim that is not in dispute . . .; or*
- (3) notify the preferred provider in writing why the claim will not be paid.*

(i) The insurer shall provide a preferred provider with copies of all applicable utilization review policies and claim processing policies or procedures, including required data elements and claim formats.

In recent weeks there has been much discussion regarding the extent to which the Commissioner of the Texas Department of Insurance is statutorily authorized to deal with prompt payment issues as they relate to Health Maintenance Organizations (HMO), Preferred Provider Organizations (PPO), and physicians.

It is my understanding that the Department of Insurance has chosen to interpret the provisions of Art. 20A.18B and Art. 3.70-3C Sec. 3A very narrowly. Although the statute reads that "all applicable utilization review policies and claim processing policies" shall be provided to the physician or provider, the narrow interpretation by the Department excludes claims processing policies regarding bundling and downcoding of physician or provider claims.

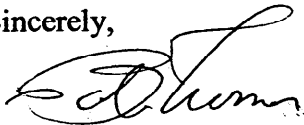
The Department asserts that the language in statute is not sufficient to warrant inclusion of bundling and downcoding policies. The differing interpretation of the statute is that the language is drafted with intent to be inclusive and therefore should include bundling and downcoding policies.

Furthermore, as both articles of the Insurance Code specifically mention that the regulated entities in question must pay the contracted rate and the fact that the amount those entities pay on the submitted claims are, as I understand the language, a claims processing policy, the fee schedule offered to the physician or provider should also be disclosed.

I, therefore, respectfully request your opinion regarding the statutory authority of the Commissioner of Insurance to require HMOs and PPOs to disclose to participating physicians their claims processing policies regarding fee schedules, bundling and downcoding. **Does the Commissioner of Insurance have the authority under Texas state law, Insurance Code Art. 20A.18B (c) & (i) and Art. 3.70-3C Sec. 3A (c) & (i), to require a Health Maintenance Organization or a Preferred Provider Organization to disclose to a participating physician or provider that organization's claims processing policies regarding fees, bundling and downcoding, and should those policies be included in the disclosure required by Art. 20A.18B (i) and Art. 3.70-3C Sec. 3A (i)?**

Thank you for your assistance in this matter.

Sincerely,



Bob Turner

cc: Susan Gusky, Opinion Committee Chair, Office of the Attorney General