CHAPTER 38
COORDINATION OF BENEFITS

DIVISION I

191—38.1(509,514) Purpose.

38.1(1) The purpose of this chapter is to adopt model group coordination of benefit ("COB") provisions and uniform guidelines for their interpretation and administration as promulgated by the National Association of Insurance Commissioners.

38.1(2) This chapter is intended to establish uniformity in the permissive use of overinsurance provisions to avoid claim delays, duplication of benefits when a person is covered by two or more plans providing benefits for medical, dental, or other care or treatment, and misunderstandings that otherwise result from the use of inconsistent or incompatible provisions among plans.

191—38.2(509,514) Applicability.

38.2(1) This chapter does not require the use of overinsurance provisions in group health insurance policies or group nonprofit health service plan contracts. If, however, a policy or contract contains overinsurance provisions, those provisions must be consistent with this chapter. A plan that does not include a COB provision consistent with this rule shall not take the benefits of another plan into account when it determines benefits.

38.2(2) Overinsurance provisions, or provisions for the reduction of benefits otherwise payable because of other insurance by whatever name designated, other than the model coordination of benefit provisions of this chapter may not be used, except that plans of coverage designed to be supplementary over the policyholder's underlying basic plan of coverage may provide that its coverage shall be excess to that specific policyholder's plan of basic coverage from whatever source provided.

191—38.3(509,514) Definitions.

38.3(1) *Plan.*

a. A "plan" is a form of coverage with which coordination is allowed. The definition of plan in the group contract must state the types of coverage which will be considered in applying the COB provision of that contract. The right to include a type of coverage is limited by the remainder of this subrule.

b. This rule uses the term "plan." However, a group contract may, instead, use "program" or some other term.

c. "Plan" shall not include individual or family:

(1) Insurance contracts;

(2) Subscriber contracts;

(3) Coverage through health maintenance organizations (HMOs); or

(4) Coverage under other prepayment, group practice and individual practice plans; except as provided below.

d. "Plan" may include:

(1) Group insurance and group subscriber contracts;

(2) Uninsured arrangements of group or group-type coverage;

(3) Group or group-type coverage through HMOs and other prepayment, group practice and individual practice plans; and

(4) Group-type contracts. Group-type contracts are contracts which are not available to the general public and can be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition of plan, at the option of the insurer or the service provider and its contract-client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designated (for example, "franchise" or "blanket"). The use of payroll deductions by the employee, subscriber or member to pay for the coverage is not sufficient, of itself, to make an individual contract part of a group-type plan. This description of group-type contracts is not intended to include individually underwritten and issued, guaranteed renewable policies that may be purchased through payroll deduction at a premium savings to the insured.

e. "Plan" may include the medical benefits coverage in group, group-type, and individual automobile "no-fault" and traditional automobile "fault" type contracts.

f. "Plan" may include Medicare or other governmental benefits. That part of the definition of "plan" may be limited to the hospital, medical, and surgical benefits of the governmental program. However, "plan" shall not include a state plan under Medicaid, and shall not include a law or plan when, by law, its benefits are excess to those of any private insurance plan or other nongovernmental plan.

g. "Plan":

(1) Shall not be construed to include group or group-type hospital indemnity benefits of $100 per day or less; but

(2) May be construed to include the amount by which group or group-type hospital indemnity benefits exceed $100 per day. "Hospital indemnity benefits" are those not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

h. "Plan" shall not include school accident-type coverages. These cover grammar, high school, and college students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis.

38.3(2) *"This plan"* is the portion of the group contract that provides health care benefits to which the COB provision applies and which may be reduced on account of the benefits of other plans.

38.3(3) *"Primary plan."* A primary plan shall mean one in which benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if either paragraph *"a"* or *"b"* below is true.

a. The plan either has no order of benefit determination rules, or it has rules which differ from these.

b. All plans which cover the person use the order of benefit determination rules required by this rule, and under those rules, the plan determines its benefits first.

38.3(4) *"Secondary plan."* A secondary plan shall mean one which is not a primary plan. If a person is covered by more than one secondary plan, these order of benefit determination rules decide the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under these rules, has its benefits determined before those of that secondary plan.

38.3(5) *"Allowable expense"* means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part under any of the plans involved.

a. The difference between the cost of a private hospital room and the cost of a semiprivate hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary either in terms of generally accepted medical practice, as specifically defined in the plan, or in the event the hospital lacks an available semiprivate room for the patient.

b. When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an allowable expense and a benefit paid.

c. When COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of "allowable expense" must include the corresponding expenses or services to which COB applies.

38.3(6) *"Claim"* means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

a. Services (including supplies);

b. Payment for all or a portion of the expenses incurred;

c. A combination of paragraphs *"a"* and *"b"* above; or

d. An indemnification.

38.3(7) *"Claim determination period."*

a. This is the period of time, which must not be less than 12 consecutive months, over which allowable expenses are compared with total benefits payable in the absence of COB, to determine:

(1) Whether overinsurance exists; and

(2) How much each plan will pay or provide.

It usually is a calendar year, but a plan may use some other period of time that fits the coverage of the group contract. A person may be covered by a plan during a portion of a claim determination period if that person's coverage starts or ends during the claim determination period.

b. As each claim is submitted, each plan is to determine its liability and pay or provide benefits based upon allowable expenses incurred to that point in the claim determination period. But that determination is subject to adjustment as later allowable expenses are incurred in the same claim determination period.

191—38.4(509,514) Model COB contract provision.

38.4(1) Following is a model COB provision for use in group contracts. That use is subject to the provisions of subrules 38.4(2) and 38.4(3) and to the provisions of these rules for coordination of benefits.

38.4(2) Flexibility. A group contract's COB provision does not have to use the words and format shown in this subrule. Changes may be made to fit the language and style of the rest of the group contract or to reflect the difference among plans:

a. Which provide services;

b. Which pay benefits for expenses incurred; and

c. Which indemnify.

Substantive changes are allowed only as set forth in this rule.

38.4(3) Prohibited coordination and benefit design. A group contract may not reduce benefits on the basis that:

a. Another plan exists;

b. Except with respect to Part B of Medicare, that a person is or could have been covered under another plan; or

c. A person has elected an option under another plan providing a lower level of benefits than another option which could have been elected.

No contract may contain a provision that its benefits are "excess" or "always secondary" to any plan defined in 38.3(1)*"a,"* except in accord with rules permitted by 191—Chapter 38.

38.4(4) Text of the model COB provision.

COORDINATION OF THE GROUP CONTRACTS
BENEFITS WITH OTHER BENEFITS

I. APPLICABILITY.

A. This coordination of benefits *("COB")* provision applies to this plan when an employee or the employee's covered dependent has health care coverage under more than one plan.

B. If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:

(1) Shall not be reduced when, under the order of benefit determination rules, this plan determines its benefits before another plan; but

(2) May be reduced when, under the order of benefit determination rules, another plan determines its benefits first. The above reduction is described in Section (IV), effect on the benefits of this plan.

II. DEFINITIONS.

A. *"Plan"* is any of these which provides benefits or services for, or because of, medical or dental care or treatment:

(1) Group insurance or group-type coverage, whether insured or uninsured. This includes prepayment, group practice or individual practice coverage. It also includes coverage other than school accident-type coverage.

(2) Coverage under a governmental plan or required or provided by law. This does not include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other nongovernmental program. Each contract or other arrangement for coverage under (i) or (ii) is a separate plan. Also, if an arrangement has two parts and COB rules apply only to one of the two, each of the parts is a separate plan.

B. *"This plan"* is the part of the group contract that provides benefits for health care expenses.

C. *"Primary plan"/"Secondary plan."* The order of benefit determination rules state whether this plan is a primary plan or secondary plan as to another plan covering the person. When this plan is a primary plan, its benefits are determined before those of the other plan and without considering the other plan's benefits. When this plan is a secondary plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits. When there are more than two plans covering the person, this plan may be a primary plan as to one or more other plans, and may be a secondary plan as to a different plan or plans.

D. *"Allowable expense"* means a necessary, reasonable, and customary item of expense of health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made. The difference between the cost of a private hospital room and the cost of a semiprivate hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary either in terms of generally accepted medical practice, as specifically defined in the plan, or in the event the hospital lacks an acceptable semiprivate room for the patient. When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an allowable expense and a benefit paid.

E. *"Claim determination period"* means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan, or any part of a year before the date this COB provision or a similar provision takes effect.

III. ORDER OF BENEFIT DETERMINATION RULES.

A. *General.* When there is a basis for a claim under this plan and another plan, this plan is a secondary plan which has its benefits determined after those of the other plan, unless:

(1) The other plan has rules coordinating its benefits with those of this plan; and

(2) Both those rules and this plan's rules, in subparagraph B below, require that this plan's benefits be determined before those of the other plan.

B. *Rules.* This plan determines its order of benefits using the first of the following rules which applies:

(1) Nondependent/dependent. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.

(2) Dependent child/parents not separated or divorced. Except as stated in subparagraph (B)(3) below, when this plan and another plan cover the same child as a dependent of different persons, called "parents":

(a) The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

(b) If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time.

(c) If the other plan does not have the rule described in (a) immediately above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

(3) Dependent child/separated or divorced parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

(a) First, the plan of the parent with custody of the child;

(b) Then, the plan of the spouse of the parent with the custody of the child; and

(c) Finally, the plan of the parent not having custody of the child.

(4) If the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. This paragraph does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

(5) Active/inactive employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule (5) is ignored.

(6) Longer/shorter length of coverage. If none of the above rules determine the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the plan which covered that person for the shorter time.

IV. EFFECT ON THE BENEFITS OF THIS PLAN.

A. *When this section applies.* This section IV applies when, in accordance with section III, order of benefit determination rules, this plan is a secondary plan as to one or more other plans. In that event the benefits of this plan may be reduced under this section. Such other plan or plans are referred to as "the other plans" in (B) immediately below.

B. *Reduction in this plan's benefits.* The benefits of this plan will be reduced when the sum of:

(1) The benefits that would be payable for the allowable expenses under this plan in the absence of this COB provision; and

(2) The benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made, exceed those allowable expenses in a claim determination period. In that case, the benefits of this plan will be reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses.

(3) When the benefits of this plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this plan.

V. RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION.

A. Certain facts are needed to apply these COB rules. The insurer has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person.

B. The insurer need not tell, or get the consent of, any person to do this. Each person claiming benefits under this plan must give the insurer any facts it needs to pay the claim.

VI. FACILITY OF PAYMENT.

A. A payment made under another plan may include an amount which should have been paid under this plan. If it does, the insurer may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under this plan.

B. The insurer will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

VII. RIGHT OF RECOVERY.

A. If the amount of the payment made by the insurer is more than it should have paid under this COB provision, it may recover the excess from one or more of:

(1) The persons it has paid or for whom it has paid;

(2) Insurance companies; or

(3) Other organizations.

B. The *"amount of the payments made"* includes the reasonable cash value of any benefits provided in the form of services.

191—38.5(509,514) Order of benefits.

38.5(1) The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist.

38.5(2) A secondary plan may take the benefits of another plan into account only when, under these rules, it is secondary to that other plan.

38.5(3) Dependent child/parents not separated or divorced. The word "birthday" in these rules refers only to month and day in a calendar year, not the year in which a person was born.

38.5(4) Longer/shorter length of coverage. To determine the length of time a person has been covered under a plan, two plans shall be treated as one if the claimant was eligible under the second within 24 hours after the first ended. Thus, the start of a new plan does not include:

1. A change in the amount or scope of a plan's benefits;
2. A change in the entity which pays, provides or administers the plan's benefits; or
3. A change from one type of plan to another (such as, from a single employer plan to that of a multiple employer plan).

The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

191—38.6(509,514) Reduction in a plan's benefits when it is secondary—general. A secondary plan may reduce its benefits subject to the conditions and limits described herein.

Total allowable expenses. A secondary plan may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than total allowable expenses. The amount by which the secondary plans benefits have been reduced shall be used by the secondary plan to pay allowable expenses, not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for allowable expenses based on all claims which were submitted up to that point in time during the claim determination period.

191—38.7(509,514) Reasonable cash value of services. A secondary plan which provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan, and have not already been paid or provided by the primary plan. Nothing in this rule shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services.

191—38.8(509,514) Excess and other nonconforming provisions.

38.8(1) Some plans have order of benefit determination rules not consistent with this rule which declare that the plan's coverage is "excess" to all others, or "always secondary." This occurs because a certain plan may not be subject to insurance regulation; or some group contracts have not yet been conformed with this rule.

38.8(2) A plan with order of benefit determination rules which comply with this rule (herein called a "complying plan") may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this rule, (therein called a "noncomplying plan") on the following basis:

a. If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis.

b. If the complying plan is the secondary plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan's liability.

c. If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. However, the complying plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the noncomplying plan.

d. If the noncomplying plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than they would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan; and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to or on behalf of the employee, subscriber, or member an amount equal to the difference. However, in no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid. In consideration of such advance, the complying plan shall be subrogated to all rights of the employee, subscriber, or member against the noncomplying plan. The advance by the complying plan shall also be without prejudice to any claim it may have against the noncomplying plan in the absence of such subrogation.

191—38.9(509,514) Allowable expense. A term such as "usual and customary," "usual and prevailing," or "reasonable and customary," may be substituted for the term "necessary, reasonable and customary." Terms such as "medical care" or "dental care" may be substituted for "health care" to describe the coverages to which the COB provisions apply.

191—38.10(509,514) Subrogation. The COB concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

191—38.11(509,514) Effective date—existing contracts.

38.11(1) These rules are applicable to every group contract which provides health care benefits and is issued in Iowa.

38.11(2) A group contract which provides health care benefits and was issued prior to the effective date of these rules shall be brought into compliance by the later of:

a. The next anniversary date or renewal date of the group contract; or

b. The expiration of any applicable collectively bargained contract pursuant to which it was written.

DIVISION II

191—38.12(509,514) Purpose and applicability.

38.12(1) The purpose of this division is to adopt the new model provisions for coordination of benefits (COB) as promulgated by the National Association of Insurance Commissioners (NAIC).

38.12(2) This division is intended to establish a uniform order of benefit determination under which plans pay claims; to reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, pursuant to rules established by this division, do not have to pay benefits first; and to provide greater efficiency in the processing of claims when a person is covered under more than one plan.

38.12(3) These rules apply to all plans that are issued on or after January 25, 2006.

191—38.13(509,514) Definitions. As used in this division, these terms have the following meanings, unless the context clearly indicates otherwise:

"Allowable expense," except as set forth below or where a statute requires a different definition, means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

1. If a plan is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accordance with Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223(c)(2)(C) of the Internal Revenue Code of 1986.

2. An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

3. Any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an allowable expense.

4. The following are examples of expenses that are not allowable expenses:

a. If a person is confined in a private hospital room, the difference between the cost of a semiprivate room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

b. If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

c. If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

d. If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology and by another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different from the primary plan's payment arrangement and if the provider's contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

5. The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of "allowable expense" in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of "allowable expense" shall include similar expenses to which COB applies.

6. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

7. The amount of the reduction may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan:

a. Because the covered person does not comply with the plan provisions concerning second surgical opinions or precertification of admissions or services; or

b. Because the covered person has a lower benefit because the covered person did not use a preferred provider.

"Birthday" refers only to month and day in a calendar year and does not include the year in which the individual is born.

"Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of services (including supplies); payment for all or a portion of the expenses incurred; a combination of services or expenses incurred; or an indemnification.

"Closed panel plan" means a plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.

"Consolidated Omnibus Budget Reconciliation Act of 1985" or *"COBRA"* means coverage provided under a right of continuation pursuant to federal law.

"Coordination of benefits" or *"COB"* means a provision establishing an order in which plans pay their claims and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

"Custodial parent" means the parent awarded custody of a child by a court decree or, in the absence of a court decree, the parent with whom the child resides more than one-half of the calendar year without regard to any temporary visitation.

"Group-type contract" means a contract that is not available to the general public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage. "Group-type contract" does not include an individually underwritten and issued guaranteed renewable policy even if the policy is purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer.

"High-deductible health plan" has the meaning given the term under Section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

"Hospital indemnity benefits" means benefits not related to expenses incurred. "Hospital indemnity benefits" does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

"Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.

If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in paragraph 1 below. A model COB provision is contained in Appendix A of this division.

1. "Plan" includes:

a. Group and nongroup insurance contracts and subscriber contracts;

b. Uninsured arrangements of group or group-type coverage;

c. Group and nongroup coverage through closed panel plans;

d. Group-type contracts;

e. The medical care components of long-term care contracts, such as skilled nursing care;

f. The medical benefits coverage in automobile "no fault" and traditional automobile "fault" contracts; and

g. Medicare or other governmental benefits, as permitted by law, except as provided in paragraph 2*"h"* below. This part of a plan may be limited to the hospital, medical and surgical benefits of the governmental program.

2. "Plan" does not include:

a. Hospital indemnity coverage benefits or other fixed indemnity coverage;

b. Accident-only coverage;

c. Specified disease or specified accident coverage;

d. Limited benefit health insurance coverage, as defined in 191—subrule 36.6(10);

e. School accident-type coverages that cover students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis;

f. Benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care, or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

g. Medicare supplement policies;

h. A state plan under Medicaid; or

i. A governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan.

"Policyholder" means the primary insured named in a nongroup insurance policy.

"Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a "primary plan" if:

1. The plan either has no order of benefit determination rules, or its rules differ from those permitted by this division; or

2. All plans that cover the person use the order of benefit determination rules required by this division, and under those rules the plan determines its benefits first.

"Secondary plan" means a plan that is not a primary plan.

191—38.14(509,514) Use of model COB contract provision.

38.14(1) Appendix A of this division contains a model COB provision for use in contracts. The use of this model COB provision is subject to the provisions of subrules 38.14(2) through 38.14(4) and to rule 38.15(509,514).

38.14(2) Appendix B of this division is a plain language description of the COB process that explains to the covered person how health plans will implement coordination of benefits. Appendix B is not intended to replace or change the provisions that are set forth in the contract. The purpose of Appendix B is to explain the process by which two or more plans will pay for or provide benefits.

38.14(3) The COB provision contained in the appendices to this division do not have to use the specific words and format shown in the appendices. Changes may be made to fit the language and style of the rest of the contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred and that indemnify. No substantive changes are permitted.

38.14(4) A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

a. Another plan exists and the covered person did not enroll in that plan;

b. A person is or could have been covered under another plan, except with respect to Part B of Medicare; or

c. A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

38.14(5) No plan may contain a provision that states that its benefits are "always excess" or "always secondary" except in accordance with this division.

38.14(6) Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider. In most instances, COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans because the other closed panel plan (the one whose providers were not used) has no liability. However, COB may occur during the plan year when the covered person receives emergency services that would have been covered by both plans. Then the secondary plan shall use the provisions of rule 38.16(509,514) to determine the amount it should pay for the benefit.

38.14(7) No plan may use a COB provision or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of "plan" under rule 38.13(509,514).

191—38.15(509,514) Rules for coordination of benefits. When a person is covered by two or more plans, the order of benefit payments shall be determined as follows:

38.15(1) *Primary plans.* The primary plan shall pay or provide its benefits as if the secondary plan or plans do not exist.

a. If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as if it were the primary plan when a covered person uses a non-panel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.

b. When multiple contracts providing coordinated coverage are treated as a single plan under this division, this subrule applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan shall be responsible for the plan's compliance with this division.

c. If a person is covered by more than one secondary plan, the order of benefit determination rules of this division decide the order in which secondary plans benefits are determined in relation to each other. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the rules of this division, has its benefits determined before those of that secondary plan.

38.15(2) *Inconsistent plans.*

a. Except as provided in paragraph *"b,"* a plan that does not contain order of benefit determination provisions that are consistent with this division is always the primary plan unless the provisions of both plans, regardless of the provisions of this paragraph, state that the complying plan is primary.

b. Coverage that is obtained by virtue of membership in a group and is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance-type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

38.15(3) *Consideration of other plans.* A plan may take into consideration the benefits paid or provided by another plan only when, under the provisions of this division, it is secondary to the other plan.

38.15(4) *Order of benefit determination.* Each plan determines its order of benefits using the first of the following rules that applies:

a. Nondependent or dependent.

(1) Subject to subparagraph 38.15(4)*"a"*(2), the plan that covers the person other than as a dependent, for example, as an employee, member, subscriber, policyholder or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

(2) If the person is a Medicare beneficiary and, as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is secondary to the plan covering the person as a dependent and primary to the plan covering the person as other than a dependent (e.g., a retired employee), then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

b. Dependent child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child shall determine the order of benefits as follows:

(1) For a dependent child whose parents are married or are living together, whether or not they have ever been married, the plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or if both parents have the same birthday, the plan that has covered one of the parents the longest is the primary plan.

(2) For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:

1. If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does have health care coverage, that parent's spouse's plan is the primary plan. This item shall not apply with respect to any plan year during which benefits are paid or provided before the entity has actual knowledge of the court decree provision;

2. If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of subparagraph 38.15(4)*"b"*(1) shall determine the order of benefits;

3. If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of subparagraph 38.15(4)*"b"*(1) of this paragraph shall determine the order of benefits; or

4. If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child is as follows:

(I) The plan covering the custodial parent;

(II) The plan covering the custodial parent's spouse;

(III) The plan covering the noncustodial parent; and then

(IV) The plan covering the noncustodial parent's spouse.

(3) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits shall be determined, as applicable, under subparagraph 38.15(4)*"b"*(1) or (2) as if those individuals were parents of the child.

c. Active employee or retired or laid-off employee.

(1) The plan that covers a person as an active employee, that is, an employee who is neither laid off nor retired or as a dependent of an active employee, is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(2) If the other plan does not have the provision stated in subparagraph 38.15(4)*"c"*(1), and, as a result, the plans do not agree on the order of benefits, subparagraph 38.15(4)*"c"*(1) is ignored.

(3) Paragraph 38.15(4)*"c"* does not apply if the provisions of paragraph 38.15(4)*"a"* can determine the order of benefits.

d. COBRA or state continuation coverage.

(1) If a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to state law or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan, and the plan covering that same person pursuant to COBRA or under a right of continuation pursuant to state law or other federal law is the secondary plan.

(2) If the other plan does not have the provision stated in subparagraph 38.15(4)*"d"*(1), and if, as a result, the plans do not agree on the order of benefits, subparagraph 38.15(4)*"d"*(1) is ignored.

(3) Paragraph 38.15(4)*"d"* does not apply if the provisions of paragraph 38.15(4)*"a"* can determine the order of benefits.

e. Longer or shorter length of coverage.

(1) If the preceding provisions stated in paragraphs 38.15(4)*"a"* through *"d"* do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

(2) To determine the length of time during which a person has been covered under a plan, two successive plans shall be treated as one if the covered person was eligible under the second plan within 24 hours after coverage under the first plan ended.

(3) The start of a new plan does not include:

1. A change in the amount or scope of a plan's benefits;
2. A change in the entity that pays, provides or administers the plan's benefits; or
3. A change from one type of plan to another, such as from a single employer plan to a multiple employer plan.

(4) The length of time during which a person is covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date on which the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

f. If none of the preceding provisions stated in paragraphs 38.15(4)*"a"* through *"e"* determine the order of benefits, the allowable expenses shall be shared equally between the plans.

191—38.16(509,514) Procedure to be followed by secondary plan to calculate benefits and pay a claim. In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan shall calculate the benefits it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan may reduce its payment by an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed 100 percent of the total allowable expense for that claim. In addition, the secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

191—38.17(509,514) Notice to covered persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one health benefit plan, you should file all your claims with each plan."

191—38.18(509,514) Miscellaneous provisions.

38.18(1) A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this subrule shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

38.18(2) Complying and noncomplying plans.

a. A plan with order of benefit determination provisions that comply with this division (complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules that are inconsistent with those contained in this division (noncomplying plan) on the following basis:

(1) If the complying plan is the primary plan, it shall pay or provide its benefits first;

(2) If the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan's liability; and

(3) If the noncomplying plan does not provide the information needed by the complying plan to determine the complying plan's benefits within a reasonable time after the noncomplying plan is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. If, within two years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, the complying plan shall adjust payments accordingly.

b. If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to the covered person or on behalf of the covered person an amount equal to the difference.

c. In no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

38.18(3) COB differs from subrogation. Provisions for COB or subrogation may be included in health care benefits contracts without compelling the inclusion or exclusion of either.

38.18(4) If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been the primary plan.

191—38.19(509,514) Effective date for existing contracts.

38.19(1) A contract that provides health care benefits and that was issued before January 25, 2006, shall be brought into compliance with this division by the latest of:

a. The next anniversary date or renewal date of the contract; or

b. Twelve months following January 25, 2006; or

c. The expiration of any applicable collectively bargained contract pursuant to which it was written.

38.19(2) For the transition period between the adoption of this division and the time frame for which plans are to be in compliance pursuant to subrule 38.19(1), a plan that is subject to the COB requirements in division I shall not be considered a noncomplying plan by a plan subject to the new COB requirements in division II. If there is a conflict between the COB requirements in division I and the new COB requirements in division II, the COB requirements in division I shall apply.

APPENDIX A MODEL COB CONTRACT PROVISIONS

COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS

The Coordination of Benefits (COB) provision applies when a person has health care coverage under more than one **Plan**. **Plan** is defined below.

The order of benefit determination rules govern the order in which each **Plan** will pay a claim for benefits. The **Plan** that pays first is called the **Primary plan**. The **Primary plan** must pay benefits in accordance with its policy terms without regard to the possibility that another **Plan** may cover some expenses. The **Plan** that pays after the **Primary plan** is the **Secondary plan**. The **Secondary plan** may reduce the benefits it pays so that payment from all **Plans** does not exceed 100% of the total **Allowable expense**.

DEFINITIONS

A. A **Plan** is any of the following that provides benefits or services for medical or dental care or treatment. If separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts.

(1) **Plan** includes: group and nongroup insurance contracts, health maintenance organization (HMO) contracts, closed panel plans or other forms of group or group-type coverage (whether insured or uninsured); medical care components of long-term care contracts, such as skilled nursing care; medical benefits under group or individual automobile contracts; and Medicare or any other federal governmental plan, as permitted by law.

(2) **Plan** does not include: hospital indemnity coverage or other fixed indemnity coverage; accident-only coverage; specified disease or specified accident coverage; limited benefit health coverage, as defined by state law; school accident-type coverage; benefits for nonmedical components of long-term care policies; Medicare supplement policies; Medicaid policies; or coverage under other federal governmental plans, unless permitted by law.

Each contract for coverage under (1) or (2) is a separate **Plan**. If a **Plan** has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate **Plan**.

B. **This plan** means, in a **COB** provision, the part of the contract providing the health care benefits to which the **COB** provision applies and which may be reduced because of the benefits of other plans. Any other part of the contract providing health care benefits is separate from this plan. A contract may apply one **COB** provision to certain benefits, such as dental benefits, coordinating only with similar benefits, and may apply another **COB** provision to coordinate other benefits.

C. The order of benefit determination rules determine whether **This plan** is a **Primary plan** or **Secondary plan** when the person has health care coverage under more than one **Plan**.

When **This plan** is primary, it determines payment for its benefits first before those of any other **Plan** without considering any other **Plan's** benefits. When **This plan** is secondary, it determines its benefits after those of another **Plan** and may reduce the benefits it pays so that all **Plan** benefits do not exceed 100% of the total **Allowable expense**.

D. **Allowable expense** is a health care expense, including deductibles, coinsurance and copayments, that is covered at least in part by any **Plan** covering the person. When a **Plan** provides benefits in the form of services, the reasonable cash value of each service will be considered an **Allowable expense** and a benefit paid. An expense that is not covered by any **Plan** covering the person is not an **Allowable expense**. In addition, any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an **Allowable expense**.

The following are examples of expenses that are not **Allowable expenses**:

(1) The difference between the cost of a semiprivate hospital room and a private hospital room is not an **Allowable expense**, unless one of the **Plans** provides coverage for private hospital room expenses.

(2) If a person is covered by 2 or more **Plans** that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology, any amount in excess of the highest reimbursement amount for a specific benefit is not an **Allowable expense**.

(3) If a person is covered by 2 or more **Plans** that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an **Allowable expense**.

(4) If a person is covered by one **Plan** that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology and by another **Plan** that provides its benefits or services on the basis of negotiated fees, the **Primary plan's** payment arrangement shall be the **Allowable expense** for all **Plans**. However, if the provider has contracted with the **Secondary plan** to provide the benefit or service for a specific negotiated fee or payment amount that is different than the **Primary plan's** payment arrangement and if the provider's contract permits, the negotiated fee or payment shall be the **Allowable expense** used by the **Secondary plan** to determine its benefits.

(5) The amount of any benefit reduction by the **Primary plan** because a covered person has failed to comply with the **Plan** provisions is not an **Allowable expense**. Examples of these types of plan provisions include second surgical opinions, precertification of admissions, and preferred provider arrangements.

E. **Closed panel plan** is a **Plan** that provides health care benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the **Plan**, and that excludes coverage for services provided by other providers, except in cases of emergency or referral by a panel member.

F. **Custodial parent** is the parent awarded custody by a court decree or, in the absence of a court decree, is the parent with whom the child resides more than one-half of the calendar year excluding any temporary visitation.

ORDER OF BENEFIT DETERMINATION RULES

When a person is covered by two or more **Plans**, the rules for determining the order of benefit payments are as follows:

A. The **Primary plan** pays or provides its benefits according to its terms of coverage and without regard to the benefits of any other **Plan**.

B. (1) Except as provided in Paragraph (2), a **Plan** that does not contain a coordination of benefits provision that is consistent with this regulation is always primary unless the provisions of both **Plans** state that the complying plan is primary.

(2) Coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits and provides that this supplementary coverage shall be excess to any other parts of the **Plan** provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance-type coverages that are written in connection with a **Closed panel plan** to provide out-of-network benefits.

C. A **Plan** may consider the benefits paid or provided by another **Plan** in calculating payment of its benefits only when it is secondary to that other **Plan**.

D. Each **Plan** determines its order of benefits using the first of the following rules that apply:

(1) Nondependent or Dependent. The **Plan** that covers the person other than as a dependent, for example as an employee, member, policyholder, subscriber or retiree is the **Primary plan** and the **Plan** that covers the person as a dependent is the **Secondary plan**. However, if the person is a Medicare beneficiary and, as a result of federal law, Medicare is secondary to the **Plan** covering the person as a dependent; and primary to the **Plan** covering the person as other than a dependent (e.g., a retired employee); then the order of benefits between the two **Plans** is reversed so that the **Plan** covering the person as an employee, member, policyholder, subscriber or retiree is the **Secondary plan** and the other **Plan** is the **Primary plan**.

(2) Dependent Child Covered Under More Than One Plan. Unless there is a court decree stating otherwise, when a dependent child is covered by more than one **Plan** the order of benefits is determined as follows:

(a) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

- The **Plan** of the parent whose birthday falls earlier in the calendar year is the **Primary plan**; or
- If both parents have the same birthday, the **Plan** that has covered the parent the longest is the **Primary plan**.

(b) For a dependent child whose parents are divorced or separated or not living together, whether or not they have ever been married:

(i) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the **Plan** of that parent has actual knowledge of those terms, that **Plan** is primary. This rule applies to plan years commencing after the **Plan** is given notice of the court decree;

(ii) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of Subparagraph (a) above shall determine the order of benefits;

(iii) If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of Subparagraph (a) above shall determine the order of benefits; or

(iv) If there is no court decree allocating responsibility for the dependent child's health care expenses or health care coverage, the order of benefits for the child is as follows:

- The **Plan** covering the **Custodial parent**;
- The **Plan** covering the spouse of the **Custodial parent**;
- The **Plan** covering the **Noncustodial parent**; and then
- The **Plan** covering the spouse of the **Noncustodial parent**.

(c) For a dependent child covered under more than one **Plan** of individuals who are the parents of the child, the provisions of Subparagraph (a) or (b) above shall determine the order of benefits as if those individuals were the parents of the child.

(3) Active Employee or Retired or Laid-Off Employee. The **Plan** that covers a person as an active employee, that is, an employee who is neither laid off nor retired, is the **Primary plan**. The **Plan** covering that same person as a retired or laid-off employee is the **Secondary plan**. The same would hold true if a person is a dependent of an active employee and that same person is a dependent of a retired or laid-off employee. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule labeled D(1) can determine the order of benefits.

(4) COBRA or State Continuation Coverage. If a person whose coverage is provided pursuant to COBRA or under a right of continuation provided by state or other federal law is covered under another **Plan**, the **Plan** covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the **Primary plan** and the COBRA or state or other federal continuation coverage is the **Secondary plan**. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule labeled D(1) can determine the order of benefits.

(5) Longer or Shorter Length of Coverage. The **Plan** that covered the person as an employee, member, policyholder, subscriber or retiree longer is the **Primary plan** and the **Plan** that covered the person the shorter period of time is the **Secondary plan**.

(6) If the preceding rules do not determine the order of benefits, the **Allowable expenses** shall be shared equally between the **Plans** meeting the definition of **Plan**. In addition, **This plan** will not pay more than it would have paid had it been the **Primary plan**.

EFFECT ON THE BENEFITS OF THIS PLAN

A. When **This plan** is secondary, it may reduce its benefits so that the total benefits paid or provided by all **Plans** during a plan year are not more than the total **Allowable expenses**. In determining the amount to be paid for any claim, the **Secondary plan** will calculate the benefits it would have paid in the absence of other health care coverage and apply that calculated amount to any **Allowable expense** under its **Plan** that is unpaid by the **Primary plan**. The **Secondary plan** may then reduce its payment by the amount so that, when combined with the amount paid by the **Primary plan**, the total benefits paid or provided by all **Plans** for the claim do not exceed the total **Allowable expense** for that claim. In addition, the **Secondary plan** shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

B. If a covered person is enrolled in two or more **Closed panel plans** and if, for any reason, including the provision of service by a non-panel provider, benefits are not payable by one **Closed panel plan**, **COB** shall not apply between that **Plan** and other **Closed panel plans**.

RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION

Certain facts about health care coverage and services are needed to apply these **COB** rules and to determine benefits payable under **This plan** and other **Plans**. [Organization responsibility for **COB** administration] may get the facts it needs from or give them to other organizations or persons for the purpose of applying these rules and determining benefits payable under **This plan** and other **Plans** covering the person claiming benefits. [Organization responsibility for **COB** administration] need not tell, or get the consent of, any person to do this. Each person claiming benefits under **This plan** must give [Organization responsibility for **COB** administration] any facts it needs to apply those rules and determine benefits payable.

FACILITY OF PAYMENT

A payment made under another **Plan** may include an amount that should have been paid under **This plan**. If it does, [Organization responsibility for **COB** administration] may pay that amount to the organization that made that payment. That amount will then be treated as though it were a benefit paid under **This plan**. [Organization responsibility for **COB** administration] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means the reasonable cash value of the benefits provided in the form of services.

RIGHT OF RECOVERY

If the amount of the payments made by [Organization responsibility for **COB** administration] is more than it should have paid under this **COB** provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid; or any other person or organization that may be responsible for the benefits or services provided for the covered person. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

APPENDIX B CONSUMER EXPLANATORY BOOKLET

COORDINATION OF BENEFITS

IMPORTANT NOTICE

This is a summary of only a few of the provisions of your health plan to help you understand coordination of benefits, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

Double Coverage

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits your insurers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses.

Coordination of benefits (COB) is complicated, and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact your state insurance department.

Primary or Secondary?

You will be asked to identify all the plans that cover members of your family. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim.

Any plan that does not contain your state's COB rules will always be primary.

When This Plan Is Primary

If you or a family member are covered under another plan in addition to this one, we will be primary when:

Your Own Expenses

- The claim is for your own health care expenses, unless you are covered by Medicare and both you and your spouse are retired.

Your Spouse's Expenses

- The claim is for your spouse, who is covered by Medicare, and you are not both retired.

Your Child's Expenses

- The claim is for the health care expenses of your child who is covered by this plan and
  - You are married and your birthday is earlier in the year than your spouse's or you are living with another individual, regardless of whether or not you have ever been married to that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule";

    or
  - You are separated or divorced and you have informed us of a court decree that makes you responsible for the child's health care expenses;

    or
  - There is no court decree, but you have custody of the child.

Other Situations

We will be primary when any other provisions of state or federal law require us to be.

How We Pay Claims When We Are Primary

When we are the primary plan, we will pay the benefits in accordance with the terms of your contract, just as if you had no other health care coverage under any other plan.

How We Pay Claims When We Are Secondary

We will be secondary whenever the rules do not require us to be primary.

How We Pay Claims When We Are Secondary

When we are the secondary plan, we do not pay until after the primary plan has paid its benefits. We will then pay part or all of the allowable expenses left unpaid, as explained below. An "allowable expense" is a health care expense covered by one of the plans, including copayments, coinsurance and deductibles.

- If there is a difference between the amount the plans allow, we will base our payment on the higher amount. However, if the primary plan has a contract with the provider, our combined payments will not be more than the amount called for in our contract or the amount called for in the contract of the primary plan, whichever is higher. Health maintenance organizations (HMOs) and preferred provider organizations (PPOs) usually have contracts with their providers.
- We will determine our payment by subtracting the amount the primary plan paid from the amount we would have paid if we had been primary. We may reduce our payment by any amount so that, when combined with the amount paid by the primary plan, the total benefits paid do not exceed the total allowable expense for your claim. We will credit any amount we would have paid in the absence of your other health care coverage toward our own plan deductible.
- If the primary plan covers similar kinds of health care expenses, but allows expenses that we do not cover, we may pay for those expenses.
- We will not pay an amount the primary plan did not cover because you did not follow its rules and procedures. For example, if your plan has reduced its benefit because you did not obtain precertification, as required by that plan, we will not pay the amount of the reduction, because it is not an allowable expense.

Questions About Coordination of Benefits?
Contact Your State Insurance Department

These rules are intended to implement Iowa Code chapters 509 and 514.

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