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.