**BULLETIN**

**23-IB-001**

**TO:** **ALL INSURERS OFFERING HEALTH BENEFIT PLANS IN THE DISTRICT OF COLUMBIA**

**FROM: KARIMA M. WOODS, COMMISSIONER**

**RE: GUIDANCE TO INSURERS ON HOW TO HANDLE CLAIMS UNDER THE NEWBORN HEALTH INSURANCE ACT**

**DATE:** **August 4, 2023**

The purpose of this Bulletin is to clarify provisions of Chapter 38 of the Newborn Health Insurance Act, D.C. Official Code §§ 31-3801 *et seq.*, as it pertains to the newborn coverage period (0 to 31 days) and the continuation of coverage beyond this period.

**Background**

The Department of Insurance, Securities and Banking (DISB) recognizes that situations where two parents have different commercial health insurance policies, which could both cover a newborn, are not uncommon[[1]](#footnote-1). Some circumstances when this may occur include, but are not limited to:

* The want/need for more complete benefits for the family/child(ren) due to potential health conditions that result in a high cost outlay;
* An option to avoid the need to elect and pay for family COBRA coverage should there be a job change for one of the parents; and
* Divorce/guardianship cases where both parents are legally compelled to cover a child.

**Guidance to Insurers**

Where the child has coverage and there is a legitimate claim, there is no reason for a claim to be denied. In the circumstances described above, in addition to the significant life changes in bringing a new child into a family, having to deal with an unpaid claim would place an undue burden on those families. As such, DISB wants to ensure claims are paid and the processes to determine primary/secondary payor, when applicable, are implemented behind the scenes between insurers.

D.C. Official Code § 31-3801 states:

All individual and group health insurance policies providing coverage on an expense-incurred basis and individual and group service-or indemnity-type contracts issued by a nonprofit health service plan shall provide that health insurance benefits shall be payable with respect to a newly born child of the insured or subscriber from the moment of birth.

**Insurers Prohibited From Denying Payment Claims In Certain Situations**

Because of the statutory obligation imposed on insurers to provide newborn coverage under D.C. Official Code § 31-3801, DISB is providing clarification with this Bulletin that when an issuer receives a claim(s) for services rendered to a newly born child, which were rendered within 0 to 31 days of the child’s date of birth, the insurer is prohibited from denying payment of the claims. All claims submitted for services related to a newly born child to an insurer providing newborn coverage must be paid, unless there was a documented enrollment decision made during prenatal care and/or there is a recent claim history with a settled payment order already established between insurers; and any reimbursement owed to an insurer whose coverage was determined to be secondary must be obtained from the insurer whose coverage was determined to be primary—rather than the covered family.

**When A Newborn Is No Longer Covered Under Two Policies**

D.C. Official Code § 31-3803 states:

If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period.

In this regard, when a newborn may be covered under one or both parents’ policies, and the family affirmatively elects to enroll the newborn in one policy by making a premium payment to continue coverage beyond the 31-day “gratuitous” coverage period pursuant to D.C. Official Code § 31–3803 (or the 60-day special enrollment period provided for by DC Health Link for individual market policies), the newborn no longer can be said to be covered under two policies; thus, eliminating any coordination of benefits situation. Moreover, the Code refers to “moment of birth” and days thereafter, so the gratuitous coverage period is without regard to any formal effectuation of coverage.

**Sample Scenarios**

***Parent A has policy with X Insurance and Parent B has policy with Y Insurance:***

* *Family chooses to cover the newborn under Parent B’s policy with Y Insurance and makes payment of premium or otherwise notifies the insurers of their intent. The hospital asked the family for both coverage information and sent bills to both insurers. Both insurers are compelled to pay the valid claims under this Bulletin. The insurers conduct their research, make the determination, and the “incorrect” insurer may recoup payment from the provider or primary insurer.*

***Parent A has policy with X Insurance and Parent B has policy with Y Insurance:***

* *Family chooses to cover the newborn under BOTH parents, but there is NO established payment order. The hospital asked the family for both coverage information and sent bills to both insurers. Both insurers are compelled to pay the valid claims under this Bulletin. The insurers conduct their research, make the determination, and the secondary insurer may recoup payment from the provider or primary insurer.*

***Parent A has policy with X Insurance and Parent B has policy with Y Insurance:***

* *Family chooses to cover the newborn under BOTH parents, but there is a known and established payment order. The hospital asked the family for both coverage information and sent bills to both insurers. Assuming the insurers know who the primary payer in this case is, claims will be paid by the responsible insurer.*

**Policy Forms Must Contain Clear Language**

Typically, a policy contains two separate provisions: (1) dependent eligibility [often a special enrollment period], and (2) coordination of benefits. To this end, policy forms shall contain clear language that reflects the ability and process to add a newborn as a dependent. Examples of acceptable terms include:

* *The special enrollment period is the thirty-one (31) day period from the date of the qualifying event. The qualifying event and subsequent effective date of coverage for a newly born dependent child is the date of birth. For employer plans: If the Qualified Employee is enrolled, the newly eligible Dependent Child will be covered automatically, but only for the first thirty-one (31) days following the child’s date of birth. The Subscriber must enroll such a Dependent Child and furnish premium for the subsequent month within thirty-one (31) days of the child’s First Eligibility Date to continue coverage (D.C. Official Code § 31–3803).*
* *This policy’s Coordination of Benefits/Subrogation provisions do not apply when a subscriber has enrolled a newly born dependent child in accordance with the policy. If the Subscriber has made no attempt to enroll a newly born dependent child in accordance with the policy, then this policy will provide coverage for the newborn for (31) days following the child’s date of birth, but after claims are paid this plan may request subrogation from another insurer where applicable.*

**Additional Language Encouraged**

Insurers are also encouraged to include additional language in policy forms or other information provided to prospective parents to address actions the insured might take in advance of the birth of a child, especially during prenatal care for an expectant subscriber, to ensure prompt payment of newborn claims. This could include requests to notify the insurer if claims for the newborn are anticipated to be submitted to this insurer or submitted to another insurer, and the timing for such notice. Insurers should have processes in place to document and retain the information.

If you have questions, contact Howard Liebers, Supervisory Insurance Examiner, at howard.liebers@dc.gov.

1. Note that the District of Columbia has not adopted the National Association of Insurance Commissioners Coordination of Benefits Model Regulation ([MDL-120](https://content.naic.org/sites/default/files/inline-files/MDL-120.pdf)), aka the “Birthday Rule.” [↑](#footnote-ref-1)