Dear Board,

The purpose of the MLR discussion at FSSB is to get feedback regarding clarifications to CCIIO technical guidance issued for 45 CFR §158.140 on May 23, 2011 and July 11, 2011 (attached). I have attached the Final MLR regulation as reference only. Additionally, DMHC has attached a word document summarizing key elements of 45 CFR §158.140 to get additional input related to payments made to physicians, IPAs and medical groups asking two key questions.

- **Will the proposed federal rules regarding MLR have the same impact on fee-for-service arrangements as with capitation arrangements?**
- **Will any of the below categories of expenses ever occur for a fee-for-service provider to the extent that these administrative expenses must be broken-out from the clinical service payments from the health plans/insurers?**

Below are the questions and answers provided by CMS and CCIIO which have stimulated our request for feedback:

July 11, 2011 CMS Response to Questions:

REIMBURSEMENT FOR CLINICAL SERVICES PROVIDED TO ENROLLEES (INCURRED CLAIMS) (45 CFR §158.140)

Question #19:
How should an issuer report amounts paid to third party vendors who pay others to provide clinical services to enrollees and who perform network development, administrative functions, claims processing, and utilization management?
Answer #19:
In general, an issuer may only include as reimbursement for clinical services (incurred claims) the amount that the vendor actually pays the medical provider or supplier for providing covered clinical services or supplies to enrollees. Where the third party vendor is performing an administrative function such as eligibility and coverage verification, claims processing, utilization review, or network development, expenditures and profits on these functions would be considered a non-claims administrative expense as provided in 45 CFR §158.140(b)(3)(ii).
Some third party vendors provide reimbursement for clinical services to enrollees and provide administrative functions such as claims processing and network development. Payments by an issuer to a third party vendor to provide clinical services directly to enrollees through its own employees are considered to be incurred claims. However, the amounts paid by the issuer to a third party vendor for the functions that are not direct clinical services to enrollees through its own employees are governed by §158.140(b)(3)(ii), and only the amounts the third party vendor pays to providers may be included in incurred claims. (Questions and Answers 8 and 9 address what is meant by the term "providers"; http://cciio.cms.gov/resources/files/2011_05_13_mlr_q_and_a_guidance.pdf.) The amounts attributable to network development, administrative fees, claims processing, and utilization management by the third party vendor and the third party vendor's profits on those activities must not be included by an issuer in its incurred claims.

May 23, 2011 CCIIO Response to Questions:

REIMBURSEMENT FOR CLINICAL SERVICES PROVIDED TO ENROLLEES (INCURRED CLAIMS) (45 CFR §158.140)

Question #8:

Is the entire amount paid to a clinical provider in a capitation arrangement considered an incurred claim?

Answer #8:

Generally, yes. Where an issuer has arranged with a clinical provider for capitation payments rather than fee-for-service reimbursement for covered services to enrollees, and such capitation payments include reimbursement for certain provider administrative costs, then the entire per member per month capitation payment paid to the provider may be included in incurred claims, as provided in 45 CFR §158.140(a).

The term “provider” in this question and answer does not refer to or include third party vendors.

Question #9:

Is the entire payment to a non-physician clinical provider in a capitation arrangement considered an incurred claim?

Generally, yes. Although 45 CFR §158.140(a) refers to the fact that it includes capitation arrangements with physicians, the intent was to include capitation arrangements with non-physician providers that are licensed, accredited, or certified to perform clinical health services, consistent with State law, and who are engaged in the delivery of medical services to enrollees.

Regards,

Dennis

Dennis Balmer
Deputy Director, FSSB
Department of Managed Health Care