



December 30, 2014

Mary T. C. Johnson
Medicaid Deputy Director
Bureau of Health Services Financing
Department of Health and Hospitals
Bienville Building
628 North 4th Street
P.O. Box 91030
Baton Rouge, LA 70821-9030

Re: Encounter Data Submission Requirements And Notice Of Monetary Penalty/Amerigroup Corporation

Dear Ms. Johnson:

Amerigroup Louisiana, Inc. (“Amerigroup”) hereby acknowledges receipt of your December 4, 2014, correspondence regarding the above-referenced matter. For the reasons set forth below, Amerigroup respectfully requests that the Department of Health and Hospitals (“DHH”) reconsider the \$520,000 Monetary Penalty it imposed pursuant to Exhibit E, Section 20.2.3 of the Contract Between State of Louisiana and Amerigroup, which contract became effective on February 1, 2012 (“Contract”).

Amerigroup does not contest DHH’s right to take Administrative Action and impose Monetary Penalties under the Contract. However, Amerigroup wishes to point out certain factors that, taken as a whole, will clearly indicate that the \$520,000 Monetary Penalty should not be imposed—or, at the very least, it should be substantially reduced.

First, we note that, as stated in DHH’s December 4, 2014, correspondence, the basis for the \$520,000 Monetary Penalty was based on Amerigroup’s failure to maintain the required Myers and Stauffer cumulative acceptance rate as required in the Comparison Report for November. We also point out that the cause of Amerigroup’s failure to meet the threshold target in the Myers and Stauffer November Comparison Report arose out of the same facts and circumstances as those described in your October 15, 2014, communication to Amerigroup. Consequently, we would argue that the October and November events were not two (2) separate instances of non-compliance, but only one (1). The rationale behind this position is as follows: During the course of Amerigroup’s efforts to comply with DHH’s requested Encounter Data reporting format change and to address an inconsistency observed on covered days reporting, in late September and early October, two (2) batch submissions occurred—one on September 25, 2014, and the other on October 9, 2014. The September submission (which admittedly contained errors) was made immediately prior to the Myers and Stauffer report cutoff date for its October’s Comparison Report. This caused the October cumulative submission percentage deficiency. Due to the timing of the October 9, 2014, submission (which was correct), the cutoff window was missed for the November Comparison

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Report, thus causing the November deficiency. Since all of the factors causing the October and November deficiencies arose out of Amerigroup's earnest efforts to comply with a requested DHH change in reporting format for Encounter Data as well as reviewing and responding to an inconsistency observed in a data field (a change we again point out was required to be completed in an extremely short period of time), we submit that a fair consideration of the facts clearly indicates that the causes of the failures to maintain the Encounter Data threshold target in October and November constituted one (1) single event—not two (2) separate events. This means that the failure to meet the threshold in November was not, in fact, the third instance of non-compliance in a year, but rather the second. Consequently, we submit that the \$520,000 penalty should not be imposed.

Second (and alternatively), Amerigroup also wishes to point out that that, pursuant to DHH's October 15, 2014, correspondence, DHH imposed a \$90,000 Monetary Penalty against Amerigroup. This penalty arose out of the same facts as those that resulted in the subsequently-imposed \$520,000 Monetary Penalty. Accordingly, Amerigroup submits that the \$90,000 penalty is more than sufficient to cover all of the deficiencies that arose out of the single event relating to Amerigroup's efforts to comply with DHH's requested change in the format whereby Encounter Data are reported and to address the covered days reporting. At the very least, the \$90,000 Monetary Penalty should serve as a credit against any Monetary Penalty DHH may choose to impose for Amerigroup's alleged November deficiency.

Third, Amerigroup points out that Exhibit E, Section 20.2.2 of the Contract requires that DHH take certain factors into consideration when making a determination to impose Monetary Penalties. We believe that three (3) of these factors are particularly applicable to this situation and that these three (3) factors, taken together, provide an adequate basis for a decision by DHH not to impose the \$520,000 penalty at all or, at the very least, to significantly reduce it. We have addressed each of these factors below.

The first factor is found at Exhibit E, Section 20.2.2.1 and involves the "...duration of the violation". Looked at in the context of the Contract as a whole, Amerigroup submits that the length(s) of time Amerigroup was technically out of compliance with respect to the accuracy of Encounter Data was, in actuality, quite short. We also point out that error that caused the fifty-two (52) day period of technical non-compliance was directly the result of Amerigroup's efforts to timely respond to a DHH-requested change in report format. In addition, prior to this requested DHH change, Amerigroup's cumulative acceptance rate had been running at 97%.

The second factor is found at Exhibit E, Section 20.2.2.4 and involves the "...severity of the violation and whether it imposes an immediate threat to the health or safety of the Medicaid members..." Clearly, the violations involved in this case were solely technical in nature and cannot in any way, we submit, be considered "severe". Further, no threat to the health or safety of Medicaid members was involved.

The third factor is found at Exhibit E, Section 20.2.2.4 and involves "...the 'good faith' exercised by the CCN in attempting to stay in compliance." A review of the correspondence exchanged between us involving the accuracy of Encounter Data reporting, as well as the substance of our related face-to-face discussions clearly demonstrate the seriousness with which Amerigroup treats its obligations

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under the Contract. We submit that the promptness of our responses, the number and extent of our remedial efforts, and the direct involvement of our senior executives in this situation all amply demonstrate that Amerigroup has acted in the utmost of “good faith” as, together, in collaboration with DHH, we promptly and diligently addressed the identified concerns.

Finally, Amerigroup wishes to draw DHH’s attention to the provisions of Section 18.4.2 of the Agreement. This section, which deals specifically with the format of Encounter Data reporting, implicitly recognizes that changes in the format of Encounter Data reports are necessarily complex undertakings. The pertinent first sentence of the Section provides in its entirety that “DHH may change the Encounter Data Transaction requirements with one hundred-fifty calendar days written notice to the CCN.” Amerigroup submits that, had it been afforded the benefit of the full time allotment contained in this provision, it would have been able to more extensively test the reliability and validity of its revised reporting format and none of the noted errors would have occurred. Thus, it was Amerigroup’s good faith attempts to comply with the State’s request to turn the revised report(s) around as quickly as possible that caused the September 25, 2014, batch submittal to be incorrect.

Consequently, and for all of the reasons outlined above, Amerigroup requests as follows:

- a) The \$520,000 penalty should be withdrawn in its entirety and the \$90,000 Monetary Penalty be deemed a sufficient penalty for all events of non-compliance arising out of Amerigroup’s efforts to comply with DHH’s requested change in the format whereby Encounter Data are reported and to correct the covered days reporting;
- b) Alternatively, the \$520,000 penalty should be substantially reduced and the previously-imposed \$90,000 penalty should serve as a credit against this reduced amount;
- c) The \$520,000 penalty should be substantially reduced—at the very least to include only the period from September 16, 2014, through October 9, 2014.

Amerigroup sincerely appreciates DHH’s consideration of the points made above.

Very truly yours,

A handwritten signature in cursive script that reads "Laura Schmidt".

Laura Schmidt
Managing Associate General Counsel

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