1 2 11 NCAC 12 .0321 was published as a readoption in NCR 34:10 839 but is now being repealed as follows:

3 11 NCAC 12 .0321 RATE FILING: HMO

4	<mark>(a)-All schedule</mark>	es of premiums for enrollee coverage for health care services, or amendment thereto, shall be filed in duplicate
5	<mark>in accordance w</mark>	rith 11 NCAC 12 .0307(b)(5), indicating whether the schedule is original or amended.
6	<mark>(b) All filings s</mark>	hall be accompanied by:
7	<del>(1)</del>	- A certification by the chief executive officer of the corporation that the premiums applicable to an enrollee
8		are not individually determined based on the status of his health;
9	<del>(2)</del>	- A certification by an actuarial expert that such premiums are established in accordance with actuarial
10		principles for various categories of enrollees and are not excessive, inadequate, or unfairly discriminatory;
11	<del>(3)</del>	- Actuarial data supporting the schedule of premiums;
12	<del>(4)</del>	
13		filing;
14	<mark>(c) Actuarial da</mark>	ata and rates required by this Rule shall be filed in triplicate.
15		
16	History Note:	Authority G.S. 58-67-50; 58-67-150;
17		Eff. January 22, 1980;
18		Amended Eff. <del>February 1, 1992. <u>February 1, 1992;</u></del>
19		<u>Repealed Eff. July 1, 2020.</u>
20		

 11 NCAC 12 .0514 is readopted as published in NCR 34:10 839 with changes as follows:

3	11 NCAC 12 .	0514	<b>COO</b>	RDINATION: GROUP A/H CONTRACT BENEFITS: GROUP COVERAGES
4	Purpose. In or	rder to pr	omote co	onsistency in liability for claims and claims determination for [Group Accident] group
5	accident and [ <mark>4</mark>	<mark>lealth</mark> ] <u>he</u>	<u>alth</u> cove	erage, when a person has more than one type of group insurance and there is a basis for a
6	<u>claim under tw</u>	o or more	group in	surance plans. [the department shall require a uniform order of benefits determination as
7	<mark>follows:</mark> ] <u>each</u>	group acc	ident and	health policy and any accident and health certificates issued under a group accident and
8	<u>health policy sl</u>	hall conta	<u>in unifor</u>	m order of benefit determination provisions as outlined in this Rule.
9	(1)	Applic	ability:	
10		(a)	[ <mark>This</mark> ]	These Coordination of Benefits ("COB") [provision applies to this plan] provisions apply
11			when	[ <mark>ə] <u>an</u> employee or the employee's covered dependent has health care coverage under <u>This</u></mark>
12			<mark>Plan a</mark>	<mark>nd one or</mark> more [ <del>than one plan.</del> ] <mark>"Plan" and "This Plan" are</mark> other Health Plans as defined in
13			Paragi	raph [ <del>(2)(a) and (b)</del> of this Rule] 2(a) of these provisions and when there is a basis for a
14			<u>claim</u>	under This Plan and the other Health Plan(s).
15		(b)	If [ <mark>this</mark>	<del>; COB provision applies,</del> <mark>the</mark> order of benefit determination rules should be looked at first.
16			Those	rules determine whether the benefits of this plan are determined before or after those of
17			<mark>anothe</mark>	er plan. The benefits of this plan:] these COB provisions apply, whether This Plan is the
18			<u>Prima</u>	ry Plan or the Secondary Plan is determined pursuant Paragraph (3) of these provisions.
19		<mark>(с)</mark>	When	This Plan is a Primary Plan, its benefits shall be determined before those of the other
20			Secon	dary Plan(s) and without considering the Secondary Plan's benefits. When there are more
21			<u>than t</u>	wo other Health Plans covering the person, This Plan may be a Primary Plan as to one or
22			more	<u>other Health Plans and may be a Secondary Plan as to a different Health Plan or Health</u>
23			<u>Plans.</u>	
24		<u>(d)</u>	<u>When</u>	This Plan is a Secondary Plan, its benefits shall be determined without considering the
25			<u>benefi</u>	ts of the Primary Plan or any other Secondary Plan and it shall credit to the deductible any
26			amou	nt that would otherwise be credited to it in the absence of coverage by another Health Plan.
27			When when	This Plan is a Secondary Plan, any amount of those benefits paid for any Allowable
28			Expen	se may be reduced to the amount of the Allowable Expense that is unpaid by the Primary
29			<u>Plan t</u>	o prevent the payment of benefits under more than one Health Plan that would total more
30			<mark>than o</mark>	ne-hundred percent (100%) of the total expense for that claim.
31		<u>(e)</u>	The b	enefits of This Plan:
32			(i)	Shall not be reduced when,[under the order of benefit determination rules, this plan]
33				determines its benefits before another plan; pursuant to Paragraph (3) of these
34				provisions, it is determined to be the Primary Plan; but
35			(ii)	May be reduced when, [under the order of benefit determination rules, another plan
36				determines its Section (IV) Effect on the Benefits of this plan.] pursuant to Paragraph
37				(3) of these provisions, it is determined to be the Secondary Plan.

1	<del>(2)</del>	Definitions:	
2		[(a) A "Plan" is any of these which provides benefits or services for, or because of, medical or c	<mark>lental</mark>
3		<del>care or treatment:</del>	
4		(i) True group insurance. This includes prepayment, group practice or individual pre	actice
5		<del>coverage. It does not include school accident type coverage, blanket, fran</del>	<mark>ichise</mark>
6		individual, automobile and homeowner coverage.	
7		[ <del>(ii) Coverage under a governmental plan or required or provided by law. This doc</del>	<mark>es not</mark>
8		<mark>include a state plan under Medicaid (Title XIX, Grants to States for Medical Assis</mark>	<mark>tance</mark>
9		Programs, of the United States Social Security Act as amended from time to time). It also	<mark>- does</mark>
10		not include any plan when, by law, its benefits are excess to those of any private insu	rance
11		<del>program or other non-governmental program.</del> ]	
12		<del>Each contract or other arrangement for coverage under (2)(a)(i) or (ii) of is a separate plan</del>	<mark>Also,</mark>
13		<mark>if an arrangement has two parts and COB rules apply only to one of the two each of the par</mark>	<mark>ts is a</mark>
14		<mark>separate plan.</mark>	
15		[(b) "This Plan" is the part of the group contact that provides benefits for health care expenses	<mark></mark> ]
16		[ <mark>(c) "Primary Plan"/"Secondary Plan". The order of benefit determination rules state whether this</mark>	<mark>s plan</mark>
17		is a Primary Plan or Secondary Plan as to another plan covering the person. When this pla	<mark>ın is a</mark>
18		Primary Plan, its benefits are determined before those of the other plan and without consid	lering
19		<del>the other plan's benefits. When there are more than two plans covering the person, this plar</del>	<mark>1 may</mark>
20		<del>be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to a dif</del>	<mark>ferent</mark>
21		<mark>plan or plans.</mark> ]	
22		[ <del>(d) "Allowable Expense" means a necessary, reasonable, and customary item of expense for h</del>	<mark>1ealth</mark>
23		care, when the item of expense is covered at least in part by one or more plans coverin	<mark>ig the</mark>
24		<del>person for whom the claim is made. When a plan provides benefits in the form of service</del>	<del>s, the</del>
25		reasonable cash value of each service rendered will be considered both an allowable expens	<mark>e and</mark>
26		a benefit paid. Total benefits paid must be equal to 100 percent of necessary medical exp	<mark>enses</mark>
27		<del>covered by both plans.</del> ]	
28		[ <del>(e) "Claim Determination Period" means a calendar year. However, it does not include any part of a</del>	<del>a year</del>
29		<mark>during which a person has no coverage under this plan, or any part of a year before the da</mark> t	<del>æ this</del>
30		COB provision or a similar provision takes effect.	
31	(2)	Definitions:	
32		(a) "Allowable Expense" means any health care expense, including coinsurance or copayn	nents,
33		without reduction for an applicable deductible, that is covered in full or in part by any o	of the
34		Health Plans covering the person. When a Health Plan provides benefits in the form of me	edical
35		services, the reasonable cash value of each service rendered shall be considered both an allow	wable
36		expense and a benefit paid.	

1		<u>(b)</u>	"Claim Determination Period" means a calendar year. However, it does not include any part of a
2			year during which a person has no coverage under This Plan, or any part of a year before the date
3			this COB provision or a similar provision takes effect.
4		(c)	"Health Plan" means a plan which provides benefits or services for, or because of, medical or
5			dental care or treatment:
6			(i) True group insurance. This includes prepayment, group practice or individual practice
7			coverage. It does not include accident and health coverage for students, blanket,
8			franchise individual, automobile and homeowner coverage.
9			(ii) Coverage under a governmental plan or required or provided by law. This does not
10			include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance
11			Programs, of the United States Social Security Act as amended from time to time). It
12			also does not include any plan when, by law, its benefits are excess to those of any
13			private insurance program or other non-governmental program.
14			Each coverage under Subparagraphs (2)(a)(i) or (ii) of these provisions is a separate Health Plan.
15			Also, if there is more than one schedule of benefits, and COB provisions apply only to one, each
16			of the schedule of benefits is a separate Health Plan.
17		<u>(d)</u>	"Primary Plan" means a Health Plan whose benefits for a person's health care coverage has been
18			determined to be the first claim payor taking the existence of any other Health Plan into
19			consideration, pursuant to Paragraph (3) of these provisions.
20		<u>(e)</u>	"Secondary Plan" means a Health Plan that is not a Primary Plan.
20 21		<u>(e)</u> (f)	"Secondary Plan" means a Health Plan that is not a Primary Plan. "This Plan" means this group accident and health policy.
	(3)	<u>(f)</u>	
21	(3)	<u>(f)</u>	"This Plan" means this group accident and health policy.
21 22	(3)	(f) Order	"This Plan" means this group accident and health policy. of Benefit [Determination Rules:] Determination:
21 22 23	(3)	(f) Order	<u>"This Plan" means this group accident and health policy.</u> of Benefit [ <del>Determination Rules:</del> ] <u>Determination:</u> [ <del>General.</del> ] When there is a basis for a claim under [this plan] <u>This Plan</u> and another [plan, this
21 22 23 24	(3)	(f) Order	<u>"This Plan" means this group accident and health policy.</u> of Benefit [Determination Rules:] Determination: [General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of
21 22 23 24 25	(3)	(f) Order	<ul> <li><u>"This Plan" means this group accident and health policy.</u></li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan]</li> <li><u>plan</u>] <u>Health Plan, This Plan</u> is a Secondary Plan which has its benefits determined after those of the other [plan,] <u>Health Plan,</u> unless:</li> </ul>
21 22 23 24 25 26	(3)	(f) Order	<ul> <li><u>"This Plan" means this group accident and health policy.</u></li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of</li> </ul>
21 22 23 24 25 26 27	(3)	(f) Order	<ul> <li><u>"This Plan" means this group accident and health policy.</u></li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan;] This Plan; and</li> </ul>
21 22 23 24 25 26 27 28	(3)	(f) Order	<ul> <li>"This Plan" means this group accident and health policy.</li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan;] This Plan; and</li> <li>(ii) both those [rules] the other Health Plan's provisions and [this plan's rules,] This Plan's</li> </ul>
21 22 23 24 25 26 27 28 29	(3)	(f) Order	<ul> <li><u>"This Plan" means this group accident and health policy.</u></li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan;] This Plan; and</li> <li>(ii) both those [rules] the other Health Plan's provisions and [this plan's rules,] This Plan's provisions in [(3)(b)(ii)(B) of this Rule,] Subparagraph (3)(b) of these provisions.</li> </ul>
21 22 23 24 25 26 27 28 29 30	(3)	(f) Order	<ul> <li><u>"This Plan" means this group accident and health policy.</u></li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan;] This Plan; and</li> <li>(ii) both those [rules] the other Health Plan's provisions and [this plan's rules,] This Plan's provisions in [(3)(b)(ii)(B) of this Rule,] Subparagraph (3)(b) of these provisions, require that [this plan's] This Plan's benefits be determined before those of the other</li> </ul>
21 22 23 24 25 26 27 28 29 30 31	(3)	(f) Order (a)	<ul> <li>"This Plan" means this group accident and health policy.</li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan;] This Plan; and</li> <li>(ii) both those [rules] the other Health Plan's provisions and [this plan's rules,] This Plan's provisions in [(3)(b)(ii)(B) of this Rule,] Subparagraph (3)(b) of these provisions, require that [this plan's] This Plan's benefits be determined before those of the other Health Plan.</li> </ul>
21 22 23 24 25 26 27 28 29 30 31 32	(3)	(f) Order (a)	<ul> <li>"This Plan" means this group accident and health policy.</li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless: <ul> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan;] This Plan; and</li> <li>(ii) both those [rules] the other Health Plan's provisions and [this plan's rules,] This Plan's provisions in [(3)(b)(ii)(B) of this Rule,] Subparagraph (3)(b) of these provisions, require that [this plan's] This Plan's benefits be determined before those of the other Health Plan.</li> </ul> </li> <li>[Rules.] This [plan] Plan determines its order of benefits using the first of the following rules</li> </ul>
21 22 23 24 25 26 27 28 29 30 31 32 33	(3)	(f) Order (a)	<ul> <li>"This Plan" means this group accident and health policy.</li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this</li> <li>plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan;] This Plan; and</li> <li>(ii) both those [rules] the other Health Plan's provisions and [this plan's rules,] This Plan's provisions in [(3)(b)(ii)(B) of this Rule,] Subparagraph (3)(b) of these provisions, require that [this plan's] This Plan's benefits be determined before those of the other Health Plan.</li> <li>[Rules.] This [plan] Plan determines its order of benefits using the first of the following rules which applies:</li> </ul>
21 22 23 24 25 26 27 28 29 30 31 32 33 34	(3)	(f) Order (a)	<ul> <li>"This Plan" means this group accident and health policy.</li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this</li> <li>plan] Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan] This Plan; and</li> <li>(ii) both those [rules] the other Health Plan's provisions and [this plan's rules,] This Plan's provisions, in [(3)(b)(ii)(B) of this Rule,] Subparagraph (3)(b) of these provisions, require that [this plan's] This Plan's benefits be determined before those of the other Health Plan.</li> <li>[Rules:] This [plan] Plan determines its order of benefits using the first of the following rules which applies:</li> <li>(i) Non-dependent/Dependent. The benefits of the [plan] Health Plan which covers the</li> </ul>
21 22 23 24 25 26 27 28 29 30 31 32 33 34 35	(3)	(f) Order (a)	<ul> <li>"This Plan" means this group accident and health policy.</li> <li>of Benefit [Determination Rules:] Determination:</li> <li>[General.] When there is a basis for a claim under [this plan] This Plan and another [plan, this</li> <li>plan] Health Plan. This Plan is a Secondary Plan which has its benefits determined after those of the other [plan,] Health Plan, unless:</li> <li>(i) the other [plan] Health Plan has [rules] provisions coordinating its benefits with those of [this plan;] This Plan; and</li> <li>(ii) both those [rules] the other Health Plan's provisions and [this plan's rules,] This Plan's provisions in [(3)(b)(ii)(B) of this Rule,] Subparagraph (3)(b) of these provisions, require that [this plan's] This Plan's benefits be determined before those of the other Health Plan.</li> <li>[Rules:] This [plan] Plan determines its order of benefits using the first of the following rules which applies:</li> <li>(i) Non-dependent/Dependent. The benefits of the [plan,] Health Plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are</li> </ul>

1	(ii)	Dependent Child/Parents Not Separated or Divorced. Except as stated in [(3)(b)(iii)(B)
2		<mark>of this Rule,</mark> ] <u>Subparagraph (3)(b)(iii) of these provisions,</u> when [ <del>this plan</del> ] <u>This Plan</u>
3		and another [plan] Health Plan cover the same child as a dependent of different persons,
4		called "parents":
5		(A) the benefits of the [plan] Health Plan of the parent whose birthday falls earlier
6		in a year are determined before those of the [ <del>plan</del> ] <u>Health Plan</u> of the parent
7		whose birthday falls later in that year; but
8		(B) if both parents have the same birthday, the benefits of the [plan] Health Plan
9		that has covered a parent for a longer period of time are determined before
10		those of the [ <del>plan</del> ] <u>Health Plan</u> that covered the other parent for a shorter
11		period of time.
12		However, if the other [ <del>plan</del> ] <u>Health Plan</u> does not have the [ <del>rule</del> ] <u>provision</u> described in
13		[Paragraph (3)(a) in this Rule,] Subparagraph (3)(b)(ii)(A) of these provisions, but
14		instead has a [rule] provision based upon the gender of the parent, and if, as a result, the
15		[plans] Health Plans do not agree on the order of benefits, the [rule] provision in the
16		other [ <mark>plan</mark> ] <u>Health Plan</u> will determine the order of benefits.
17	(iii)	Dependent Child/Separated or Divorced Parents. If two or more [plans] Health Plans
18		cover a person as a dependent child of divorced or separated parents, benefits for the
19		child are determined in this order:
20		(A) first, the [plan] Health Plan of the parent with custody of the child;
21		(B) then, the [plan] <u>Health Plan</u> of the spouse of the parent with custody of the
22		child; and
23		(C) finally, the [plan] <u>Health Plan</u> of the parent not having custody of the child.
24		However, if the specific terms of a court decree state that one of the parents is
25		responsible for the [health pay or provide the benefits of the plan of that parent has
26		actual knowledge of those terms,] healthcare expenses or healthcare coverage and the
27		Health Plan of the parent has actual knowledge of those terms, the benefits of that [plan]
28		Health Plan are determined first. [In this Rule,] Subparagraph (3)(b)(iii)(C) of these
29		provisions does not apply with respect to any [elaim determination period] Claim
30		Determination Period or [plan year] plan-year during which any benefits are actually
31		paid or provided before the [ <del>entity]<u>Health Plan</u> has that actual knowledge.</del>
32	(iv)	Active Inactive Employee. The benefits of a [plan] Health Plan which covers a person
33		as an employee who is neither laid off nor retired (or as that employee's dependent) are
34		determined before those of a [plan] Health Plan which covers that person as a laid off or
35		retired employee (or as that employee's dependent). If the other [plan] Health Plan does
36		not have <u>a provision like Subparagraph</u> (3)(b)(iv), and if, as a result, the [ <del>plans</del> ] <u>Health</u>
37		Plans do not agree on the order of benefits, Subparagraph (3)(b)(iv) is ignored.

1		(v)	Longer/Shorter Length of Coverage. If [more] none of the other provisions of
2			Paragraph (3) [ <del>of this Rule determines</del> ] <u>determine</u> the order of benefits, the benefits of
3			the [ <del>plan</del> ] <u>Health Plan</u> which covered an employee, member or subscriber longer are
4			determined before those of the [plan] Health Plan which covered that person for the
5			shorter time.
6			
7	History Note:	Authority G.S.	58-2-40; 58-51-1; <mark>58-51-80; <mark>58-51-81;</mark> 58-65-1; 58-65-40;</mark>
8		Eff. February 1	, 1976;
9		Readopted Eff.	September 26, 1978;
10		Amended Eff. F	ebruary 1, 1992; April 1, 1989; <del>July 1, 1986. <u>July 1, 1986;</u></del>
11		<u>Readopted Eff.</u>	July 1, 2020.
12			

April 20, 2020

Loretta Peace-Bunch Department of Insurance Sent via email only: loretta.peace-bunch@ncdoi.gov

Re: Objection to Rules 11 NCAC 12 .0321 and .0514

Dear Ms. Peace-Bunch:

At its April meeting, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 11 NCAC 12 .0321 for lack of clarity. Line 5 crossreferences a repealed rule. The Rule also uses the undefined terms "excessive," "inadequate" and "unfairly discriminatory" as well as the phrase "data deemed necessary by the commissioner."

The Commission also objected to Rule 11 NCAC 12 .0514 for lack of clarity. The Rule is unclear for reasons detailed in the staff opinion, including multiple versions and meanings of the word "plan." It is also unclear whether "the order of benefit determination rules" refer to Item (3) of the Rule or Sub-item (3)(b) of the Rule. The Rule also uses the following undefined terms: "school accident-type coverage" at line 21; "parts" at line 29; "necessary, reasonable, and customary" at page 2, line 1; "services" at page 2, line 3; and "necessary medical expenses" at page 2, line 5.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashlug Sugelor

Ashley Snyder Commission Counsel

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Department of Insurance RULE CITATION: 11 NCAC 12 .0321 RECOMMENDED ACTION:

Approve, but note staff's comment

- X Object, based on: Lack of statutory authority
  - X Unclear or ambiguous Unnecessary Failure to comply with the APA Extend the period of review

## COMMENT:

Staff recommends objection for lack of clarity. Specifically, line 5 provides a cross-reference to Rule 11 NCAC 12 .0307 which has been repealed. As a result, the filing requirements for schedules of premiums are unclear. Additionally, the Rule is ambiguous as written since it uses the undefined terms "excessive," "inadequate" and "unfairly discriminatory" at line 10 as well as the phrase "data deemed necessary by the commissioner" at line 12.

2 3 11 NCAC 12 .0321 **RATE FILING: HMO** 4 (a) All schedules of premiums for enrollee coverage for health care services, or amendment thereto, shall be filed in duplicate 5 in accordance with 11 NCAC 12 .0307(b)(5), indicating whether the schedule is original or amended. 6 (b) All filings shall be accompanied by: 7 A certification by the chief executive officer of the corporation that the premiums applicable to an enrollee (1)8 are not individually determined based on the status of his health; 9 A certification by an actuarial expert that such premiums are established in accordance with actuarial (2) 10 principles for various categories of enrollees and are not excessive, inadequate, or unfairly discriminatory; 11 (3) Actuarial data supporting the schedule of premiums; 12 (4) Such other data deemed necessary by the commissioner to determine whether to approve or disapprove the 13 filing; 14 (c) Actuarial data and rates required by this Rule shall be filed in triplicate. 15 16 History Note: Authority G.S. 58-67-50; 58-67-150; 17 Eff. January 22, 1980; Amended Eff. February 1, 1992. February 1, 1992; 18 19 Readopted Eff. March 1, 2020. 20 21

11 NCAC 12 .0321 is readopted as published in NCR 34:10 839 as follows:

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## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Department of Insurance RULE CITATION: 11 NCAC 12 .0514 RECOMMENDED ACTION:

Approve, but note staff's comment

- X Object, based on: Lack of statutory authority
  - X Unclear or ambiguous Unnecessary Failure to comply with the APA Extend the period of review

## COMMENT:

Staff recommends objection to this Rule governing selection of benefits for accident and health insurance for lack of clarity. This Rule is unclear as written for many reasons, including use of the defined terms "plan" at line 18 and "this plan" at line 30 in addition to the undefined terms "separate plan" at line 28 and "other plan" on page 2, line 30. Staff notes the term is partially capitalized as "other Plan" on page 2, line 15, so it is additionally unclear if this term has a different meaning. The multiple versions and meanings of the word "plan" used throughout this Rule make the Rule confusing and thus, ambiguous as written.

At line 11, this Rule states, "... 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." It is unclear to staff whether "the order of benefit determination rules" refers to Item (3) of this Rule or Sub-item (3)(b) of this Rule. The term "rule" also appears to refer to requirements within specific "plans" at page 2, lines 30-32. The multiple uses of the word "rule," none of which follow the definition of the term in G.S. 150B-2(8a), further confuse the meaning of this Rule.

The Rule also includes the following undefined terms which make the Rule unclear: "school accident-type coverage" at line 21; "parts" at line 29; the phrase "necessary, reasonable, and customary" at page 2, line 1; "services" at page 2, line 3; and "necessary medical expenses" at page 2, line 5. Overall, staff recommends objection for ambiguity.

1	11 NCAC 12 .0	514 is re	adopted	as published in NCR 34:10 839 as follows:			
2							
3	11 NCAC 12 .0514		C00	COORDINATION: GROUP A/H CONTRACT BENEFITS: GROUP COVERAGES			
4	4 Purpose. In order to prop			nsistency in liability for claims and claims determination for Group Accident and Health			
5	coverage, the d	epartmen	t shall re	equire a uniform order of benefits determination as follows:			
6	(1)	Applic	cability:				
7		(a)	This (	Coordination of Benefits ("COB") provision applies to this plan when a employee or the			
8			emplo	byee's covered dependent has health care coverage under more than one plan. "Plan" and			
9			"This	Plan" are defined in (2)(a) and (b) of this Rule.			
10		(b)	If this	COB provision applies, the order of benefit determination rules should be looked at first.			
11			Those	rules determine whether the benefits of this plan are determined before or after those of			
12			anoth	er plan. The benefits of this plan:			
13			(i)	Shall not be reduced when, under the order of benefit determination rules, this plan			
14				determines its benefits before another plan; but			
15			(ii)	May be reduced when, under the order of benefit determination rules, another plan			
16				determines its Section (IV) Effect on the Benefits of this plan.			
17	(2)	Defini	tions:				
18		(a)	A "Pla	an" is any of these which provides benefits or services for, or because of, medical or dental			
19			care c	r treatment:			
20			(i)	True group insurance. This includes prepayment, group practice or individual practice			
21				coverage. It does not include school accident-type coverage, blanket, franchise			
22				individual, automobile and homeowner coverage.			
23			(ii)	Coverage under a governmental plan or required or provided by law. This does not			
24				include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance			
25				Programs, of the United States Social Security Act as amended from time to time). It			
26				also does not include any plan when, by law, its benefits are excess to those of any			
27				private insurance program or other non-governmental program.			
28	Each c	contract o	r other a	rrangement for coverage under (2)(a) (i) or (ii) is a separate plan. Also, if an arrangement			
29	has tw	o parts a	nd COB	rules apply only to one of the two, each of the parts is a separate plan.			
30		(b)	"This	Plan" is the part of the group contact that provides benefits for health care expenses.			
31		(c)	"Prim	ary Plan"/"Secondary Plan". The order of benefit determination rules state whether this			
32			plan i	s a Primary Plan or Secondary Plan as to another plan covering the person. When this plan			
33			is a I	Primary Plan, its benefits are determined before those of the other plan and without			
34			consid	dering the other plan's benefits. When there are more than two plans covering the person,			
35			this pl	an may be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to			
36			a diffe	erent plan or plans.			

1		(d)	"Allow	vable Exp	bense" means a necessary, reasonable, and customary item of expense for health
2			care, v	when the	item of expense is covered at least in part by one or more plans covering the
3			person	for who	n the claim is made. When a plan provides benefits in the form of services, the
4			reason	able cash	value of each service rendered will be considered both an allowable expense and
5			a bene	fit paid. '	Total benefits paid must be equal to 100 percent of necessary medical expenses
6			covere	d by both	n plans.
7		(e)	"Claim	n Determi	nation Period" means a calendar year. However, it does not include any part of a
8			year du	uring whi	ch a person has no coverage under this plan, or any part of a year before the date
9			this CO	OB provi	sion or a similar provision takes effect.
10	(3)	Order	of Benefi	it Determ	ination Rules:
11		(a)	Genera	al. When	there is a basis for a claim under this plan and another plan, this plan is a
12			Second	dary Plan	which has its benefits determined after those of the other plan, unless:
13			(i)	the oth	er plan has rules coordinating its benefits with those of this plan; and
14			(ii)	both th	ose rules and this plan's rules, in (3)(b)(ii)(B) of this Rule, require that this plan's
15				benefit	s be determined before those of the other Plan.
16		(b)	Rules.	This pla	an determines its order of benefits using the first of the following rules which
17			applies	s:	
18			(i)	Non-d	ependent/Dependent. The benefits of the plan which covers the person as an
19				employ	yee, member or subscriber (that is, other than as a dependent) are determined
20				before	those of the plan which covers the person as a dependent.
21			(ii)	Depen	dent Child/Parents Not Separated or Divorced. Except as stated in (3)(b)(iii)(B)
22				of this	Rule, when this plan and another plan cover the same child as a dependent of
23				differe	nt persons, called "parents":
24				(A)	the benefits of the plan of the parent whose birthday falls earlier in a year are
25					determined before those of the plan of the parent whose birthday falls later in
26					that year; but
27				(B)	if both parents have the same birthday, the benefits of the plan that has covered
28					a parent for a longer period of time are determined before those of the plan that
29					covered the other parent for a shorter period of time.
30	However, if the	other pla	n does no	t have the	rule described in Paragraph (3)(a) in this Rule, but instead has a rule based upon
31	the gender of th	e parent,	, and if, a	s a result	, the plans do not agree on the order of benefits, the rule in the other plan will
32	determine the or	rder of b	enefits.		
33			(iii)	Depen	dent Child/Separated or Divorced Parents. If two or more plans cover a person as
34				-	ndent child of divorced or separated parents, benefits for the child are determined
35				in this	order:
36				(A)	first, the plan of the parent with custody of the child;
37				(B)	then, the plan of the spouse of the parent with custody of the child; and

1			(C)	finally, the plan of the parent not having custody of the child.
2	However, if the	specific terms of a	a court dec	ree state that one of the parents is responsible for the health pay or provide the
3	benefits of the p	lan of that parent l	has actual	knowledge of those terms, the benefits of that plan are determined first. In this
4	Rule, (3)(b)(iii)(	C) does not apply	with respe	ect to any claim determination period or plan year during which any benefits are
5	actually paid or	provided before t	he entity h	as that actual knowledge.
6		(iv)	Active	nactive Employee. The benefits of a plan which covers a person as an employee
7			who is	neither laid off nor retired (or as that employee's dependent) are determined
8			before t	hose of a plan which covers that person as a laid off or retired employee (or as
9			that em	ployee's dependent). If the other plan does not have $(3)(b)(iv)$ , and if, as a result,
10			the plan	is do not agree on the order of benefits, $(3)(b)(iv)$ is ignored.
11		(v)	Longer	Shorter Length of Coverage. If more of Paragraph (3) of this Rule determines
12			the orde	er of benefits, the benefits of the plan which covered an employee, member or
13			subscril	per longer are determined before those of the plan which covered that person for
14			the shore	ter time.
15				
16	History Note:	Authority G.S. 5	58-2-40; 5	8-51-1; 58-65-1; 58-65-40;
17		Eff. February 1	, 1976;	
18		Readopted Eff.	September	· 26, 1978;
19		Amended Eff. F	ebruary 1	1992; April 1, 1989; <del>July 1, 1986. July 1, 1986;</del>
20		<u>Readopted Eff.</u>	March 1, 2	2020.
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