

**191—38.18(509,514) Miscellaneous provisions.**

**38.18(1)** A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this subrule shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

**38.18(2) Complying and noncomplying plans.**

*a.* A plan with order of benefit determination provisions that comply with this division (complying plan) may coordinate its benefits with a plan that is “excess” or “always secondary” or that uses order of benefit determination rules that are inconsistent with those contained in this division (noncomplying plan) on the following basis:

- (1) If the complying plan is the primary plan, it shall pay or provide its benefits first;
- (2) If the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan’s liability; and
- (3) If the noncomplying plan does not provide the information needed by the complying plan to determine the complying plan’s benefits within a reasonable time after the noncomplying plan is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. If, within two years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, the complying plan shall adjust payments accordingly.

*b.* If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to the covered person or on behalf of the covered person an amount equal to the difference.

*c.* In no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

**38.18(3)** COB differs from subrogation. Provisions for COB or subrogation may be included in health care benefits contracts without compelling the inclusion or exclusion of either.

**38.18(4)** If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been the primary plan.