WAC 284-51-205 Rules for coordination of benefits. (1) When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

(a) The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist.

(b) If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan must pay or provide benefits as if it were the primary plan when a covered person uses a nonpanel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.

(c) When multiple contracts providing coordinated coverage are treated as a single plan under this chapter, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one issuer pays or provides benefits under the plan, the issuer designated as primary within the plan is responsible for the plan's compliance with this chapter.

(d) If a person is covered by more than one secondary plan, the order of benefit determination rules of this chapter decide the order in which secondary plans' benefits are determined in relation to each other. Each secondary plan must take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the rules of this chapter, has its benefits determined before those of that secondary plan.

(2)(a) Except as provided in (b) of this subsection, a plan that does not contain order of benefit determination provisions that are consistent with this chapter is always the primary plan unless the provisions of both plans, regardless of the provisions of this section, state that the complying plan is primary.

(b) Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage is excess to any other parts of the plan provided by the contract holder. Examples include major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(3) A plan may take into consideration the benefits paid or provided by another plan only when, under the rules of this chapter, it is secondary to that other plan.

(4) Order of benefit determination. Each plan determines its order of benefits using the first of the following rules that applies:

(a) Nondependent or dependent.

(i) Subject to (a)(ii) of this subsection, the plan that covers the person other than as a dependent, for example as an employee, member, subscriber, policyholder or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

(ii)(A) If the person is a medicare beneficiary, and, as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, medicare is:

(I) Secondary to the plan covering the person as a dependent; and

(II) Primary to the plan covering the person as other than a dependent (e.g., a retired employee);

(B) Then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

(b) Dependent child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child must determine the order of benefits as follows:

(i) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

(A) The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(B) If both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

(ii) For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:

(A) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does, that parent's spouse's plan is the primary plan. This does not apply to any plan year during which benefits are paid or provided before the plan has actual knowledge of the court decree provision;

(B) If a court decree states one parent is to assume primary financial responsibility for the dependent child but does not mention responsibility for health care expenses, the plan of the parent assuming financial responsibility is primary;

(C) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of (b)(i) of this subsection determine the order of benefits;

(D) If a court decree states that the parents have joint custody without specifying that one parent has financial responsibility or responsibility for the health care expenses or health care coverage of the dependent child, the provisions of (b)(i) of this subsection determine the order of benefits; or

(E) If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child is as follows:

(I) The plan covering the custodial parent, first;

(II) The plan covering the custodial parent's spouse, second;

(III) The plan covering the noncustodial parent, third; and then

(IV) The plan covering the noncustodial parent's spouse, last.

(iii) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits is determined, as applicable, under (b)(i) or (ii) of this subsection as if those individuals were parents of the child.

(c) Active employee or retired or laid-off employee.

(i) The plan that covers a person as an active employee that is, an employee who is neither laid off nor retired or as a dependent of an active employee is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(ii) If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule does not apply.

(iii) This provision does not apply if the provision in (a) of this subsection can determine the order of benefits.

(d) COBRA or state continuation coverage.

(i) If a person whose coverage is provided under COBRA or under a right of continuation according to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan and the plan covering that same person under COBRA or under a right of continuation according to state or other federal law is the secondary plan.

(ii) If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule does not apply.

(iii) This provision does not apply if the provision in (a) of this subsection can determine the order of benefits.

(e) Longer or shorter length of coverage.

(i) If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

(ii) To determine the length of time a person has been covered under a plan, two successive plans are treated as one if the covered person was eligible under the second plan within twenty-four hours after coverage under the first plan ended.

(iii) The start of a new plan does not include:

(A) A change in the amount or scope of a plan's benefits;

(B) A change in the entity that pays, provides or administers the plan's benefits; or

(C) A change from one type of plan to another, such as, from a single employer plan to a multiple employer plan.

(iv) The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group must be used as the date to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding rules determines the order of benefits, the allowable expenses must be shared equally between the plans.

[Statutory Authority: RCW 48.20.60 [48.20.060], 48.21.200, 48.44.050, and 48.46.200. WSR 07-13-008 (Matter No. R 2005-07), § 284-51-205, filed 6/8/07, effective 7/9/07.]