**Section 2602.40 Standards**

No company shall withhold any portion of any benefit payable as the result of a claim on the basis that the sum withheld is an adjustment or correction for an overpayment made on a prior claim arising under the same policy unless:

a) The company has within its files clear, documented evidence of overpayment and written authorization from the insured permitting such withholding procedure, or

b) The company has within its files clear, documented evidence of all of the following:

1) The amount of the claim payment was clearly erroneous under the provisions of the policy. If the amount is the subject of a legitimate dispute between the insured and the company as to coverage or other policy provisions, this procedure may not be used.

2) The error which resulted in the payment is not a mistake of law.

3) The company notifies the insured in writing within six (6) months of the date of the error, or within twelve (12) months for errors arising from billing errors made by providers of services or treatment on the compensable claim. Such six (6) or twelve (12) months period shall be measured from the date of the claim check or draft which contains the erroneous payment.

4) Such notice states clearly the nature of the error and the states the amount of the overpayment.