Arkansas Insurance Department

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DIRECTIVE NO.: 1-2012

TO: **HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, HEALTH CARE PRODUCERS, AND OTHER INTERESTED PERSONS**

FROM: **ARKANSAS INSURANCE DEPARTMENT**

SUBJECT: **CONTINUITY OF IN-NETWORK HOSPITAL COVERAGE**

DATE: **MARCH 27, 2012**

The Arkansas Insurance Department ("Department") issues this Directive to all "health care insurers" as defined by Ark. Code Ann. § 23-99-403(5) which issue "managed care plans" under Ark. Code Ann. § 23-99-403(6) to address the termination of participation of a hospital in a health care insurer's network during the time an individual or group is covered under a managed care plan. This Directive applies to health care insurers who issue or deliver "health benefit plans" as defined by Ark. Code Ann. § 23-99-403(4)(A). This Directive applies to all health benefit plans issued or renewed after July 2, 2012.

The Department issues this Directive in light of recent health care insurer notices to insureds that a health care insurer was terminating a hospital from its network. Although the health care insurer and hospitals eventually contracted following these termination notices, terminations are especially disruptive if the terminated hospital is the only hospital within the county serving the insureds and policyholders.

The Department maintains that health care insureds and certificate holders in managed care plans rely upon a health care insurer's representation in its sales, marketing and plan information, at the time of application or enrollment, as to the availability of a particular hospital to be in-network throughout the coverage term in a health insurance policy or contract. Health care insureds and enrollees materially rely upon the in-network availability of a hospital in the purchase and selection of a health care plan, due to the geographical proximity of the enrollee to the hospital and due to the familiarity of the hospital to the enrollee. Health care insureds should not suffer disruption and other harms including but not limited to out-of-network costs during the course of coverage under a health care policy or plan, whenever a health insurer and participating

hospital provider decide to terminate their relationship during that coverage period. The Department maintains that if a health care insurer represents the participation of a particular hospital to be in-network at enrollment or application, the health care insurer has made this part of the bargain made to the insured that such in-network participation will exist for the coverage term of the policy or contract. The Department believes that the continuity of care provisions in Ark. Code Ann. § 23-99-408, following termination of medical provider participation, requiring in-network coverage during episodes of medical treatment, or for ninety (90) days, whichever occurs first, do not go far enough to protect against consumer harm unless the in-network continuity of care applies to the full coverage term, as contemplated by the insured when the insurance and network was selected by the insured.

The Department interprets that the representations made by a health care insurer in its description of in-network participating hospitals, at the time of application or enrollment, to be representations of the benefits, advantages, conditions, or terms of an insurance policy under Ark. Code Ann. § 23-66-206(8)(A). The description made by a health care insurer to prospective insureds and enrollees at the time of application or enrollment about which hospitals it has participating in its network servicing the plan is a "condition" or "term" in the insurance policy or contract, and this is an important "term" or "condition" relied upon by a consumer in his or her decision to buy the health care policy or contract. Therefore, the Department maintains that any health care insurer which terminates the in-network status of a hospital during the time a person is covered under a health plan or policy, to be committing a Trade Practices Act violation under § 23-66-206(8)(A) by refusing to cover such hospital services as in-network during the coverage period of the health care plan or policy. For a health care insurer to avoid committing a violation of Ark. Code Ann. § 23-66-206(8)(A), the Department interprets that the continuity of care provisions in Ark. Code Ann. § 23-99-408 to cease at the time coverage is terminated under the health care policy or plan, or at renewal of the group policy, or on the anniversary date of any individual policy using a provider network.

The Department's interpretation is confined to representations made by health care insurers of its participating hospitals at the time of application or enrollment of the plan or policy given the comprehensive and essential medical services hospitals provide and the disruption which is caused to consumers when the participation of a hospital in the plan is dropped or terminated. This Directive therefore only applies to provide continuity of in-network benefits for the full coverage term for hospital inpatient and outpatient services. The Department also cautions hospitals during this period to avoid "balance billing" enrollees after its network participation is terminated and to continue to hold such patients harmless and to treat such patients as in-network for as long as the policy or plan is in effect under the requirements of this Directive.

The Department cautions health care insurers that once a hospital's participation is terminated in the health care plan, a health insurer, producer or broker, shall immediately cease the marketing or sale of all new policies or plans, issued following the termination of a hospital's participation, which represent the hospital to be an in-network participating provider of that health care insurer.

The Department takes the position that the sale of a health policy or plan which misrepresents the in-network status of a hospital in a health care plan or policy at the time of enrollment to be a deceptive act committed by the health insurer, producer, or broker, in violation of the Trade Practices Act pursuant to Ark. Code Ann. § 23-66-206(8)(A). The Department directs all health care insurers to have available to all producers and brokers a current up-to-date list of all participating hospital providers and to immediately update this list following termination of network participation of a hospital in its health plans or policies.

Finally, the Department directs that health care insurers notify in writing all health care insureds in the health care plan or policy, within twenty (20) days, following termination of a hospital from the health care plan, that a hospital is no longer in network under the plan or policy which was listed as in-network at the time of the enrollment. For purposes of this Directive, "health care insureds" mean "covered persons" as defined under Ark. Code Ann. § 23-99-403(3). These notices may be confined to the health care insureds residing in the county in which the hospital is located. The health care insurer is also directed to provide in that written notice to the health care insured that he or she is entitled to in-network continuity of care with that hospital provider until coverage is terminated under the health care policy or plan, or at renewal of the group policy, or on the anniversary date of any individual policy using a provider network, in conformity with this Directive. Health care insurers are directed to provide a specimen copy of this notice form to the Department's Life and Health Division for information purposes only.

All Companies subject to this Directive are instructed to forward or make available this Directive to all appointed Arkansas producers. Any questions regarding this Directive should be directed to the Legal Division of the Arkansas Insurance Department at 501-371-2820 or via e-mail at insurance.legal@arkansas.gov.

JAY BRADFORD
ARKANSAS INSURANCE COMMISSIONER

3-27-2012
DATE