



# OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

**RALPH T. HUDGENS**  
COMMISSIONER OF INSURANCE  
SAFETY FIRE COMMISSIONER  
INDUSTRIAL LOAN COMMISSIONER  
COMPTROLLER GENERAL

SEVENTH FLOOR, WEST TOWER  
FLOYD BUILDING  
2 MARTIN LUTHER KING, JR. DRIVE  
ATLANTA, GEORGIA 30334  
(404) 656-2056  
www.oci.ga.gov

**BEFORE THE COMMISSIONER OF INSURANCE**

**STATE OF GEORGIA**

## **NOTICE OF INTENT TO ADOPT RULE CHANGES AND NOTICE OF HEARING**

Notice is hereby given pursuant to the Georgia Administrative Procedure Act, O.C.G.A. Sections 50-13-3, 50-13-4, 50-13-6, 50-13-21, and, 33-2-9 of the following proposal by the Commissioner of Insurance to amend the Rules and Regulations of the Office of the Commissioner of Insurance.

The Rules and Regulations of the Office of the Commissioner of Insurance ("Office") are proposed to be amended by the following action:

- Repeal Regulation Chapter 120-2-20-.03 titled "Severability" and adopt in lieu thereof Chapter 120-20-20.03 entitled "Unlawful Agreements between Insurers and Providers;" and
- Adopt new Regulation Chapter 120-2-20.04 titled "Severability."

## **NOTICE OF RULEMAKING**

### **JURISDICTION**

Pursuant to O.C.G.A. Section 33-2-9, the Commissioner is authorized to promulgate regulations implementing provisions of Title 33 and to issue interpretive rulings. The basis for the above-referenced actions is O.C.G.A. Section 33-6-13 which prohibits "any contract, understanding, or combination [thereof] with any other person to do jointly or severally any act or engage in any practice for the purpose of or that has a tendency to or the effect of... (3) Establishing or perpetuating any condition in this state detrimental to free competition in the business of insurance or injurious to the insuring public."

### **SYNOPSIS AND EXPLANATION OF RULES**

The main purpose of the proposed amendments is to address insurers' inclusion of provisions in their provider agreements, commonly known as "most-favored-nation clauses" as such clauses violate O.C.G.A. Section 33-6-13(a)(3).

On May 25, 2011, a hearing was held by this Office on proposed Regulations Chapter 120-2-20.-03 titled "Unlawful Agreements between Insurers and Hospitals" and 120-2-20.-04 titled "Severability." The proposed Regulation Chapter 120-2-20.-03 provided that agreements between insurers and hospitals shall not (i) prohibit a hospital from contracting with another party to provide services at a lower rate than the rate specified in the contract, (ii) require, or permit the insurer to require, a hospital

to accept a lower payment or reimbursement rate if the hospital agrees to provide services to another party at a lower rate, (iii) require, or permit the insurer to require, termination or renegotiation of an existing contract [in] the event the hospital agrees to provide services to any other party at a lower rate, and (iv) require a hospital to disclose, to the insurer or its designee, the hospital's contractual payment or reimbursement rates with other parties. This proposed Regulation also provided that the Commissioner shall follow the procedure required by O.C.G.A. Section 33-6-13(d) whenever there is a violation of the Regulation. The proposed Regulation Chapter 120-2-20.-04 entitled "Severability" was a restatement of Regulation Chapter 120-2-20.-03.

After the May 25, 2011, hearing, this Office determined that the proposed Regulation Chapter 120-2-20.-03 entitled "Unlawful Agreements between Insurers and Hospitals" should be broadened and modified so as to prohibit such agreements between insurers and providers. Consequently, this Office has not issued an Order on the proposed Regulations publicly heard at the May 25, 2011, hearing.

The modified proposed Regulation Chapter 120-2-20.-03 addressed herein is titled "Unlawful Agreements between Insurers and Providers" and provides that agreements between insurers and providers shall not (i) prohibit a provider from contracting with another party to provide services at a lower rate than the rate specified in the contract, (ii) require, or permit the insurer to require, a provider to accept a lower payment or reimbursement rate if the provider agrees to provide services to another party at a lower rate, (iii) require, or permit the insurer to require, termination or renegotiation of an existing contract [in] the event the provider agrees to provide services to any other party at a lower rate, and (iv) require a provider to disclose, to the insurer or its designee, the provider's contractual payment or reimbursement rates with other parties. This modified proposed Regulation also provides that the Commissioner shall follow the procedure required by O.C.G.A. Section 22-6-13(d) whenever there is a violation of the Regulation. Finally, the modified proposed Regulation also defines "Provider" and "Health Care Services."

There are no proposed modifications to proposed Regulation Chapter 120-2-20.-04 titled "Severability" and addressed at the May 25, 2011, hearing.

#### **MODIFIED PROPOSED REGULATION AND SCHEDULE**

The full text of the modified proposed Regulation Chapter 120-2-20.-03 entitled "Unlawful Agreements between Insurers and Providers" is attached hereto and made a part hereof by reference.

The aforesaid modified proposed Regulation Chapter 120-2-20.-03 is being forwarded to the Office of the Attorney General for approval as to legality pursuant to O.C.G.A. Section 33-2-9, is now on file in the Administrative Procedure Division of the Office of Commissioner of Insurance, 916 West Tower, Floyd Building, Two Martin Luther King, Jr. Drive, Atlanta, Georgia 30334, and is hereby declared to be a public record as follows:

Proposed amendments to Proposed Regulation Chapter 120-2-20 entitled Unfair Trade and Claims Settlement Practices: Docket Number I-11-R-5.

Interested persons may participate in the rulemaking process by submitting their written comments to:

Vince Wiegand, Director  
Administrative Procedure Division  
Office of Commissioner of Insurance

708 West Tower, Floyd Building  
Two Martin Luther King, Jr. Drive  
Atlanta, Georgia 30334  
vwiegand@oci.ga.gov

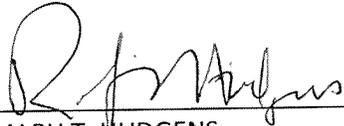
**All comments must be received by the Administrative Procedure Division by 4:30 P.M. Wednesday, January 4, 2012.** The Commissioner requests that, where possible, comments include specific proposed revisions to the modified proposed Regulation.

The Commissioner shall consider adoption of the modified proposed Regulation at **10:00 A.M. Wednesday, January 11, 2012, in the Hearing Room of this Office, Seventh Floor, West Tower, Floyd Building, Two Martin Luther King, Jr. Drive, Atlanta, Georgia 30334** at which time interested persons may also submit oral comments on the modified proposed Regulation.

Oral presentations at the hearing will be limited to five (5) minutes per person in order to afford all interested persons an opportunity to be heard. If you have a physical impairment and require assistance or have any questions regarding this notice, please contact Vince Wiegand.

Based upon full consideration of all written and oral comments regarding the above matters, the Commissioner of Insurance may reject or adopt the modified proposed Regulation or may make changes which may require another rulemaking hearing.

Given under my Hand and Official Seal this 18<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
RALPH T. HUDGENS  
COMMISSIONER OF INSURANCE  
STATE OF GEORGIA

Direct All Correspondence To:  
Vince Wiegand, Director  
Administrative Procedure Division  
916 West Tower, Floyd Building  
2 Martin Luther King, Jr. Drive  
Atlanta, Georgia 30334  
Telephone Number (404) 651-6503