



OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

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Directive 10-EX-2

It has come to my attention that certain insurers are including provisions in their hospital agreements, commonly known as a "most-favored-nation clause," which violate Georgia law. For the purposes of this Directive, the following terms are defined as follows:

"insurer" means any insurer that delivers or offers a managed care plan, as defined by O.C.G.A. § 33-20A-3(11).

"most-favored-nation clause" means a contractual provision that:

- (A) Prohibits, or grants a contracting insurer an option to prohibit, a hospital from contracting with another party to provide health care services at a lower rate than the payment or reimbursement rate specified in the contract with the contracting insurer;
- (B) Requires, or grants a contracting insurer an option to require, a hospital to accept a lower payment or reimbursement rate if the hospital agrees to provide health care services to any other party at a lower rate than the payment or reimbursement rate specified in the contract with the contracting insurer;
- (C) Requires, or grants a contracting insurer an option to require, termination or renegotiation of an existing provider contract if a hospital agrees to provide health care services to any other party at a lower rate than the payment or reimbursement rate specified in the contract with the contracting insurer; or
- (D) Requires a hospital to disclose, to the insurer or its designee, the hospital's contractual payment or reimbursement rates with other parties.

Most-favored-nation clauses violate O.C.G.A. § 33-6-13(a)(3). Insurers should undertake an immediate review of all hospital agreements to ensure that those agreements do not contain most-favored-nation clauses. Insurers should waive most-favored-nations clauses or amend hospital agreements to exclude most-favored-nations clauses.

Insurers are directed to submit written acknowledgement of their receipt of this Directive no later than August 9, 2010, to the attention of Trey Sivley, Principal Enforcement Attorney, Georgia Department of Insurance, 2 Martin Luther King, Jr. Drive, Suite 602 West Tower, Atlanta, Georgia 30334. In addition, each acknowledgement should indicate whether the insurer included a most-favored-nation clause in any of its currently effective hospital agreements. Further, the acknowledgement should include a description of what, if any, action an insurer intends to take with respect to existing most-favored-nation clauses; *i.e.*, waiver, amendment, etc.

Any attempt to enforce a most-favored-nation clause will result in appropriate administrative action. Please direct any questions regarding this Directive to the Enforcement Division of the Georgia Department of Insurance at 404-656-2060.

A handwritten signature in black ink, reading "John W. Oxendine". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

John W. Oxendine
Commissioner of Insurance