



February 2, 1999

**ARKANSAS INSURANCE DEPARTMENT  
LEGAL DIVISION**

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**DIRECTIVE NO. 2-99**

**TO: ALL LICENSED HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATION AND  
LEGAL/TRADE ASSOCIATIONS**

**FROM: ARKANSAS INSURANCE DEPARTMENT**

**SUBJECT: REFUSAL TO PAY MEDICAL CLAIM BECAUSE THERE EXISTS A  
QUESTION OF FACT OR THIRD PARTY**

The Department directs the attention of all health insurers and health maintenance organizations to our claims payment and settlement requirements in automobile accidents or accidents involving third parties. No health insurer or health maintenance organization may refuse to promptly pay its insured's medical claim because there exists a question of fact or circumstance that a third party or third party's insurance carrier is responsible for the medical benefits, without conducting a reasonable investigation and notifying the insured in writing that they are not contractually obligated to be the primary payer in such a case.

Rule 43 § 9 states that insurers shall not refuse to settle a first party claim on the basis that responsibility for the payment should be assumed by others, except as may be otherwise be provided by policy provisions. If the policy or plan provides for subrogation rights for the expenses paid its insured, the insurer may thereafter resort to subrogation against the third party to recover the medical benefits provided its insured or enrollee, as described in its contract. However, in the absence of an initial claims limitation or exclusion in the policy or plan for expenses caused by a third party, health insurers and organizations may not rely on a non-existent policy exclusion or limitation that a third party is responsible for the expense to deny or delay payment of the claim. The companies are reminded of the Arkansas Trade Practices Act, in Ark. Code Ann. § 23-66-206(9)(F), which defines among other things, "unfair claims settlement practice" to be "not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear." (Emphasis added.) One example of such an "unfair claims settlement practice" is denying a claim before conducting a reasonable investigation of the facts, or denying a claim in contravention of the controlling insurance contract.

On the other hand, should there exist an exclusion or limitation in the policy or policy or plan to pay for medical costs caused by a third party, the carrier or organization must nonetheless abide by the Rule 43 investigation requirements and not violate any unfair claims settlement practice set out in Ark. Code Ann. § 23-66-206(9).

Rule 43, Section 9 (1), specifies that a health carrier or organization has fifteen (15) days from the date it receives notice of a claim to either pay the claim, deny the claim, or advise their insured or enrollee it needs more time to investigate the claim. If the carrier or organization needs more time to investigate the claim to decide whether or not a third party is liable for payment, it must advise its insured or enrollee of this circumstance in writing, and the writing must specify the reasons why more time is needed to complete the investigation, after each forty-five (45)-day interval from the first date it received notice of the claim. Therefore, if there is an issue whether a third party is responsible for the medical benefits, the health carrier or health organization must actually investigate and decide whether a third party is in fact liable and notify the insured accordingly. A health carrier or organization which does not actually investigate that a third party is liable for medical expenses and merely recites or rests upon the possibility that a negligent third party is or may be responsible for such medical expenses violates the

above rule, and possibly Ark. Code Ann. § 23-66-206(9)(D) which defines one unfair claims settlement practice as "refusing to pay claims without conducting a reasonable investigation based upon all available information."

**If you have any questions regarding this Directive, please contact the Arkansas Insurance Department Life and Health Division at (501) 371-2800.**

(signed by Commissioner Pickens)  
Mike Pickens