

**BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF PREMIER HEALTH INSURANCE  
COMPANY D/B/A MERCY HEALTH PLANS**

**A.I.D. 2011- 0 0 8**

**CONSENT AGREEMENT AND ORDER**

Now, on this 2nd day of February, 2011, the matter of Premier Health Insurance Company d/b/a Mercy Health Plans (“MHP”), comes before Jay Bradford, Insurance Commissioner of the State of Arkansas (“Commissioner”). This Consent Agreement and Order (“Order”) is entered into by and among MHP and the Arkansas Insurance Department (“Department” or “AID”). (MHP and the Department are collectively referred to herein as the “Parties” and each is a “Party.”)

In drafting and finalizing this Order, the Department was represented by its General Counsel, John Morris; MHP was represented by its in-house counsel, Jonathan Weinberg.

The Parties stipulate and agree to the following:

**JURISDICTION**

1. MHP is domiciled in the State of Missouri and is a licensed foreign insurer in the State of Arkansas admitted to write accident and health insurance.
2. MHP is a regulated entity and acknowledges the jurisdiction of the Commissioner in this matter.

**BACKGROUND**

3. The Parties hereto along with the Sisters of Mercy Health System (“SMHS”) entered into a Consent Agreement and Order 2010-1-077 dated September 9, 2010 (“Consent Order”).

4. Pursuant to the Consent Order and AR Code 23-79-119 (the "Statute"), all individuals entitled to coverage (including subscribers and their dependents) as of September 15, 2010 under MercyOne Policies issued by MHP in Arkansas ("Policyholders") were given notice that such Policies ("Policies") would terminate effective March 15, 2011 ("Termination Date") and each Party acknowledges that the Policies will terminate as of the Termination Date.

5. Since the date the Consent Order was entered (and after the date that the notices of termination were given), the following dispute has arisen among the Parties: AID asserts that MHP is obligated under a Department Rule (in effect on the date of execution of the Consent Order) to extend pregnancy benefits after the Termination Date to those Policyholders that had purchased pregnancy benefit coverage and are pregnant and entitled to such benefits from MHP as of the Termination Date and MHP disputes this assertion.

6. AID has delivered to MHP a Notice of Public Hearing to be held by AID (by continuance) on February 4, 2011 (the "Hearing") with respect to the extension of such pregnancy benefits. The Arkansas Comprehensive Health Insurance Pool ("CHIP") has been permitted to intervene in the proceedings to be held at the Hearing.

7. The Parties desire, pursuant to the terms of this Order, to resolve amicably (a) the dispute set forth in Section 5 above (involving the extension of pregnancy benefits to former Policyholders), and (b) all other possible disputes between and among the Parties involving the termination of the Policies.

#### **TERMS OF AMICABLE RESOLUTION**

8. At CHIP's request, MHP will deliver to CHIP a list of Policyholders as of February 15, 2011 (the "2/15/11 Subscriber List"). CHIP shall (a) maintain the information on the 2/15/11 Subscriber List as confidential and shall not share such information with any person

or entity outside of CHIP, (b) notify MHP at least 10 days prior to replying to any request for the disclosure of the information on the 2/15/11 Subscriber List, (c) use the 2/15/11 Subscriber List solely to verify that an applicant for coverage under CHIP is a current Policyholder, (d) not contact any person or entity on the 2/15/11 Subscriber List unless and until that person or entity has submitted an application to CHIP for coverage under CHIP as of March 15, 2011, and (e) commencing on the effective date of this Order, provide MHP with weekly updates of (i) Policyholders that have applied for coverage under CHIP, and (ii) such applications that CHIP reasonably believes will be eligible for and approved for coverage by CHIP.

9. On June 30, 2011, CHIP shall provide MHP with a list (“List”) that contains the names of each Policyholder who: (i) was provided a notice of termination of his or her respective MercyOne Policy on September 15, 2010, (ii) qualified under CHIP’s published qualifications for admission to CHIP upon termination of his or her respective Policy on the Termination Date (including, without limitation, having been unable to obtain or access health insurance coverage in the private market due to the existence or history of a medical condition), (iii) elected to become a participant in CHIP as of the Termination Date and is, as of June 15, 2011, a participant in CHIP, (iv) has paid all requisite CHIP premiums, (v) is pregnant as of the Termination Date, and (vi) would have been entitled to pregnancy benefits after the Termination Date under her respective Policy if such Policy had not terminated. Each person qualified to be listed on the List is referred to herein as a “Pregnant Policyholder.”

10. The List shall each be accompanied by (a) a certificate from the President of CHIP certifying that each Pregnant Policyholder listed on the List is qualified for coverage under CHIP pursuant to the requirements set forth in Section 9 above, and (b) documentation supporting the qualifications for each Pregnant Policyholder on each List to obtain coverage

under CHIP. MHP shall have the right to request such information necessary to confirm such qualifications. Within 30 days after MHP confirms the qualifications of each listed Pregnant Policyholder, MHP shall contribute to CHIP an amount equal to the product of (a) (i) \$1000, times (ii) the number of qualified Pregnant Policyholders on the List. Such respective contributions may be utilized by CHIP in its discretion including, without limitation, to offset any administrative expenses incurred by CHIP.

11. No Pregnant Policyholder shall hold any rights in or to, or become a third party beneficiary of, the contribution made by MHP to CHIP and no Party shall communicate any information, in writing or orally, to Policyholders or Pregnant Policyholders or to the general public that is inconsistent, or may be construed to be inconsistent, with the foregoing.

12. In consideration of the contributions described above, (a) the Department accepts the terms hereunder as a full and complete compromise, settlement, resolution and accord and satisfaction of any and all claims, rights, demands, debts, liabilities, damages, expenses, fees, interest, penalties, actions or causes of action of whatsoever nature, past, present or future, whether known or unknown, asserted or unasserted, liquidated or unliquidated, which the Department or CHIP may have against MHP or their respective officers, directors, shareholders, employees, agents, administrators, attorneys, affiliates, subsidiaries, parent companies, predecessors, successors, assigns and their reinsurers (collectively, the "Releasees"), arising from, or related or pertaining in any manner to, any matters addressed in this Order, and (b) the Department hereby releases each and all of the Releasees from any liability for any of the foregoing other than the obligations of (i) MHP set forth in this Order, and (ii) MHP to pay valid claims which accrued under the Policies based on covered services received under the Policies prior to the Termination Date, in each instance, for any claim arising from, or related or

pertaining in any manner to, the provision or extension of pregnancy benefits to any Policyholder or Pregnant Policyholder after the Termination Date.

13. AID acknowledges that (a) it shall cancel the Hearing, and (b) the contributions required under this Order shall be in lieu of any other amounts that any Releasee might be or become obligated to pay to AID or to any other entity with respect to the termination of the Policies for extensions of maternity benefits including, without limitation, under any Department Rule or otherwise, except that MHP shall remain liable for the payment of valid claims which accrued under the Policies based on covered services received under the Policies prior to the Termination Date.

14. AID acknowledges that CHIP (a) shall provide pregnancy benefits to Pregnant Policyholders who qualify under CHIP standards for such coverage and pay the attendant premiums, and (b) acknowledges that the contributions required under this Order shall be in lieu of any other amounts that any Releasee might be or become obligated to pay to CHIP related to the Policyholders and Pregnant Policyholders, including, without limitation, under any Department Rule or otherwise or arising from, or related or pertaining in any manner to, the provision or extension of pregnancy benefits to any Policyholder or Pregnant Policyholder after the Termination Date.

#### **GENERAL PROVISIONS**

15. This Order is being executed and delivered by MHP solely as a compromise for the purpose of avoiding the expense of further administrative action and/or litigation, and the making of this settlement is not to be construed as, and does not constitute, an admission of liability or wrongdoing on the part of any Releasee, each of whom expressly denies such liability.

16. To the extent CHIP has obligations and commitments under this Order, AID will work with CHIP to ensure that CHIP meets all such obligations and commitments under this Order.

17. Neither this Order nor any related negotiations, statements or court proceedings shall be offered by any Party as evidence of or an admission, denial or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to the Releasees, or as a waiver by any Releasee of any applicable defense, including without limitation any applicable statute of limitations or statute of frauds.

18. Any notice, request, list or other document to be given hereunder by a Party shall be in writing and shall be deemed to have been given (a) when received if given in person, by courier service or electronic mail, and (b) on the third day after deposit with a nationally recognized overnight carrier or the United States Postal Department; in each case if addressed or directed to a Party at the current location of the Party's primary business office with a copy to its attorney as listed in the opening paragraph above, or to such other address as a Party may designate by notice given as herein provided.

19. This Order may be executed by electronic transmission (*i.e.*, facsimile or electronically transmitted portable document format (PDF)) and in counterparts, any one of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same instrument.

20. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties. No waiver by any Party of any covenant herein, whether intentional or not, shall be deemed to extend to any prior or subsequent default of, misrepresentation or breach of covenant hereunder or affect in any way rights arising by

virtue of any prior or subsequent occurrence. The failure of a Party to assert any of its rights hereunder shall not constitute a waiver of such rights.

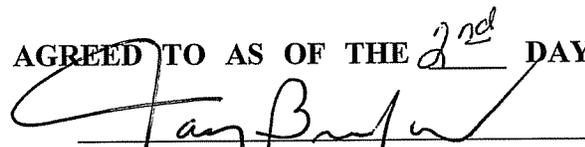
21. This Order sets forth the entire agreements and understandings of the Parties with respect to the matters set forth herein and the terms hereof supersede any and all prior agreements, arrangements and understandings between or among the Parties related to the specific subject matter hereof. The terms of this Order shall in no manner modify, supersede or in any way amend the Consent Agreement nor does it release any obligations arising thereunder. The Consent Order remains in full force and effect and all parties are expected to comply fully with the terms of such agreement.

22. Each Party has jointly participated in the negotiation and drafting of this Order. In the event of any ambiguity or if a question of intent or interpretation arises, this shall be construed as if drafted jointly by the Parties and no presumptions or burdens of proof shall arise favoring any Party by virtue of the authorship of any of the provisions of this Order.

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Signature page follows)

IT IS SO ORDERED, DIRECTED AND AGREED TO AS OF THE 2<sup>nd</sup> DAY OF  
FEBRUARY, 2011.

  
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JAY BRADFORD  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

Date: As of February 2, 2011

PREMIER HEALTH INSURANCE COMPANY  
D/B/A MERCY HEALTH PLANS

By: \_\_\_\_\_  
Michael Murphy  
President

Date: As of February \_\_\_\_, 2011

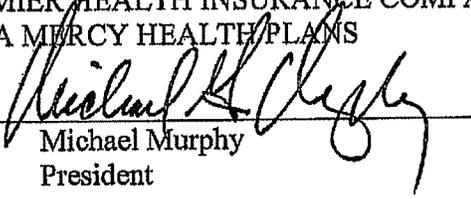
**IT IS SO ORDERED, DIRECTED AND AGREED TO AS OF THE 2ND DAY OF  
FEBRUARY, 2011.**

\_\_\_\_\_  
JAY BRADFORD  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

Date: As of February 2, 2011

PREMIER HEALTH INSURANCE COMPANY  
D/B/A MERCY HEALTH PLANS

By: \_\_\_\_\_

  
Michael Murphy  
President

Date: As of February 2, 2011