Before the Insurance Commissioner
Of the State of Arkansas

IN THE MATTER OF A LIMITED SCOPE MARKET CONDUCT EXAMINATION OF UNITED HEALTHCARE INSURANCE COMPANY & UNITED HEALTHCARE OF ARKANSAS, INC. AID NO. 2007-077

ORDER

Now on this day the matter of the Report of Examination of UNITED HEALTHCARE INSURANCE COMPANY, NAIC # 79413, and UNITED HEALTHCARE OF ARKANSAS, NAIC # 95446, (hereafter, the "Company") is taken under consideration by Julie Benafield Bowman, Insurance Commissioner for the State of Arkansas (the "Commissioner"). From the facts before her, the Commissioner finds as follows:

1. United HealthCare of Arkansas Inc., NAIC # 95446, is an Arkansas domiciled company licensed by the Arkansas Insurance Department (the "Department") to operate in this State as a health maintenance organization under Ark. Code Ann. §23-76-108. United HealthCare Insurance Company, NAIC # 79413, is licensed to operate in this State as a health insurer. The two (2) companies are affiliated with each other and market health plans in this State.

2. Pursuant to Ark. Code Ann. § 23-61-201(a)(1), the Arkansas Insurance Department (the "Department") began a limited scope, market conduct examination of the Company to determine if the Company complied with the Arkansas "Any Willing Provider Law," Ark. Code Ann. §23-99-201, et. seq. and Ark. Code Ann. §23-99-801, et. seq.,("AWP") in its payments to an "in-network"

hospital of the Company, Arkansas Surgical Hospital, of North Little Rock, Arkansas (the "Complainant"). The basis of this examination derived from a January 29, 2007 complaint (the "Complaint"), filed at the Department by the Complainant against three health insurers, Arkansas Blue Cross & Blue Shield, United HealthCare of Arkansas Inc., and QCA Health Plan Inc. (collectively, the "Respondent Health Insurers"). The Complainant requested that the Department compare the Complainant's payment rates with other "in-network" hospitals of each Respondent Health Insurer from a "selected list of procedures."

The Complainant requested that, if the payment rates for the procedures were in fact different, the Department should require that "the insurance providers pay affected hospitals the incremental amount necessary to correct discriminatory payment rates for all cases served in-network retroactive to the contract beginning date." As the basis of the Complaint, the Complainant cited AWP.

3. The examination began on April 30, 2007 and was completed on or about October 24, 2007. A verified report of examination (the "Report") was filed at the Department on or about October 24, 2007 and was forwarded by certified mail to the Company on October 27, 2007, return receipt requested. The Company received the Report on October 29, 2007 and made a November 26, 2007 written response or rebuttal to the Department about the Report and its findings.

4. The Report contains the following comments and discrepancies concerning the Company's operations:

A. The examiner noted that in a sampled comparison of reimbursement amounts for similarly performed "outpatient" and "inpatient" procedures, performed by other member hospital providers of the Company, the Company did provide "reduced reimbursement" to the Complainant, in comparison to two (2) other member hospitals; however, the examiner noted that the "reduced reimbursement" did not constitute a "monetary disadvantage or penalty" under Ark. Code Ann. §23-99-204(a)(1)(B)(ii) without information that the reimbursement differences affected, either directly or indirectly, a beneficiary's choice to continue to use the Complainant as an in-network hospital. The examiner relied on the language in Ark. Code Ann. §23-99-204(a)(1) which describes a "monetary advantage or penalty" as one "that would affect a beneficiary's choice among those health care providers who participate in the health benefit plan according to the terms offered."

B. The examiner noted that, in analyzing whether "reduced reimbursement" acts as an improper "monetary advantage or penalty" under Ark. Code Ann. §23-99-204(a)(1)(B)(ii), the "penalty" must "affect a beneficiary's choice among those health care providers who participate in the health plan according to the terms offered." The examiner further stated that, even if there exists a "monetary advantage or penalty," a health insurer is not deemed to have committed a violation of AWP under Ark. Code Ann. §23-99-206 and Ark. Code Ann. §23-99-204(b) as long as it is an action taken by the health benefit plan to maintain quality, enforce utilization regulations, or to control costs. The examiner concluded that the Company was not saved from a violation of Ark. Code Ann.

§23-99-204(a)(1)(B)(ii) because its "reduced reimbursement" to the Complainant was due to cost or quality actions instituted by the health insurer. The examiner stated that the Complainant was paid less for the sampled "outpatient" and "inpatient services," compared to two (2) other member hospitals, because of size and service differences with the other sample member hospitals, but these were not measures of the health insurer instituted to control costs or maintain quality under Ark. Code Ann. §23-99-204(b) nor actions by the health insurer to control costs or maintain quality standards under Ark. Code Ann. §23-99-206. The examiner noted that he was unable to determine how such size and service characteristics of the hospital operated specifically as "the health benefit plan instituting measures designed to control costs and maintain quality standards" in each of the sampled procedures themselves." Finally, the examiner noted that in analyzing whether "reduced reimbursement" acts as an improper "monetary advantage or penalty" under Ark. Code Ann. §23-99-204(a)(1)(B)(ii), in terms of how medical providers are to be "grouped" or "classed" for purposes of comparing reimbursement within "classes," that there exists no separate class for "specialty hospitals," but instead there exists one class as "hospitals" in Ark. Code Ann. §23-99-203(d)(11) and Ark. Code Ann. §23-99-802(4)(K).

5. On November 26, 2007, the Company filed a rebuttal or response to the findings as stated in the Report, maintaining the following in response to the discrepancies listed in paragraph four (4) of this Order:

A. The Company objected to the disclosure of a payment amount in the Report on line five (5), paragraph one (1), on page thirteen (13) as a "trade secret" and requests the payment amount be removed from the Report.

B. The Company stated that AWP does not require equal direct payment or parity to providers by health care insurers; rather, the law prohibits a "monetary advantage" or "penalty" set forth in the terms of a health benefit plan contract entered into between a consumer and a health care insurer that would affect a beneficiary's choice among network providers, such as differing copayments or level of reimbursement to a beneficiary for covered services received by a medical provider.

C. The Company maintained that Ark. Code Ann. §23-99-204(a)(1) explicitly refers to the imposition of a "monetary advantage" or "penalty" under a health benefit plan, rather than under a network medical provider contract. (Emphasis Added). The Company maintained that a health insurer is therefore permitted to negotiate different payment amounts to medical providers in network provider agreements because network provider agreements are not "health benefit plans." The Company stated that the provisions in Ark. Code Ann. §23-99-204, including Ark. Code Ann. §23-99-204(a)(1)(B)(ii), therefore do not govern or restrict the negotiation of different payments to hospitals by a health insurer in its medical provider contracts.

D. The Company explained that Ark. Code Ann. §23-99-204(a)(3) requires a health insurer to accept a provider who is willing to accept the plan's operating terms and conditions, "schedule of fees," covered expenses and

utilization regulations and quality standards. The Company stated that "reimbursement" under a health benefit plan means reimbursement to the beneficiary for out-of-pocket costs; on the other hand, fee schedules are the negotiated direct payments made to providers.

E. The Company stated that had the Arkansas State Legislature intended to require equal pay for all the listed providers in either the 1995 version or the 2005 version of AWP, it could have easily used the language as it had in Ark. Code Ann. §23-79-114, of "payment or reimbursement on an equal basis," however that language does not exist in AWP.

F. The Company disagreed with the examiner's conclusion that all hospitals are in the "same class" simply because they are licensed as a "hospital" by the State of Arkansas. The Company explained that hospitals differ in number of beds, support staff, location, quality standards, mortality rates, services offered, and procedures and treatments rendered. These differences result in different cost structures, which are recognized by the United States Government, in that it, too, pays hospitals different amounts between different hospitals (the Company is referring to medicare reimbursement).

G. The Company disagreed with the examiner that the Company's consideration of additional services of member hospitals, in its reimbursement calculation, was not a measure instituted to control costs or maintain quality under Ark. Code Ann. §23-99-204(b), or an action to control costs or maintain quality under Ark. Code Ann. §23-99-206. The Company stated that its consideration of additional services and capacities maintained by its member

hospitals were valid cost and quality concerns of the health insurer to consider in setting hospital reimbursement amounts. The Company explained that, if a hospital has a greater bed capacity or higher overhead costs due to the types and level of care/services it provides, it should be entitled to a higher payment rate than a specialty hospital which has a lower overhead operating margins. The Company stated that the activity of the health insurer to consider such characteristics of a hospital is a cost control measure. The Company maintained that its right or freedom to negotiate the most favorable individual medical provider payment rates, even if the payment rates differ, helps reduce health plan costs, and, therefore its freedom to negotiate different payment rates is permitted under AWP as an action or measure aimed to control costs.

THEREFORE, pursuant to the provisions of Ark. Code Ann. § 23-61-205, et seq., the Commissioner hereby orders:

1. That the Report filed with the Department is hereby adopted with the following modifications as provided in this Order;

2. That the Department remove the disclosure of the payment amount on line five (5), paragraph one (1), on page thirteen (13) of the Report because that payment differential amount is a trade secret or may provide information advantageous to a competitor;

3. That, for the purposes of AWP, particularly Ark. Code Ann. § 23-99-204(a)(1)(B)(ii), the Commissioner interprets the term "reimbursement" to mean what is traditionally understood by the term "reimbursement," in the insurance industry, payment made to an insured or beneficiary to repay money the insured

or beneficiary has expended for services received from a medical service provider, as distinguished from payments made by an insurer directly to a medical service provider pursuant to the insurance policy or health maintenance organization contract. The Commissioner therefore rejects references in the Report which compares the Complainant's "reimbursement" under a network provider agreement with other in-network member medical providers. The Commissioner modifies such references to mean a comparison of medical provider "payments";

4. That, as to the provider payment of sampled "outpatient" and "inpatient" services examined, the Complainant was paid less for certain sampled services compared to two (2) other member hospitals, however the Company did not impose upon the Complainant a "monetary penalty" under Ark. Code Ann. §23-99-204 because there is no evidence that beneficiary choice or patient choice to access the Complainant is affected;

5. That the examiner's finding that the Company was not instituting a measure or action to control costs or quality when a health insurer takes into consideration the additional services of a member hospital, or other unique characteristics of a hospital, in its calculation for reimbursement, is rejected. The Commissioner finds that under Ark. Code Ann. §23-99-204(b) a health insurer may take into consideration the unique service and size characteristics of a hospital in its negotiation of individual provider payment rates because these directly affect the costs a health plan absorbs. The Commissioner finds that AWP does not require identical payment to hospitals for similarly performed services.

A health insurer may vary payment for similarly performed services because of cost or quality reasons related to the different size and scope of services provided by other member hospitals under Ark. Code Ann. §23-99-204(b) and Ark. Code Ann. §23-99-206;

6. That the examiner's finding that there exists no separate class for "specialty hospitals" but instead there exists one class as "hospitals" in Ark. Code Ann. §23-99-203(d)(11) and Ark. Code Ann. §23-99-802(4)(K) is rejected. A health insurer may categorize hospitals differently due to size, location, scope of services, and other distinguishing or unique factors in order to control costs, regulate utilization, or maintain quality as contemplated in Ark. Code Ann. §23-99-204(b) and Ark. Code Ann. §23-99-206. The statutes listing medical providers entitled to participate in AWP (Ark. Code Ann. §23-99-203 and Ark. Code Ann. §23-99-802(4)(K)) do not require "hospitals" to be classified as a single, indivisible class any more than "physicians or surgeons" are restricted from further classification, under its general class, according to their specialties in determining payment;

7. That the Department shall forward a copy of this Order and the Adopted Examination Report to the Company via certified mail;

8. That within twenty (20) days of receipt of this Order, the Company shall file with the Department affidavits executed by each of its directors stating under oath that they have received a copy of this Order; and

9. That the Adopted Examination Report will be open for public inspection upon the expiration of thirty (30) days from the date of this Order.

IT IS SO ORDERED this 14th day of December, 2007.

Julie Benafield Bowman

JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS