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MISSISSIPPI BULLETIN 97-1

**CONTRACTUAL ARRANGEMENTS BETWEEN LICENSED CARRIERS
AND RISK ASSUMING PROVIDER NETWORKS**

INTRODUCTION: Providers in Mississippi are organizing themselves into networks (including but not limited to independent practice associations, physician group practices and physician hospital organizations) which seek to integrate the financing and delivery of health care services on the local level, with the ultimate purpose of contracting with health maintenance organizations and other licensed Carriers (as defined in Miss. Code Ann. § 83-41-303(c)) (hereinafter "Licensees") offering plans to provide health care services to plan subscribers in return for compensation involving varying degrees of financial risk transfer to the provider network and its participating providers. Additionally, Licensees are attempting to develop their own provider networks which also involve the sharing of risk with participating providers.

PURPOSE: The purpose of this Bulletin is to provide an advisory to Licensees and provider networks on Department policy regarding regulation of evolving Licensee-provider network contractual relationships. It is anticipated by the Department that this Bulletin will also evolve to accommodate and encourage market innovations that have the potential to improve the health care system in this State for the ultimate protection and benefit of the consumer.

DEFINITION: As used in this Bulletin, the term "provider network" means a partnership, association, corporation, limited liability company, or other legal entity which:

1. Enters into a contractual arrangement or arrangements with a Licensee offering health care plans;
2. Has contracts with providers (hereinafter "participating providers");
3. Agrees under its arrangements with a Licensee to provide or arrange for the provision of a defined set of health care services to the Licensee's subscribers principally through the provider network's participating providers;

4. Assumes under such arrangements some responsibility for, in conjunction with the Licensee and under compliance monitoring of the Licensee, such functions as network contracting and management, quality assurance, utilization review, provider credentialing and relations or related functions; and
5. Which assumes to some extent, through capitation reimbursement or other risk-sharing arrangements, the financial risk for provision of such services to the Licensee's subscribers.

The term "participating provider" means a physician, hospital, pharmacy, pharmacist or other provider of health care services. The term "physician" includes individual physicians, physician groups, clinics without walls and integrated group practices.

For purposes of this bulletin, the terms "risk assuming", "risk transfer", "risk sharing", "financial risk" and "at-risk basis" shall not include direct contracting arrangements between provider networks and non-regulated groups such as employers, but rather, shall encompass downstream risk arrangements between provider networks and Licensees in which the provider network and its participating providers assume a portion of the Licensee's risk. Provider networks assuming insurance risk through direct arrangements with non-regulated groups shall be subject to the same regulatory requirements applicable to Licensees.

POLICY: A provider network may contract with a Licensee to provide health care services on an at-risk basis without being licensed under Miss. Code Ann. §§ 83-41-301 et seq. Participating providers in the provider network may contract through the provider network to provide such health care services also on an at-risk basis without being licensed under Miss. Code Ann. §§ 83-41-301 et seq. Such risk transfers from Licensees to provider networks and the participating providers will, in most instances, be regulated through the Licensee. In all instances, the Licensee remains ultimately responsible to the Licensee's subscribers for ensuring the delivery of health care benefits and the quality of services provided, and the Department will not permit a Licensee to delegate responsibility for member grievance system operation or resolution to a provider network.

The Licensee and the provider network remain at all times responsible for compliance with all applicable laws and regulations (including but not limited to Article 7 and Article 9 of Chapter 41 of Title 83 of the Mississippi Code of 1972, Annotated).

In the Department's periodic examinations and other financial analysis of Licensees, the Department will continue to hold a Licensee contracting with a provider network ultimately responsible for all duties and responsibilities arising under the Licensee's subscriber agreements.

The health care services must be provided by the provider network through the network's participating providers. Neither the provider network nor any participating provider can be at-risk for any referral services that the participating providers order or arrange, but do not furnish directly. The language in this paragraph is not intended to prohibit withholds and bonus arrangements or the provision of coverage by a Licensee for services provided by out-of-network providers.

In the event the proposed aggregate at-risk payments (including capitation payments, withholds and/or bonuses) to be paid by one or more Licensees to a provider network exceeds 25% of the total aggregate gross revenues of the participating providers of that provider network for the immediately preceding calendar year, the Licensee shall ensure that the provider network and/or its participating providers have adequate per-patient and/or aggregate stop-loss protection. The Licensee may provide the stop-loss protection directly or purchase such protection, or the provider network or its participating providers may purchase such protection.

PROCEDURE: Risk transfers will be analyzed by the Department through a process of reviewing standard form Licensee-provider network contracts, including the general components of the financial proposal and the Licensee's plan for managing the Licensee's exposure under proposed risk transfers. Licensees contracting with one or more provider networks must file with the Department a plan for managing the Licensee's exposure under those contracts and, unless previously filed and approved, standard form Licensee-provider network contracts and standard form provider network-participating provider contracts. No Licensee-provider contract subject to this Bulletin shall be entered into after the date of this Bulletin until the standard forms are reviewed and approved by the Department. The Department may retain, at the filing entity's expense, any attorneys, actuaries, accountants and other experts not otherwise a part of the Department's staff as may be reasonably necessary to assist the Department in conducting this review and in determining the adequacy of any required stop-loss protection.

At least sixty (60) days prior to materially deviating from a filed and approved exposure management plan or standard form contract, a Licensee shall file for the Department's review and approval plan modifications and appropriate standard form contracts.

The following provisions must be present in the proposed Licensee-provider network contract:

1. Appropriate hold harmless provisions, as required by Miss. Code Ann. § 83-41-325(13), both in the Licensee-provider network contract, and in any contracts between the provider network and those of its participating providers contractually obligated to provide services to Licensee subscribers under the Licensee-provider network contract.

2. A provision prohibiting the assignment of any rights or obligations under the contract in the absence of the written consent of the Licensee.
3. Appropriate provisions for the termination of the contract, including whether the contract complies with the requirements of Miss. Code Ann. § 83-41-325(17), and including consideration of whether the Licensee has the right to immediately terminate the contract upon a valid order issued by the Department or other lawful authority.

Non-HMO entities will be required to incorporate the above provisions in proposed Licensee-provider network contracts pursuant to Miss. Code Ann. §§ 83-41-405 and 83-41-417.

In addition, the Department will consider whether one or more of the following optional provisions are present in the proposed Licensee-provider network contract:

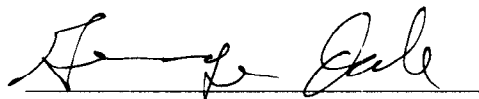
1. A provision for the maintenance of books, accounts and records by the provider network to assure that transactions, including the risk transfer, are clearly, accurately and completely disclosed.
2. Appropriate terms permitting the Licensee to assure itself of the financial viability and condition of the provider network throughout the term of the contract. These terms might include one or more of the following:
 - (i) A provision authorizing the Licensee to access the provider network's books, accounts and records upon terms and conditions as the Licensee and the provider network may agree.
 - (ii) A provision requiring the provider network to provide interim unaudited financial statements on a regular and ongoing basis as well as providing the Licensee an annual audited financial statement.
3. A provision requiring the provider network to timely advise the Licensee of relevant matters that may have a material effect on the provider network's ability to perform under the contract.
4. Whether the Licensee-provider network contract is incorporated by reference and is attached to all contracts between the provider network and those of its participating providers contractually obligated to provide services to the Licensee's subscribers under the Licensee-provider network contract.

It is not the intent of the Department to require every Licensee-provider network contract to contain all of the foregoing optional provisions. Rather, it is incumbent upon the Licensee

to include those optional provisions it believes are necessary given the relationship and financial risk-sharing arrangements between the Licensee and the provider network.

Please note that this Bulletin applies only to risk assuming provider networks as defined herein. The Department is currently developing guidelines for the certification of managed care plans pursuant to Miss. Code Ann. § 83-41-401 et seq. These new guidelines will apply to all provider networks (risk assuming and non-risk assuming) meeting the definition of a managed care contractor under Section 83-41-403(d).

EFFECTIVE DATE: This Bulletin is issued pursuant to the authority granted by Article 7 and Article 9 of Chapter 41 of Title 83 of the Mississippi Code of 1972, Annotated, and shall be effective from and after July 11, 1997.

A handwritten signature in cursive script, appearing to read "George Dale", is written over a horizontal line.

GEORGE DALE
Commissioner of Insurance
State of Mississippi