



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

1200 West Third Street
Little Rock, AR 72201-1904
501-371-2820
FAX 501-371-2629

Bulletin 15-93

September 1, 1993

**“VARIABLE DEDUCTIBLES” AND “COORDINATION OF BENEFITS” IN
INDIVIDUAL DISABILITY (ACCIDENT AND HEALTH) POLICIES AND
CONTRACTS**

A number of different insurers have been submitting policy form proposals which may or may not contain a traditional flat amount deductible but which do contain what they are calling a “variable deductible”; the effect of such clauses is to purport to reduce the amount of benefit payable under the subject contract depending, or “varying,” upon the amount of benefits payable under other possibly applicable coverage. This Department will not approve any such filings because they are really, in substance, “other insurance” or “coordination of benefit” provisions, and if an insurer wishes to obtain the effect and benefit to itself of such clauses, it must follow the dictates of Arkansas Rule and Regulation 21, §4.B and Ark. Code Ann. §23-85-132.

In traditional insurance practice, there is no such thing as a “variable deductible.” The expression itself is an oxymoron, as it is an attempted “marriage” of two distinct and inconsistent concepts.

A “deductible,” simply and traditionally stated, is that portion of an insured loss that is to be borne by the insured before he is entitled to recovery from the insurer under a policy, regardless of whether there may be other coverages. It is distinguishable from the “over” or “excess” insurance, “other insurance” and “coordination of benefit” clauses that only become applicable once there is more than one (1) policy or contract in question on a particular loss.

We have no statute in Arkansas dealing specifically with deductibles in individual disability policies. At Rule and Regulation 18, §7.E., however, in discussing the minimum requisites of “Major Medical” insurance, it provides that a deductible in that context may either be:

- i. a specific dollar figure which shall not be in the aggregate in excess of 5% of the aggregate maximum limit under the policy; *or*
- ii. an amount equal to the amount provided by an *underlying* hospital and medical expense policy to which the individual policy in question is designed to be *complementary*.

These are the only circumstances in which there may be “deductibles” in an individual major medical product; in the latter instance the deductible is at a set, ascertainable figure since it is always known to which coverage (usually group) the individual Major Medical policy is to be “complementary.” It is *never* in any sense “variable.”

The “*Other Insurance*,” and “*Coordination of Benefits*” concepts, are dealt with in Ark. Code Ann. §23-85-132 and Rule and Regulation 21. Section 23-85-132 provides that :

“No contract of individual disability insurance...[other than individual major medical policies, or catastrophic expense policies or nonrenewal ticket disability policies] shall contain a provision reducing the benefit which would otherwise be payable...if the reduction is due solely to the existence of one (1) or more additional contracts...” (emphasis added).

This provision addresses the concept of “over-insurance” or “coordination of benefits” consistently with the NAIC Model and practice, i.e., the comparison and coordination of policy benefits only has its *proper* place in group policies, with the sole proviso that such a clause may appear in a major medical, catastrophic expense, or non-renewable ticket disability policy *if* it complies with the limitations set forth in Rule and Regulation 21, §r.B., Guideline 13.

Any review of Rule and Regulation 21 reveals its group emphasis, pursuant to the NAIC policy statement adopted June 2, 1970. *But if an insurer does place such a clause in one of the three (3) types of individual policies in which it is permitted, the insurer must put the language under “Limitations and Exceptions,” and then stamp the policy with the bold print notice as to its limited character as provided by Guideline 13.*

The Department policy on this issue as to major medical contracts can be summarized as follows:

- i. a policy may qualify as an individual “major medical” with a set flat amount deductible, not exceeding the percentage limit, or it may have the complementary structure while underlying another known hospital/surgical coverage; or
- ii. it can be classed as a “major medical” even if it has a coordination of benefit (or “other insurance”) clause so long as it contains all of the cautionary language to call the policyholders’ attention to what it is and incorporates the coordination principles of Guidelines Six, Eight and Nine of Section 4, Rule and Regulation 21.

Please direct your calls to Assistant Commissioner Donald Switzer in the Legal Division at (501) 686-2999, John Shields or Rosalind Minor in the Life and Health Division at 501-686-2875 if you have any questions.

Lee Douglass
INSURANCE COMMISSIONER