

BEFORE THE ARKANSAS INSURANCE DEPARTMENT

IN RE FREEWAY SURGERY CENTER,
LLC AND CENTERVIEW SURGERY
CENTER, LLC

AID ORDER No. 2021- 45

ORDER DENYING PETITION FOR DECLARATORY RELIEF AND DAMAGES

Comes now the Arkansas Insurance Department (“Department”), by and through its attorney, Crystal Phelps, and, for its Order, states the following:

FACTUAL SUMMARY

1. On September 10, 2021, the Arkansas Insurance Department received a “Petition for Declaratory Relief and Damages” (“Petition”) filed by Petitioners Freeway Surgery Center, LLC and Centerview Surgery Center, LLC (“Petitioners”).

2. Petitioners obtained licenses to operate as temporary hospitals from the Arkansas Department of Health and complain that Arkansas Blue Cross Blue Shield (“ABCBS”) violated and continues to violate the Arkansas Temporary Hospital Facility Act (Act 732 of 2021, codified at Ark. Code Ann. § 23-99-1401).

3. Because Petitioners filed a Petition on October 22, 2020 also styled as “Petition for Declaratory Relief and Damages” in an earlier proceeding to avail themselves of the Department’s newly promulgated Rule 121, the Department is treating this Petition filed September 10, 2021 as a request for a declaratory order pursuant to Department Rule 121.

4. The issues described within Petitioners’ October 22, 2020 Petition first reached the Department through a complaint filed with the Department. The Department reviewed and

investigated the complaint through its normal complaint procedures, and only after hearing from the respondent and concluding these procedures, did the Department decide to schedule an administrative hearing to address the issue.

5. Section One of Department Rule 121 describes a declaratory order as “a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency.”

6. Because Rule 121 affirmatively states “a declaratory order is not the appropriate means for determining the conduct of another person,” and a declaratory order should only have effect upon the person requesting it and the Commissioner, a declaratory order is not appropriate for Petitioners who seek to have an effect on a third party. Petitioners’ concerns would be more appropriately addressed through submission of a complaint.

7. Additionally, the relief requested by Petitioners is not available through a declaratory order. Petitioners requested the Department order ABCBS to take specific actions, or in the alternative, award Petitioners restitution for actual losses pursuant to Ark. Code Ann. § 23-61-110(a)(3). Declaratory orders are only used to “resolve questions or doubts as to how statutes, rules, or orders may apply to petitioners’ own circumstances.”

8. The Department will deem the allegations made within Petitioners’ Petition as a complaint and will begin investigating the complaint for potential enforcement upon execution of this Order.

ORDER

Wherefore, the Department declines to issue a Declaratory Order in response to
Petitioners' request.

IT IS SO DECLARED AND ORDERED.

9/20/2021

Date



Alan McClain
Insurance Commissioner
State of Arkansas