



Michael Preston
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

ARKANSAS INSURANCE DEPARTMENT

IN RE AMBULATORY SURGICAL CENTERS

PETITION FOR DECLARATORY RULING

Comes now Fair Park Surgery Center, Centerview Surgery Center LLC., South Arkansas Surgery Center, Advanced Ambulatory Surgery Center LLC., Executive Park Surgery Center of Fort Smith Inc., Eye Surgery Center of Arkansas, Novamed Surgery Center of Jonesboro, LLC., Freeway Surgery Center, Central Arkansas Surgical Center, and the Gastroenterology and Surgery Center of Arkansas II, LLC. (hereafter jointly, "Complainants," or "ASCs"), requesting a declaratory ruling from the Arkansas Insurance Commissioner ("Commissioner") pertaining to the following matter(s):

1. On or about October 26, 2019, Complainants filed an administrative, regulatory Complaint against Arkansas Blue Cross and Blue Shield ("ABCBS") at the Arkansas Insurance Department ("Department") alleging, inter alia, that ABCBS is in violation of Ark. Code Ann. § 23-79-115(a) for not reimbursing outpatient services provided at their facilities at rates equal to rates paid by ABCBS to hospital-owned outpatient for substantially similar or identical procedures or services.
2. On or about November 6, 2019, ABCBS responded to the Complaint maintaining that Ark. Code Ann. § 23-79-115(a) does not require provider payment parity between hospital outpatient surgery centers and ambulatory surgical centers. ABCBS explained that Ark. Code Ann. § 23-79-115(a) only applies to the contract and relationship between insurers and insureds and not to the payment relationship between insurers and medical providers which might provide covered treatment. ABCBS argues that the phraseology in Ark. Code Ann. § 23-79-115(a) references the "person entitled to payment or reimbursement under the policy," which is the member/insured and not the providers or facilities which treated the insured or member. ABCBS further points out that the preceding statute in Ark. Code Ann. § 23-79-114, which mandates provider payment for similarly performed services between physicians and a variety of other medical specialists, expressly requires payment parity in light of the fact that it references payment parity for "providers performing services," language which is absent from Ark. Code Ann. § 23-79-115(a). ABCBS also noted that it pays ASCs more than hospital owned outpatient services, for the CPT codes alleged in the Complaint, as a percentage of Medicare allowable.

3. The Department has reviewed the ASC complaint and responses by ABCBS. The Department maintains that even if Respondent ABCBS is correct in its interpretation that Ark. Code Ann. § 23-79-115(a) only references "reimbursement" to insureds and not to medical providers, different payment rates between ASCs' and hospital owned centers may affect or even significantly affect each member's amount of payment the plan itself has to cover, "reimburse," or pay to the member in its cost sharing relationship with its insureds. The Department has not provided an opinion or interpretation whether these reimbursement differences violate Ark. Code Ann. § 23-79-115(a), or any other state or federal law, including but not limited to the Patient Protection Acts, in Ark. Code Ann. §§ 23-99-201 et seq and 23-99-801 et seq. The Department maintains that this issue needs resolution and is therefore ripe for administrative review and may involve other health care issuers and outpatient center service facilities.

WHEREFORE, the Commissioner grants the Complainants' request for a Declaratory Petition and shall set this matter for an administrative hearing and shall issue an Order or Ruling pertaining to the Complaint, following an administrative hearing on this matter.



Alan McClain
Insurance Commissioner
State of Arkansas

6-15-2020

Date