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*The Indiana State Medical Association is dedicated to Indiana physicians and their efforts to provide the best possible health care for their patients.*

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May 29, 2008

Mr. Jim Atterholt  
Commissioner  
Indiana Department of Insurance  
311 W. Washington Street  
Indianapolis, IN 46204

Re: Prompt Pay Law and Anthem

Dear Commissioner Atterholt:

In the last several months, the Indiana State Medical Association (ISMA) has been contacted by several physicians' offices about a significant Anthem claims processing error. As we understand it, sometime around October 2007, Anthem began to incorrectly process some claims containing multiple units of service. More specifically, offices were properly billing multiple units of chemotherapy (or other similar) drugs for infusion therapy but only one unit was being paid. We understand the billed amounts can reach thousands of dollars. One office we have spoken with spent significant time trying to remedy this issue with Anthem, which stated that the problem was due to a "computer glitch" in one of their multiple claims processing centers. Anthem told them to report each incorrectly-processed claim as an error and resubmit them. The office did, and some re-filed claims were then denied as duplicates. The office also filed numerous complaints with the Indiana Department of Insurance (IDOI). After several months passed without resolution (i.e., without payment in full), the office began asking Anthem to pay interest on their claims pursuant to Indiana's Prompt Pay Law. Anthem's response was that they were not required to pay interest because they "paid" the claim. The office then called us to inquire if Anthem's interpretation of the Prompt Pay Law was accurate.

As you know, the Prompt Pay Law states, in relevant part, "An insurer shall pay or deny each clean claim in accordance with section 6 of this chapter." IC 27-8-5.7-5. The insurer must timely notify the provider of any deficiencies in the claims. Id. Failure to provide such notice establishes the claim as a clean claim. Id. According to section 6, insurers must then pay or deny each clean claim within 30 days (if electronic) or 45 days (if paper). Id. If the insurer fails to timely pay the claims, and subsequently pays the claim, the insurer "shall pay the provider that submitted the claim interest on the accident and sickness insurance policy allowable

amount of the claim paid under this section.” 1C 27-8-5.7-6. As you also know, that law also permits you, the Commissioner, to assess civil penalties against the insurer for noncompliance. 1C 27-8-5.7-8. A full copy of the law is enclosed for your reference.

After reviewing the Prompt Pay Law, our Legal Counsel, Julie Reed, contacted IDOI Consumer Services. The representative stated the IDOI was well aware of the Anthem “computer glitch.” Ms. Reed asked how IDOI had been interpreting the Prompt Pay Law and inquired about its applicability in this case. After reviewing the law, the representative said that the law appeared to be ambiguous and that it would require an interpretation from the IDOI Legal Department. Ms. Reed then contacted Tina Korty in the Legal Department and asked for such an interpretation. On April 1, Ms. Reed received a response from Carol Cutter, Chief Deputy Commissioner for Health and Legislative Affairs, who stated that the IDOI was meeting with Anthem on April 2 to discuss these claim payment issues and their “computer glitch” and that we would be advised of the agreed resolution. On April 10, Ms. Cutter notified Ms. Reed that Anthem was “very forthright about their horrible situation for provider payments” and that they are “taking some very good steps to try to alleviate the pain as much as possible.” “We were told that an Anthem representative would contact us to provide further details. They have not, Ms. Reed further inquired whether the IDOI was issuing any sanction and/or punishment to Anthem, either in the form of interest on claims not fully paid, or other. Ms. Cutter replied that the decision would be made by your Enforcement Division after Anthem submits a series of progress reports. No timeline or additional contact person was provided.

The purpose of this letter is to express our concern that the Prompt Pay Law is not being applied to this situation. By all accounts, Anthem does not appear to be contesting the validity of the claims being submitted - i.e., they are clean. Instead, Anthem seems to be suggesting that because they paid something for the claims, they do not have to pay any interest on the significant balance of those undisputed claims that they have not paid. This runs counter to the Prompt Pay Law.

The purpose of the Prompt Pay Law, which was supported by ISMA, was to ensure that physicians’ clean claims would be timely paid. Unlike in some other industries, physicians are generally not permitted to bill or be paid in advance for their services. They are required to render the service, submit their claim, then wait to receive payment from the insurer (and perhaps wait further for additional payment from secondary payers and/or the patient). In cases such as this, where medication is being administered as part of the treatment, the physician is required to purchase the necessary drugs in advance of the care. The physicians must pay for those drugs immediately - they are not permitted to withhold payment until they are paid or reimbursed by the insurance company. Therefore, even when the delivery and payment system operates smoothly, physicians can be out of pocket on these drugs for a period of time before they are reimbursed. In this case, it is undisputed that the system has not operated properly and that doctors have been forced to wait even longer than the statutory period for payment. In the meantime, the physicians are forced to carry the debt of the medications they have already paid for, perhaps through financing, loans, or lines of credit.

Although we understand that human and equipment errors occur, they should not happen without consequences. Even if you choose not to exercise your discretionary authority to issue civil penalties against Anthem in this case, physicians and other health care providers should not be punished for errors that were not theirs. More importantly, the insurer, who is at fault here, should not be able

to shift the financial burden of their errors to the physicians. At a minimum, Anthem should have to pay the physicians the interest that the Prompt Pay Law requires. Based on the information available to us, Anthem is refusing to do so.

In light of Anthem's refusal, ISMA, on behalf of Indiana physicians, respectfully requests that the IDOI require insurers who do not timely pay clean claims **in full** to pay health care providers interest on the undisputed, unpaid balances under the Prompt Pay Law. In this case, ISMA specifically requests that Anthem be required to pay interest on all claims improperly (i.e., partially) paid pursuant to their undisputed "computer glitch."

We welcome your written response to this matter. In addition, please contact Julie Reed at ISMA if you have any questions or if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon D. Marhenke", with a long horizontal flourish extending to the right.

Jon D. Marhenke, MD President

JDR/jr

Enclosure

Cc: Julie D. Reed, JD, ISMA Legal Counsel