COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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COMMISSIONER OF INSURANCE

June 8, 2018

Anthony J. Giudi, MD, FCAP, President
Massachusetts Society of Pathologists
22 Hutchins Road
Medford, MA 02155

Dear Dr. Giudi:

Insurance Commissioner Gary Anderson received your letter of April 5, 2018 and requested that I meet with you and members of your organization and respond on his behalf and on behalf of the Division of Insurance ("Division"). In your letter, you wrote regarding the provisions of M.G.L. c. 176O, §6(a)(4) and holding patients financially harmless from billing for services provided within in-network hospitals by doctors who are not part of that health carrier's provider network. You requested that the Division clarify "(1) enforcement efforts made to ensure health plans are complying with this provision; and (2) and information the Division can furnish to assess whether patients are aware of this protection or whether patients are being victimized by health insurance plans that are failing to comply with this law." We met on May 17, 2018 to discuss the noted issue.

As you noted in your letter, it is required under M.G.L. c. 176O, §6(a)(4)(ii) that carriers issue evidences of coverage to persons covered under their health plans and among the information required to be in such coverage in an explanation that "whenever a location is part of the carrier's network, that the carrier shall cover medically necessary covered benefits provided at that location and the insured shall not be responsible to pay more than the amount required for network services even if part of the medically necessary covered services are performed by out-of-network providers unless the insured has a reasonable opportunity to choose to have the service performed by a network provider." Please be aware that this same language is also included within 211 CMR 52.00, the Division's regulation for "Managed Care Consumer Protections and Accreditation of Carriers" at 211 CMR 52.13(3)(f)3.

Staff within the Division's Bureau of Managed Care review all Evidences of Coverage that carriers use in offering insured managed care plans in Massachusetts, first when initially offered, and again, when carriers go through a biennial managed care accreditation process. Staff have prepared checklists for all carriers to use to document where items required by statute, regulation

or other rule are addressed and check all documents to ensure that they meet the noted requirements. Only after carriers meet these requirement will the Division put the Evidences on file and permit carriers to use them to represent coverage to covered members. It is my understanding that all insured managed care products include the required language.

It is also the Division's responsibility to ensure that covered members receive the benefits stated within each Evidence of Coverage according to the requirements of the statute. In addition to ensuring that such protections are clearly spelt out in within consumer documents in a clear, concise and complete manner, the Division looks into all complaints brought to its examiners within its Consumer Service Section, whether transmitted by phone, e-mail or letter, when a consumer believes that its health plan may not be complying with the provisions of the law.

As provided for in M.G.L. c. 176O, §2 and highlighted within 211 CMR 52.17, the Division will "investigate all Complaints made against a Carrier or any entity with which it contracts for allegations of noncompliance with the Accreditation requirements established under 211 CMR 52.00" and may take regulatory action if it finds that a company has not properly complied with statutory requirements. If the Division believes that there is systemic concern about a carrier's or carriers' compliance, the Division may initiate a special examination under M.G.L. c. 175, §4 to conduct a thorough examination of a carrier's or carriers' business processes to investigate systems or actions that have led to any regulatory concerns.

Please note that the Division held meetings with the health insurance industry following the passage of the law creating M.G.L. c. 176O, §6(a)(4) as it created 211 CMR 52.13(3)(f)3. and explained our agency's expectations for carriers to be in compliance with the provisions of that section. Since the promulgation of the noted changes to that regulation, I am not aware of complaints that have come to the Division of Insurance regarding a carrier not being in compliance with this section of the law.

If you or others become aware of any complaints about this or any other section of the statute, I would welcome information that would enable our Consumer Services Section, Bureau of Managed Care or Special Investigations Unit conduct a comprehensive investigation of the complaint. If you have any outstanding questions or would like to discuss this issue in more detail, please contact me at (617) 521-7323.

Sincerely,

Kevin P. Beagan
Deputy Commissioner, Health Care Access Bureau