

# Arkansas Insurance Department

Mike Beebe  
Governor



Jay Bradford  
Commissioner

**BULLETIN NO: 19-2013**

**TO: ALL LICENSED INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, FRATERNAL BENEFIT SOCIETIES, FARMERS' MUTUAL AID ASSOCIATIONS OR COMPANIES, HOSPITAL MEDICAL SERVICE CORPORATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, PRODUCERS AND OTHER INTERESTED PARTIES.**

**FROM: ARKANSAS INSURANCE DEPARTMENT**

**SUBJECT: SUSPENSION OF "FREE LOOK" PROVISIONS FOR INDIVIDUAL HEALTH POLICIES SUBJECT TO THE AFFORDABLE CARE ACT.**

**DATE: SEPTEMBER 27, 2013**

This Bulletin is directed to health insurers, HMOs, and hospital medical service corporations issuing individual health policies on and after January 1, 2014 that are subject to the requirements of the Patient Protection and Affordable Care Act, Public Law No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law No. 111-152 ("ACA"). This includes "Qualified Health Plan" issuers in the federally facilitated Health Insurance Marketplace ("Marketplace") that sell individual health policies or contracts through the Marketplace.

Pursuant to Ark. Code Ann. § 23-79-111(a), the Arkansas Insurance Commissioner ("Commissioner") is waiving the requirement that individual health insurance policies provide a "free look" period in policy form contracts under Ark. Code Ann. § 23-79-112(f)(1) and Arkansas Insurance Department Rule 18, Subsection 8(A)(7), for individual policies or contracts required to be ACA compliant on and after January 1, 2014. For policies or contracts previously approved with a "free look" provision, the Commissioner is waiving enforcement of that provision and advising insurers and plans intending to issue individual health policies through the Marketplace to amend their individual health policy contracts and remove any "free look" provision for individual policies or contracts required to be ACA compliant on and after January 1, 2014. The Commissioner is suspending the "free look" requirement for one year beginning January 1, 2014.

Under Ark. Code Ann. § 23-79-111(a), the Commissioner may waive the required use of a particular provision in a particular insurance policy form if: (1) he finds the provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy; and (2) the policy is otherwise approved by him.

The Commissioner finds that the requirement of "free look" to be unnecessary for the protection of the insured and inconsistent with the purposes of individual policies and specifically those issued

through the Marketplace. For persons purchasing individual health policies through the Marketplace, the Commissioner believes that due to new ACA requirements a person has abundant, standardized, readable, and freely available information, from public resources by the Exchange and at open enrollment, as well as assistance if needed, to preview, examine and understand all aspects of available health plans during a six (6) month long open enrollment process. The Commissioner believes there to be a low frequency of policyholders actually exercising “free look” cancellations anyway within ten (10) days or greater after delivery of the policy in individual health insurance, in general, and believes that consumers tend to examine or review health plan options and benefits as much or more before enrollment or selection of the plan than within a ten (10) to thirty (30) day window following physical or electronic delivery of the policy itself.

The Commissioner is also advised that the imposition of the “free look” requirement for individual health policies to be problematic to the effective functioning and operation of the Marketplace in terms of tracking the “free look” period by the federally-facilitated portal as well as integrating a “free look” time period with auto-enrollment rules for individuals eligible for the Health Care Independence Program, commonly called the “Private Option.”

The Commissioner is guided by the circumstance that persons enrolled in plans through the Marketplace will have the opportunity to change plans at annual enrollment and other qualified special enrollment time periods, as well as have information needed to make an informed choice, without the protection of the free look period. For persons eligible under the “Private Option,” these enrollees will have equivalent benefits and cost-sharing structures, and thus the only key differences across plans will be in networks and formularies.

Given that there is plan information available to persons to examine the health benefits and plan adequately prior to the physical delivery of a policy, and, given the complications related to tracking and synchronization with the portal, the Commissioner is waiving the requirement of “free look” for one year, effective January 1, 2014, for individual health policies required to be ACA compliant on and after January 1, 2014. This bulletin therefore only applies to individual health policies subject to the ACA and therefore will not apply to policies such as limited health benefit policies, short-term health policies, hospital income policies, supplemental policies not subject to the ACA, including Medicare supplement policies, or to any individual policies or contracts which by virtue of federal law require a “free look” period.

If you have any questions or comments, please contact the Legal Division at 501-371-2820, or via email at [insurance.Legal@arkansas.gov](mailto:insurance.Legal@arkansas.gov).

  
\_\_\_\_\_  
JAY BRADFORD  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

*September 27, 2013*  
\_\_\_\_\_  
DATE