

Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

May 26, 2015

BULLETIN NO.: 9-2015

TO: All Licensed Foreign, Alien and Domestic Insurers, Accredited/Trusteed Reinsurers, Farmers' Mutual Aid Associations, Hospital and Medical Service Corporations, Health Maintenance Organizations, Fraternal Benefit Societies, Insurer Trade Associations, Rate Service or Advisory Organizations, All Insurance Producer Trade Associations, All Third Party Administrators, Adjuster Trade Association, Approved But Not Admitted Surplus Line Insurers, Licensed Managing General Agents and Agencies, Licensed Surplus Line Brokers, the National Association of Insurance Commissioners and Other Interested Parties

FROM: Arkansas Insurance Department

SUBJECT: 2015 ARKANSAS LEGISLATION PERTAINING TO INSURANCE

GENERAL LEGISLATION

[GENERAL OMNIBUS, ACT 231 OF 2015](#), Effective July 22, 2015.

Section 1. Ark Code Ann. § 6-17-1403. This section changes Workers' Compensation Commission to the Public Employee Claims Division of the State Insurance Department.

Section 2. Ark Code Ann. § 21-2-708. Adds a reference to this section regarding the Self-Insured Fidelity Bond Program.

Section 3. Ark Code Ann. § 23-63-805. This is a technical correction to the Code.

Section 4. Ark Code Ann. § 23-64-209(b)(3). This section deletes/repeals the code regarding adjuster's licenses.

Section 5. Ark. Code Ann. § 23-79-102. This section adds a reference to Ark Code Ann. § 23-79-121 to the subsection regarding title insurance.

Section 6. Ark. Code Ann. § 23-79-110(a)(3). This is a technical correction to the Code.

Sections 7. and 8. Ark Code Ann. § 26-57-604(a)(3) and (4). This change will simply update the Code to change the word “disability” to “accident and health” in § 26-57-604(a)(3) and (4).

FINANCIAL – INSURER LEGISLATION

TO ESTABLISH THE UNCLAIMED LIFE INSURANCE BENEFITS ACT 905 of 2015. Effective July 22, 2015.

This Act adds a Subchapter to Chapter 81 as the Unclaimed Life Insurance Benefits Act. The Act requires that life insurance companies use the Social Security Administration Death Master File to verify the death of an individual and that an insurer make a good faith effort to determine the death of the insured upon receipt of knowledge of death. It further requires that those benefits, if unclaimed, be submitted to the Auditor of State under the Unclaimed Property Act at § 18-28-201.

TO MODIFY THE FINANCIAL AND REGULATORY INSURANCE LAWS IN THIS STATE ACT 1223 of 2015. Effective July 22, 2015.

Sections 1 - 5: The amendments to this existing model law provide for a new process by which unauthorized reinsurers may qualify to post reduced collateral to satisfy state credit for reinsurance standards. The previous 100% collateral requirement is reduced for certain eligible Non-US Reinsurers. The revisions also include certain notice requirements for domestic ceding insurers regarding levels of reinsurance recoverables and percentage of gross written premium ceded to a single assuming insurer or group of affiliated assuming insurers.

Section 6: The new provision allows a tax credit when a domestic property and casualty insurer must pay increased taxes in another state because Arkansas’ tax rate exceeds that of the other state.

Section 7: Adds Long Term Care Policies to the Lines Reported and allows market analysis regarding complaints and how they are resolved for that line.

Section 8 – 14: The new provisions require disclosure of enterprise risk reporting within the holding company system and provides for the Department’s participation in supervisory colleges. The revisions also include guidelines for regulatory coordination and the appointment of group-wide supervisors for internationally active insurance groups.

Sections 15 – 19: The investment law amendments provide updated investment authority needed to utilize certain investment securities. Amendments also address certain existing investment guidance in need of further expansion and clarification. The updated provisions allow greater investment flexibility for domestic insurers.

Sections 20 – 25: The amendment of this existing NAIC model law includes revised trend test standards for life insurers.

Sections 27 – 28: The amended language modifies existing agent record retention requirements and allows an insurer to hold records on behalf of an agent to satisfy requirements.

Sections 29 – 30: The amended language provides the Commissioner with the flexibility to accept assets other than cash as consideration for the issuance of surplus notes.

Section 31: The new provision establishes a requirement for an internal risk and solvency assessment (“ORSA”) process for insurers. Under the new standards, insurers and insurance groups will be required to maintain a risk management framework; regularly perform an assessment; and annually file an “ORSA” summary report upon request. Pursuant to 23-69-407, companies with less than \$500 million direct and unaffiliated assumed premium, and a member of an insurance group with less than \$1 billion direct and unaffiliated assumed premium, are exempt from this subchapter.

Sections 32 – 45: The Standard Nonforfeiture Law for Life Insurance and Standard Valuation Law for Life Insurance and Annuities were amended to adopt new Principle-Based Reserving (“PBR”) requirements. PBR becomes operational once it has been adopted in at least 42 U.S. jurisdictions, accounting for 75 percent of U.S. life insurance premiums combined. Pursuant to 23-84-119, the new requirements include exemption provisions for single state and small companies.

PROPERTY & CASUALTY LEGISLATION

TO CREATE THE ARKANSAS GRAIN DEALERS ACT; TO REGULATE GRAIN DEALERS; AND TO DECLARE AN EMERGENCY, ACT 601 of 2015. **Effective March 23, 2015.**

The "Arkansas Grain Dealers Act," codified at Arkansas Code Annotated § 2-24-101, et. seq., requires any person who operates as a grain buyer, defined as a "dealer," to obtain a license from the State Plant Board before entering into a contract for or purchasing grain. Current dealers are granted sixty (60) days from the effective date of the Act to obtain a license, and all licenses are valid for one (1) year and must be renewed annually. The State Plant Board may require a surety bond, financial reserve, or other evidence of creditworthiness for dealers, and the State Plant Board has the authority to take action against a dealer for violation of the Act, including suspension of the license, civil penalty, or criminal conviction.

TO ALLOW A REVIEW OF A DECISION BY AN ADVISORY ORGANIZATION; AND TO PROVIDE THE AUTHORITY FOR THE STATE FIRE MARSHAL ENFORCEMENT SECTION TO ASSIST THE INSURANCE COMMISSIONER IN REVIEWING RATE FILINGS, ACT 961 of 2015. **Effective July 22, 2015.**

The new requirements are for the Fire Marshal to review fire protection class code determinations by an advisory organization and determine if the evaluation of fire protection services is reasonable and appropriate, and to make recommendations to the Insurance Commissioner concerning filings made to the commissioner concerning fire protection standards, when so requested. Specifically, the Fire Marshal must review a fire protection class code determination by reassessing the fire protection services of each area of the state under approved standards to determine whether or not the analysis of the area's fire protection services were graded accurately considering the area's concerns, characteristics, and equipment and support available for fire protection services. The Fire Marshal must advise the Insurance Commissioner if the fire protection class code determination is reasonable and appropriate and recommend further review or action by the Insurance Commissioner concerning the fire protection class code determination.

TO ENSURE THE SAFETY, RELIABILITY, AND COST-EFFECTIVENESS OF TRANSPORTATION NETWORK COMPANY SERVICES; AND TO PRESERVE AND ENHANCE ACCESS TO TRANSPORTATION OPTIONS FOR THE STATE'S RESIDENTS AND VISITORS, ACT 1050 of 2015. **Effective July 22, 2015.**

The Transportation Network Company Services Act is codified at Arkansas Code Annotated § 23-13-701, et seq., and sets forth requirements for operation of a transportation network company in Arkansas. A transportation network company driver is not required to register the

motor vehicle used for transportation network company services as a commercial or for-hire motor vehicle, and he or she may conduct transportation network company services with a standard, noncommercial driver's license. The Act requires a permit from the Arkansas Public Service Commission to operate a transportation network company, and the annual permit fee of \$15,000 is paid to the Commission. The Act also has specific requirements regarding the fare charged for transportation network company services. The fare must be disclosed to passengers on the company's website, digital network, or within its software application, and a receipt listing the origin and destination of the trip, total time and distance of the trip and an itemization of the fare paid must be transmitted to the customer in a reasonable time. The website, digital network, or software application must also display a picture of the driver the license plate number of the driver's vehicle. The Act sets strict standards regarding insurance coverage, hiring of drivers, safety of the motor vehicle used for transportation network company services, the prohibition of cash payment and street hails, complaint handling, and penalties for any violation of the Act

TO PROMOTE FAIR AND EQUITABLE ALLOCATION OF LIABILITY IN CONSTRUCTION CONTRACTS, ACT 1120 of 2015. Effective July 22, 2015.

Ark. Code Ann. § 4-56-104, which discusses the unenforceability of a construction contract that contains a hold harmless, was amended to prohibit any provision in a construction agreement or contract that requires an entity or its insurer to indemnify, defend, or hold harmless another entity against liability for damage arising out of the death of or bodily injury to a person or persons or damage to property, which arises out of the negligence or fault of the indemnitee, its agents, representatives, subcontractors, or suppliers. Such indemnification is void and unenforceable as against public policy, and the prohibition also applies to a public construction agreement or contract. The Act makes void and unenforceable any construction agreement or contract that conflicts with the aforementioned prohibition or attempts to circumvent the prohibition by making the agreement or contract subject to the laws of another state. An indemnification against liability for damage arising out of the death of or bodily injury to persons or damage to property cannot exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitors, its agents, representatives, subcontractors, or suppliers. The prohibition against certain indemnification language does not apply to a construction agreement or contract to provide construction work or services to an operator or other person directly related to oil and gas related activities or operations.

TO AMEND THE PROPERTY AND CASUALTY LAW, ACT 1210 of 2015. Effective July 22, 2015.

The requirement in Ark. Code Ann. § 23-63-1201, et seq., for casualty companies to report detailed information about premiums, losses, reserves and expenses is no longer necessary and is repealed. The information can now be obtained through the insurers' annual reports, and removing the reporting requirement will save each casualty company the \$50 filing fee even for "zero" reports.

The Act also makes clear that insurance policy forms are subject to and must comply with state laws. Next, in the Valued Policy Law, Arkansas Code Annotated § 23-88-101, insurers are allowed to pro rate a total loss where there are two or more property policies to prevent a windfall to the insured. It is also acceptable for the insurer to allocate total loss only to the structures involved, rather than the entire policy, and to deduct the retention or the deductible from the insurance proceeds.

The annual fire loss reports required by Arkansas Code Annotated § 23-88-402 are no longer mandatory because the reports revealed no significant data regarding fire losses by county. The notice concerning fire protection's importance is retained.

Finally, the Act updates the language of the residential earthquake coverage disclosure for new property policies, as required by Arkansas Code Annotated § 23-102-114.

TO CREATE THE SUCCESSOR CORPORATION ASBESTOS-RELATED LIABILITY FAIRNESS, ACT 1241 of 2015. Effective January 1, 2020.

The Act provides that a corporation that has assumed or incurred asbestos-related liabilities, known as a "successor," is not liable for any asbestos claim when the successor's cumulative successor asbestos-related liabilities exceed the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The immunity does not extend to workers' compensation benefits, a claim that does not constitute a successor asbestos-related liability, an obligation under the National Labor Relations Act, 29 U.S.C. § 151 et seq., or under any collective bargaining agreement, or if the successor, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor. The Act goes on to explain how to calculate the fair market value of total gross assets and any adjustments.

TO AMEND VARIOUS PROVISIONS OF THE ARKANSAS INSURANCE CODE; TO PROVIDE MODERNIZATION OF REGULATION BY THE INSURANCE COMMISSIONER; AND TO REVISE THE TRANSPORTATION NETWORK COMPANY SERVICES ACT, ACT 1267. Effective July 22, 2015.

A transportation network company is a licensed entity that uses a digital network to connect riders with transportation network company drivers who provide prearranged rides. While a transportation network company driver is logged on to the company's digital network and is available to receive transportation requests, the driver must have (1) primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage when a driver is not engaged in a prearranged ride; and (2) primary automobile liability insurance coverage of at least \$1,000,000 for death, bodily injury, and property damage when a driver is engaged in a

prearranged ride. In the event that the driver's insurance has lapsed or the driver does not have the required coverage, the transportation network company's insurance must provide the required coverage, and the insurer has the duty to defend the claim. The driver must carry proof of the required insurance coverage while using his or her use of a motor vehicle in connection with a transportation network company's digital network. In the event of an accident, the driver must provide the insurance information to all interested parties and law enforcement personnel and must disclose whether he or she was logged on to the transportation network company's digital network or was on a prearranged ride at the time of the accident. Before any driver is allowed to accept a request for a prearranged ride, the transportation network company must disclose in writing to the drivers (1) the required insurance coverage that the company provides while the transportation network company driver uses a personal vehicle in connection with the company's digital network; and (2) that, depending on the terms of the insurance policy, the driver's own insurance policy might not provide any coverage while the driver is logged on to the company's digital network and is available to receive prearranged ride requests or is engaged in a prearranged ride.

LIFE & HEALTH LEGISLATION

TO CREATE THE ARKANSAS HEALTH REFORM ACT OF 2015; AND TO DECLARE AN EMERGENCY, ACT 46 of 2015. Effective February 11, 2015.

Act 46 creates the Arkansas Health Care Reform Legislative Task Force. This Task Force is studying alternatives to, and the viability of, the Health Care Independence Program and associated Medicaid costs and improvements related continuation of the "Private Option."

TO EXEMPT A CONCIERGE SERVICE ARRANGEMENT FROM THE INSURANCE LAWS OF ARKANSAS, ACT 101 of 2015. Effective July 22, 2015.

Removes jurisdiction of the Department over concierge or boutique health plans or arrangements by exempting them from health insurance in both the insurance code and HMO subchapter. The Act does however require the concierge plan to provide a form notice to concierge contract holders that the plan is not health insurance and may not be coordinated with existing health plans of the person.

TO MODIFY COVERAGE FOR CRANIOFACIAL ANOMALY RECONSTRUCTIVE SURGERY, ACT 373 of 2015. Effective July 22, 2015.

Adds the Arkansas State Employees and Teachers Health Plan to the list of health plans subject to the cranio-facial coverage mandate. The Act also made various clarifications to improve interpretation of the mandate related to accreditation of cranio-facial teams which review and approve treatments.

CONCERNING TERMINALLY ILL PATIENT ACCESS TO INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES; AND TO CREATE THE RIGHT TO TRY ACT, ACT 374 of 2015. Effective July 22, 2015.

Provides a person with a right to try investigational drugs or medicine from a medical authorization level, if the person has a terminal illness. The Act does not change any underlying and already present insurance coverage exclusion for investigational or experimental drugs. The Act provides that an insurance company may, but is not required to , provide coverage for an investigational drug, biological product, or device; and shall not deny coverage for an item or service that is otherwise covered by an insurance contract between the eligible person and an insurance company.

TO MODIFY THE DEFINITION OF A THIRD-PARTY ADMINISTRATOR USED BY MULTIPLE EMPLOYER TRUSTS AND SELF-INSURED PLANS, ACT 689 of 2015. Effective July 22, 2015.

Requires or authorizes the Department to register and license pharmacy benefit managers under the Insurance Code's subchapter regulating third party administrators for pharmacy benefit managers administering pharmacy benefits for fully insured and self funded health plans.

TO ENCOURAGE THE USE OF TELEMEDICINE; AND TO DECLARE AN EMERGENCY, ACT 887 of 2015. Effective April 1, 2015.

Authorizes implements and advances the practices of telemedicine in this State, which is the delivery of healthcare services by means of real-time two-way electronic audio-visual communications while the patient is at an "originating site" and a "healthcare professional" is at a distant site. The Act requires all fully insured health plans to cover the services of a physician who is licensed by the Arkansas State Medical Board for healthcare services through telemedicine on the same basis as the health benefit plan provides coverage for the same healthcare services provided by the physician in person.

TO PROHIBIT THE USE OF CERTAIN RISK FACTORS BY A HEALTHCARE PAYOR TO REIMBURSE A PHYSICIAN UNDER AN ALTERNATIVE PAYMENT SYSTEM, ACT 902 of 2015. Effective July 22, 2015.

Addresses physician reimbursement practices related to physician risk sharing with health insurer or HMO. This Act prohibits health insurers and HMOs, when determining any gain-sharing or risk-sharing for a physician in the participating network agreement or relationship, from attributing to a physician any costs that are a result of variations in the healthcare payor's negotiated contract pricing with other persons or entities outside the physician's practice, if

including the costs reduces a physician's gain sharing amount or increases a physician's risk-sharing amount.

TO REGULATE AN INSURER THAT OFFERS VISION CARE PLANS; AND TO ESTABLISH THE VISION CARE PLAN, ACT 959 of 2015. Effective July 22, 2015.

Prohibits vision care plans and insurers providing vision benefits from requiring a vision provider to apply a discount to an insured or enrollee for noncovered services or noncovered materials. The Act prohibits vision care plans and insurers providing vision benefits from restricting or limiting the vision care provider's choice of optical labs or choice of sources and suppliers of services, assuming the selected lab follows or accepts the participating provider requirements.

TO MODIFY THE RESPONSIBILITIES OF A PHARMACY BENEFITS MANAGER AND PATIENT RIGHTS REGARDING PAYMENT FOR PHARMACISTS' SERVICES, ACT 1025 of 2015. Effective July 22, 2015.

Prohibits pharmacy benefit managers from opting into mail order pharmacy benefits without express consent of the insureds or enrollees being obtained first. The Act also prohibits an action by a pharmacy benefits manager called a “clawback,” which requires an insured or enrollee to make a payment for pharmacists services in an amount greater than the pharmacist or pharmacy providing the pharmacists services may retain from all payment sources.

TO ESTABLISH THE PRIOR AUTHORIZATION TRANSPARENCY ACT; AND TO ENSURE TRANSPARENCY IN USE OF PRIOR AUTHORIZATIONS FOR MEDICAL TREATMENT, ACT 1106 of 2015. Effective July 22, 2015.

Makes significant changes to the Prior Authorization provisions in the Insurance Code by repealing the earlier provisions in Ark. Code Ann. § 23-99-420 and replacing those with a new subchapter in Ark. Code Ann. §§ 23-99-901, et seq. The new requirements strengthen provider rights and notice under prior authorization requirements by health insurers, addressing urgency and emergency authorizations and nonmedical review requirements and restrictions, including requiring posting and publication by health insurers of written clinical criteria for prior authorizations and process to the public part of its website.

TO REQUIRE A HEALTH BENEFIT PLAN TO DISCLOSE CERTAIN DRUG FORMULARY INFORMATION, ACT 1109 of 2015. Effective July 22, 2015.

Requires health insurers and HMOs providing prescription drug coverage, to post and maintain on their websites, their prescription drug coverage, out of pocket cost information, deductibles, prior authorization procedures and appeals system.

TO REGULATE PEDIATRIC DENTAL BENEFITS; AND TO CLARIFY REASONABLE ASSURANCE FOR OFF-EXCHANGE PEDIATRIC DENTAL-ESSENTIAL HEALTH BENEFITS, ACT 1134 of 2015. Effective July 22, 2015.

Addresses health insurers and HMOs offering health plans outside the Exchange or Marketplace as to the insurer or HMO meeting the “reasonable assurance” standard by CMS for the provision of pediatric dental coverage. Act 1134 provides that a health insurer meets the reasonable assurance standard of providing pediatric dental if a pediatric dental plan is available for purchase on the Marketplace and if the consumer is notified of the requirement of having to purchase pediatric dental in the EHB plan.

TO IMPROVE THE INSURANCE PANEL PARTICIPATION PROCESS FOR HEALTHCARE PROVIDERS, ACT 1232 of 2015. Effective July 22, 2015.

Reduces the time period health insurers have to complete medical provider credentialing from 90 days to 60 days and otherwise provides various amendments to the Medical Provider Application Statute in Ark. Code Ann. § 23-99-411, strengthening the rights and notices of medical providers going through credentialing by health plans, including establishing a \$1,000 per day fine for violations of the section.

TO CREATE THE ARKANSAS HEALTHCARE TRANSPARENCY INITIATIVE OF 2015; AND TO DECLARE AN EMERGENCY, ACT 1233 of 2015. Effective April 7, 2015.

Requires the Insurance Department to collect health data from health plans and other health plan related entities in the state, including self funded plans, for the purposed of analyzing health care costs and qualitative improvements. The Act establishes an “All-Payer Claims Database” (APCD) mechanism with an advisory board to consult with the Commissioner and Department related to acquisition of health data, including claims, coverage and enrollment data for the benefit of the Health Care Task Force as well as for other state agency research including the Department’s rate review division. The Act was passed with an emergency clause and is currently in effect. The Department is developing a rule for APCD and Transparency initiative with the objective of adopting a final rule implementing this Act in September of 2015.

PRODUCER LEGISLATION

AN ACT TO AMEND ARKANSAS LAW CONCERNING THE LICENSURE, CERTIFICATION, OR PERMITTING OF ACTIVE DUTY SERVICE MEMBERS, RETURNING MILITARY VETERANS, AND SPOUSES, ACT 848 of 2015. Effective March 31, 2015.

Amends licensing laws for active duty military personnel stationed in Arkansas, returning veterans, and their spouses. Any military personnel or their spouse will benefit from this law in that their license shall not expire until 180 days following the return from active deployment. The agency will need to promulgate new rules to authorize an extension of licensing fees and continuing education requirements for military personnel, veterans, and their spouses.

TO PRESERVE COMPETITION IN SELLING GROUP INSURANCE POLICIES TO INDIVIDUAL SCHOOL DISTRICTS, ACT 1183 of 2015. Effective July 22, 2015.

Permits individual school districts to purchase group disability insurance and also group contracts or policies that provide disability income insurance, specified disease insurance, hospital indemnity insurance, long-term care insurance, accident-only insurance to groups described under Ark. Code Ann. § 23-86-106.

FUNERAL FINANCIAL LEGISLATION

TO REGULATE PREPAID FUNERAL BENEFITS CONTRACTS UNDER THE ARKANSAS PREPAID FUNERAL BENEFITS LAW, ACT 880 of 2015. Effective July 22, 2015.

Allows prepaid funeral benefit organizations to charge contract holders a fee for cancellation or transfer of contracts. The Act permits the Insurance Commissioner to establish or set this fee by administrative Rule. The Department intends to begin the process of rule-making establishing this fee in the next few months.

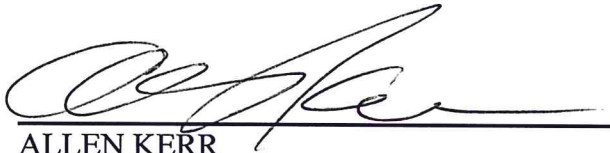
TO REGULATE PREPAID FUNERAL BENEFITS CONTRACTS UNDER THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; TO DEFINE A NONGUARANTEED PREPAID CONTRACT; AND TO DECLARE AN EMERGENCY, ACT 904 of 2015. Effective April 1, 2015.

Permits the Insurance Commissioner to administer contracts for defunct, insolvent or unlicensed funeral homes in a receivership manner. The Act also allows the Department to regulate and to apply our statutory regulatory mechanisms over prepaid funeral contracts which do not provide a

guarantee of a fixed price. The Act was passed with an emergency clause and is currently in effect.

TO ALLOW A BURIAL ASSOCIATION WITH EXCESS ACCOUNT FUNDS TO PAY A MEMBER MORE THAN THE FACE VALUE OF THE BURIAL POLICY, ACT 1030 of 2015. Effective July 22, 2015.

Permits the Burial Association Board to approve requests from burial associations that have excess financial resources, as determined by the board, to adopt a plan to pay death benefits in excess of the face value of a certificate of benefits issued by the burial association to members of the burial association.



ALLEN KERR
INSURANCE COMMISSIONER
ARKANSAS INSURANCE DEPARTMENT

May 26, 2015
DATE