

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF ARKANSAS**

**IN THE MATTER OF  
RATE AND FORM REVIEW TIME PERIODS  
UNDER ARK. CODE ANN. § 23-79-109  
& INTERPRETATION OF  
ARK. CODE ANN. § 23-79-109(a)(1)(A)(ii)(a)**

**PETITIONER**

**USABLE MUTUAL INSURANCE  
COMPANY d/b/a ARKANSAS BLUE  
CROSS & BLUE SHIELD**

**AID NO. 2016-091**

**DECLARATORY ORDER**

Now on this day the above described matter is taken under consideration by Allen Kerr, Insurance Commissioner (“Commissioner”), with the Arkansas Insurance Department (the “Department”) appearing through managing attorney, Booth Rand. The Petitioner, USABLE Mutual Insurance Company, d/b/a Arkansas Blue Cross and Blue Shield (hereafter, “Petitioner”), is represented by Mr. Justin Allen, ESQ., and Mr. Gordon Rather, ESQ., of Little Rock, Arkansas. From the facts, matters and other items before him, the Commissioner finds as follows:

**FINDINGS PRESENTED**

1. On September 30, 2016, the Petitioner submitted to the Commissioner a letter requesting a declaratory hearing and order. The Petitioner requested an order which declares: (1) that the time period in which the Commissioner may approve or disapprove rates as described in Ark. Code Ann. § 23-79-109(b)(1) through (b)(4) begins to run when an insurance form or individual accident and health insurance rate filing is submitted; (2) that the application of Ark.

Code Ann. § 23-79-109(a)(1)(A)(ii)(a) to any rate filings of Petitioner is unconstitutional; (3) that Petitioner is not a “nonprofit insurer”; and (4) all other proper relief consistent with its request. Petitioner requested its declaratory relief under Ark. Code Ann. § 23-61-303 and § 25-15-206. The Petitioner requests a prospective, declaratory order to apply to rate and form filings under Ark. Code Ann. § 23-79-109, not already approved or disapproved, after the date of this Order.

2. The Petitioner files individual accident and health insurance rates and accident and health insurance forms with the Department throughout the year as a domestic accident and health insurer in this State. Petitioner, therefore, is directly impacted by Department applications of Ark. Code Ann. § 23-79-109 related to time periods for reviewing rates and policy forms. In addition, the Petitioner may be separately impacted in the future through application of Ark. Code Ann. § 23-79-109(a)(1)(A)(ii)(a) in considering an insurer’s surplus in determining if a proposed rate is excessive. Given these reasons, the Commissioner finds that Petitioner is an “aggrieved party” entitled to a hearing and entitled to request declaratory relief under Ark. Code Ann. § 23-61-303(b)(1).

3. The Commissioner issues this Declaratory Order under Ark. Code Ann. § 23-61-303, § 25-15-206 under the Arkansas Administrative Procedures Act, and Section XVI on Declaratory Orders, under the Arkansas Insurance Department Rules of Practice and Procedure.

4. As this Declaratory Order is intended to provide clarification of the Department’s procedures and processes related to the calculation of time for the Commissioner to approve or disapprove the form or rate filed by insurers, it applies to all submissions by insurers subject to Ark. Code Ann. § 23-79-109.

5. Pursuant to Ark. Code Ann. § 23-79-109(b)(1), rates and forms subject to review under Ark. Code Ann. § 23-79-109, which include but are not limited to accident and health insurance form and rate filings, are “deemed approved” after thirty (30) days from the date of filing unless affirmatively approved or disapproved by the Commissioner during that time period. The Commissioner may extend the initial thirty (30) day review period by not more than an additional thirty (30) days “by giving notice of the extension before expiration of the initial thirty-day period.” The Department typically invokes the one-time extension to provide more time to resolve deficiencies, objections and inquiries with the insurer in its review of a proposed filing.

6. The Petitioner challenges the Department’s procedure of starting the initial thirty (30) days once a filing is considered “complete” by the Department. This is not a new procedure but dates back to past Insurance Commissioner Administrations. The Department has maintained that a filing is “complete” when the Department has no further objections, inquiries or requests for information to the rate or form filing insurer. The Petitioner maintains that this application is erroneous under Ark. Code Ann. § 23-79-109(b) because there exists no language in that section, or elsewhere in the Arkansas insurance code, that provides for a rate or form review time period to begin from the date the filing is considered “complete” by the Department. Underlying its legal objection is the concern by the Petitioner that this application operates to delay the approval or disapproval of a rate beyond the statutory rate review time period to an uncertain date, and this uncertainty impacts its product and business planning which is dependent upon timely approved premium calculations.

7. The Department, however, maintains its procedure is necessary to guard against the thirty (30) day period (plus extension, if any) expiring and prematurely operating to approve

rates or policy forms, for filings in which the Department has raised objections, concerns or inquiries, not timely responded to or explained by the rate or form filer during the thirty (30) day review period and one-time extension period. The Department's procedure beginning the time period when the filing is "complete" guards against filings being "deemed approved" by operation of law that are deficient or filed in piecemeal fashion with the regulator. Furthermore, the Department maintains its application is for the benefit of the rate and form filer considering the alternative is that the Department would affirmatively disapprove the filing, prior to the expiration of the time period, if its concerns, objections, or inquiries are not timely addressed or explained adequately by the insurer thereby requiring the insurer to completely refile the rates or forms again.

8. The Commissioner finds that the Department's procedure of beginning the rate and form review time period under Ark. Code Ann. § 23-79-109(b)(1) once a filing is "complete" provides potentially unclear timelines to insurers filing rates and forms with the Department. Therefore, the Commissioner finds that the rate and form review time period in Ark. Code Ann. § 23-79-109(b)(1) will begin when the rate or form is filed with the Department. The Commissioner has issued a Bulletin with this Declaratory Order, hereby incorporating it by reference into this Order. This Bulletin shall provide clarifications on time periods for rate and form review procedures under Ark. Code Ann. § 23-79-109. These standards shall apply to all policy forms and rates reviewed by the Department on or after the date of this Order unless replaced or superseded by a permanent rule, or change in law. If authorized or approved, the Department shall initiate rule-making on these standards for the promulgation of a permanent rule.

9. The Petitioner next requests that the Commissioner review the application of Ark. Code Ann. § 23-79-109(a)(1)(A)(ii)(a) which states: “The Commissioner may consider a nonprofit insurer’s surplus levels in determining whether a proposed rate is excessive.” The term “nonprofit insurer” is not defined in Ark. Code Ann. § 23-79-109; however, elsewhere in the insurance code, references to nonprofit are made for organizations licensed and regulated by the Department. In Chapter 75 governing hospital and medical service corporations and Chapter 76 related to health maintenance organizations, references are made to the nonprofit as being organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq.

10. The Commissioner, in an effort to provide clarity and continuity within the insurance code, finds that a “nonprofit insurer” for purposes of § 23-79-109(a)(1)(A)(ii)(a) means an accident and health insurer, health maintenance organization or hospital and medical service corporation which has either organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., or has filed its Articles of Incorporation for a certificate of authority with the Insurance Commissioner, stating in its Articles that it is operating as a nonprofit or on a not for profit basis. The Department, on a prospective basis, will rely upon the insurer’s incorporation or organizational status or type as filed in its Articles of Incorporation or Arkansas Secretary of State’s office. The Department shall apply this clarification of a “nonprofit” insurer under Ark. Code Ann. § 23-79-109(a)(1)(A)(ii)(a) and it shall be the interpretation of the Commissioner from the effective date of this Order unless or until this is clarified under state law. The Commissioner defers to the State Legislature to further clarify this matter as to the insurance entity type subject to consideration of its surplus levels for purposes of determining if a proposed rate is excessive.

11. The Petitioner next requests the Commissioner to make various declarations as to the constitutionality of Ark. Code Ann. § 23-79-109(a)(1)(A)(ii)(a). Although the Commissioner agrees with the Petitioner that constitutional objections may be raised or presented at the agency or department level in administrative adjudications and hearings, the Commissioner is not empowered or authorized to ultimately issue such declarations. The Commissioner therefore declines to make such determinations in this Order and finds that the Petitioner is not waiving its rights to raise these objections in the future.

12. The Petitioner agrees to rescind and dismiss its current hearing and declaratory request on the application to Petitioner of Ark. Code Ann. § 23-79-109(a)(1)(A)(ii)(a). The Petitioner also agrees to rescind and dismiss its current hearing and declaratory request related to “the time period in which the Commissioner may approve or disapprove rates as described in Ark. Code Ann. § 23-79-109(b)(1) through (b)(4)”.

**WHEREFORE, IT IS HEREBY ORDERED:**

1. The Department’s procedure of beginning the rate and form review time period once the filing is considered “complete” by the Department under Ark. Code Ann. § 23-79-109(b)(1) provides unclear timelines to the insurers. The Department hereby issues AID Bulletin No. 14-2016, “Rate and Form Review Timelines,” incorporated into this Order to provide notice to all insurers whose forms and rates will be subject to § 23-79-109 regarding the Department’s clarification of procedures under the statute with respect to future rate and form filings and review.

2. The term “nonprofit insurer” for purposes of § 23-79-109(a)(1)(A)(ii)(a) shall mean an accident and health insurer, health maintenance organization or hospital and medical

service corporation which has either organized under Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., or has filed its Articles of Incorporation for a certificate of authority with the Insurance Commissioner, stating in its Articles that it is operating as a nonprofit or on a not for profit basis.

3. Petitioner shall immediately rescind and dismiss its current hearing and declaratory requests made with the Department regarding application of Ark. Code Ann. § 23-79-109(a)(1)(A)(ii)(a) and filing time periods under Ark. Code Ann. § 23-79-109(b) (1) through (b)(4).

4. This Declaratory Order is prospective and has no effect on the approval or disapproval of any filings prior to the date of this order.

IT IS SO ORDERED this 9th day of November, 2016

  
ALLEN KERR  
INSURANCE COMMISSIONER  
ARKANSAS INSURANCE DEPARTMENT



APPROVED BY PETITIONER  
USABLE MUTUAL INSURANCE COMPANY  
d/b/a/ Arkansas Blue Cross and Blue Shield

CURTIS BARNETT  
CEO Elect

11-7-2016

DATE