

HEARING

**IN THE MATTER OF
PROPOSED RULE 114
“PRIOR AUTHORIZATIONS FOR
PAIN MEDICATIONS FOR
TERMINAL ILLNESSES”**

APRIL 14, 2016

9:00 A.M.

**HONORABLE RUSS GALBRAITH, CHIEF DEPUTY
COMMISSIONER & HEARING OFFICER**

ORIGINAL

HEARING

IN THE MATTER OF

PROPOSED RULE 114
"PRIOR AUTHORIZATIONS FOR
PAIN MEDICATIONS FOR
TERMINAL ILLNESSES"

HONORABLE RUSS GALBRAITH
CHIEF DEPUTY COMMISSIONER & HEARING OFFICER
ARKANSAS INSURANCE DEPARTMENT

HEARING PROCEEDINGS

APRIL 14, 2016

at 9:00 A.M.

APPEARANCES

ON BEHALF OF THE ARKANSAS INSURANCE DEPARTMENT:

MR. BOOTH RAND
ARKANSAS INSURANCE DEPARTMENT
1200 WEST THIRD STREET
LITTLE ROCK, ARKANSAS 72201-1904

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7/29/16

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CAPTION

PROCEEDINGS in the above-styled and numbered cause on the 14th day of April, 2016, before Faith Grigsby, Arkansas Supreme Court Certified Court Reporter #686, at 9:00 a.m., in the Hearing Room of the Arkansas Insurance Department, 1200 West Third Street, Little Rock, Arkansas, pursuant to the agreement hereinafter set forth.

* * * * *

PROCEEDINGS

APRIL 14, 2016

1
2
3 HEARING OFFICER: Good morning, everybody.
4 Today is April 14, 2016, and we are here in the
5 matter of Proposed Rule 114: Prior
6 Authorizations for Pain Medications for
7 Terminal Illnesses.

8 Present and representing the Department is
9 Booth Rand. My name is Russ Galbraith and
10 Commissioner Allen Kerr has appointed me to be
11 the hearing officer in this matter.

12 Mr. Rand, you may proceed.

13 MR. RAND: Thank you, Mr. Hearing Officer.
14 As per usual, I've got some exhibits I would
15 like to tender into the administrative record,
16 and I'll just go through those. And my plan is
17 to get those submitted to you and go through
18 that, and then give an explanation of the rule
19 after that, and some suggested revisions, and
20 discuss some public comments.

21 Exhibit Number 1 is the Commissioner's
22 Designation of Hearing Officer appointing you
23 as Hearing Officer this morning.

24 Exhibit Number 2 is a copy of the Notice of
25 Public Hearing. This is a notice that we send

1 out to the industry and interested licensees
2 who want to receive information about rule-
3 making activities that are ongoing at the
4 Department. We issued this on February 19,
5 2016, of this year, notifying the industry and
6 licensees of the Department's intention of
7 promulgating Proposed Rule 114 related to prior
8 authorizations for pain medications for
9 terminal illness, which we'll call Rule 114
10 from here on out. But it set the time and date
11 for today's hearing in the notice and was
12 distributed to the industry.

13 Exhibit Number 3 is a copy of the Proposed
14 Rule draft that we filed with the Bureau of
15 Legislative Research.

16 Exhibit Number 4, Mr. Hearing Officer, as
17 you know, we have to provide at least three
18 days notice in the state newspaper advising the
19 public when our hearings are and Exhibit 4
20 reflects the Democratic Gazette's advertisement
21 that ran in the back of the paper advising and
22 notifying the public about the rule-making
23 related to today's rule, showing the time and
24 date for the hearing of April 14th at 9:00.
25 The ad ran February 29th, March 1st, and March

1 2nd. The back page of Exhibit 4 is a
2 confirmation from the Democrat Gazette that it
3 received the ad and was going to run the ad, as
4 well as the cover letter to Pam Dicus, which is
5 the next document after that.

6 Exhibit 5, one of the things that we do, in
7 addition to newspaper notice, at the Department
8 is, we do a blast electronic distribution, or
9 mailing, to persons who have signed up to
10 receive notice about our rules that we're
11 promulgating. Exhibit 5 is the legal notice
12 that was sent out with a link for persons to
13 click on the link to see what the rule is and
14 when the notice of hearing is and advising them
15 to send comments. This is actually a new form
16 that we're sending, and this was sent out on
17 February 19th at 11:00, by the Legal Division.

18 The next page in that document is sort of
19 -- I've not explained this to the industry yet,
20 but you can actually now see how many people
21 click on the links. One of the issues that
22 we've had is wondering if anybody reads our
23 bulletin notices and notices of public hearing,
24 so we've put software to the task of trying to
25 track how many people that have signed up

1 actually click on our rules and information,
2 and we had, out of 1,500 recipients, about 300
3 or 400 who clicked on it. So there's a lot of
4 people who don't click on our links, I guess.
5 So that's --

6 HEARING OFFICER: And we had one
7 unsubscribe.

8 MR. RAND: We did. But we do now keep
9 statistics on it, not to really get anybody in
10 trouble, just to see what people are looking
11 at.

12 Exhibit 6 is the cover letter that we sent
13 to the Bureau of Legislative Research, to Ms.
14 Donna Davis, for the Arkansas Legislative
15 Council to review our rules. It's simply the
16 cover letter. Behind the cover letter are
17 parts of Exhibit 6 related to what we have to
18 file with the Bureau of Legislative Research.

19 We sent to the Bureau a February 19th cover
20 letter, copy of the proposed rule, as well as
21 all of the financial impact and legislative
22 questionnaires and economic impact statement.
23 Those are 6A, 6B. And 6C is a short summary of
24 the rule for persons who just want to see what
25 we're up to in a real quick way. 6C is part of

1 that. So that was filed on February 19th with
2 the Bureau.

3 Exhibit 7, as you know, Mr. Hearing
4 Officer, we have to file a courtesy copy. We
5 don't have to. We do provide courtesy copy
6 information to other state officials. Exhibit
7 7 is a copy of the proposed rule to the
8 Secretary of State. Exhibit 8 is a copy of the
9 letter with the proposed rule that went to the
10 Arkansas State Library. Exhibit 9 is a cover
11 letter which included a copy of the rule that
12 was sent to the Arkansas Attorney General's
13 Office.

14 Exhibit 10 is a letter that we sent to the
15 Governor's Office, to Ms. Katie Beck, who is
16 our regulatory liaison, explaining what the
17 Department is doing. Actually, as you know,
18 the Governor's Office reviews and approves our
19 rules before we actually file, a lot of times,
20 and the correspondence indicates that we had
21 gotten approval from the Governor's Office, I
22 think, way back in the fall of 2015, or early
23 winter. That was sent to Katie on February
24 19th, just to confirm and reflect her
25 recollection that we had discussed and they had

1 approved our promulgation of this rule.

2 Exhibit 11 is a courtesy copy that we send
3 to the Arkansas Economic Development
4 Commission. That commission looks after small
5 business. If they have any objections, to
6 please send those to us. So we sent that to
7 the AEDC February 19, 2016.

8 I have also included into this notebook of
9 exhibits copies of Act 1106 of 2015, which is a
10 prior authorization law, and a copy of Act 992
11 of 2015, which is also another prior
12 authorization law that we're dealing with today
13 that gave us the authority to issue this rule
14 related to pain medication prior
15 authorizations.

16 Exhibit 14 are public comments. As part of
17 Exhibit 14 we have received two comments. One
18 was from the Arkansas Medical Society, which is
19 in favor of the rule, and Arkansas Blue Cross
20 and Blue Shield, which is also in favor of the
21 proposed rule.

22 At this time, I would submit those into the
23 administrative record, and I'll be glad to
24 explain why we're doing what we're doing today.

25 HEARING OFFICER: So without objection,

1 Department's Exhibits 1 through 14 will be
2 entered into the record and become part of the
3 transcript.

4 (WHEREUPON, Exhibits Number 1 through 14
5 were marked for identification and are attached
6 hereto.)

7 HEARING OFFICER: So, Mr. Rand, you may
8 proceed.

9 MR. RAND: Thank you, Mr. Hearing Officer.
10 Rule 114, why do we need this rule? I believe
11 late last summer the Insurance Commissioner was
12 contacted to add a limitation to Act 992 of
13 2015, which is Senator Irvin's act, or
14 enactment, that essentially allows persons to
15 receive pain medication for persons who have
16 terminal illnesses without having to go through
17 or be plagued by a lot of prior authorization
18 requirements by the insurance companies during
19 those kinds of phases.

20 And one of the concerns that, I think, the
21 health insurance industry had with the bill
22 before it was actually enacted was that it had
23 really no limitation or restriction on the
24 amount of pain medication in the act. And, of
25 course, that wasn't the intent of the sponsor

1 or legislature to allow unlimited pain
2 medication for persons who have terminal
3 illnesses.

4 And so the suggestion was made -- the
5 request was made during last session, 2015, to
6 please add language that would not lead people
7 to the misunderstanding that the law is going
8 to allow people to get unlimited pain
9 medication, or pain medication in such amounts
10 that might compromise a patient's safety or
11 health or utilization concerns.

12 And so it is my understanding that before
13 the amendment could be run, session closed and
14 the sponsor simply couldn't get the provision
15 or limitation added to Act 992 and just ran out
16 of time, and so the request was made that they
17 contact the Insurance Department to see if the
18 Department could, by rule, add the limitation
19 by administrative rule, and so that is one
20 purpose of this rule.

21 In Section 3, Mr. Hearing Officer, it
22 provides the limitation or restriction or,
23 basically, understanding that, although prior
24 authorization is not required, there still
25 would be utilization controls. And it

1 certainly does not mean that a person could get
2 unlimited pain medication or compromise other
3 patient safety issues, and so we added that in
4 Section 3.

5 I ran that language by the Arkansas Medical
6 Society and others, including Senator Irvin,
7 and met with her, and they had no objection to
8 Section 3 as being the limitation that the
9 sponsor in the insurance industry, or at least
10 one insurer, had in limitations I have
11 described just simply could be added to law.

12 Now, that's one reason why we're doing this
13 rule. The other is quite an interesting one.
14 Act 992, which deals with prior authorization
15 for pain medications for terminal illness, was
16 passed during the same legislative session as
17 Act 1106. Act 1106 also substantially
18 redrafted prior authorization protocols for
19 health insurers with providers, substantially,
20 and it repealed the provisions where Act 92 was
21 supposed to stick in that law and move them
22 over into, initially, what was 23-99-900
23 subchapter.

24 The Code Revision Commission moved the Act
25 1106 provisions over into another subchapter,

1 and so that Act 1106 was passed after Act 992,
2 and so what happened was, Act 1106 removed the
3 code where Act 992 was supposed to go. And
4 during discussions with Code Revision
5 Commission as well as with me and the
6 Department, and I agreed with the Code Revision
7 Commission, there was no way to move Act 992
8 law into the new subchapter because of the
9 substantial way in which the legislature
10 modified or changed all prior authorizations.
11 It just would not work in an understandable
12 way.

13 So one other consequence that we had
14 related to Act 992, and the reason why we're
15 doing this rule is to explain that the law
16 still, in Act 992, applies, it just could not
17 be codified. There was no place to stick it or
18 to put it in the insurance code because another
19 subsequent act in that session removed those
20 provisions.

21 And one purpose of this is to add the
22 limitation. The other is to explain that we're
23 interpreting the Act 992 to be valid law, it
24 just could not be codified by the Code Revision
25 Commission. So a lot of stuff there with

1 respect to two acts going on at the same time
2 that conflicted with one another and we're
3 trying to actually, also, repair or make sense
4 of that. So those are the two purposes of the
5 rule.

6 So one other thing I would like the Hearing
7 Officer to focus on, on Section 2, the current
8 draft of this rule has definitions that we
9 reference. If you see in Section 2 starting on
10 Section 2.2, there is a definition of health
11 benefit plan is defined by 23-99-903(7). 23-
12 99-903(7) is not correct now. Code Revision
13 Commission has removed the 900 subchapter over
14 into the 1100 subchapter.

15 So what we propose to do in terms of edits
16 for this rule is to -- if you look at every one
17 of those references to the Subchapter 903(7),
18 903(8), 903(16), those should be 1103(7),
19 1103(8), 1103(16) to 1103(21), down at 7, to
20 comport with where CRC moved the new prior
21 authorization requirements.

22 The other edit or suggested change is, we
23 have a proposed effective date on this rule,
24 June 6th. There is no way I'm going to
25 probably be able to get on the May agenda

1 unless I do a lot of work today. I think what
2 we would prefer to do is to have the effective
3 date moved or edited/modified to late June so
4 that I can have this reviewed at the
5 legislative council in their early June
6 calendar.

7 So right now, the rule of BLR is that --
8 the requirement is, I can't get on the next
9 month's agenda and I can't get in on May's
10 agenda unless I, today or by no later than
11 tomorrow, submit all of these changes and the
12 hearing transcript -- not hearing transcript,
13 but a public comment summary. I've got a lot
14 of things going on. I would prefer to just
15 move the effective date to allow us to get on
16 the June agenda. So just modify that date.

17 HEARING OFFICER: Is there no limitation to
18 -- once the legislature looks at it, is there
19 any type of limitation in terms of the
20 effective date?

21 MR. RAND: No.

22 HEARING OFFICER: So we could make this
23 July 1 or June 30.

24 MR. RAND: That's right. It's how urgent
25 we feel like this is needed to be implemented

1 and, actually, I mean, I think a month here, or
2 25 days is not going to kill anybody. So
3 making this wait for another 25 days is not
4 going to cause anybody any heartburn, I don't
5 think.

6 HEARING OFFICER: What's your proposed
7 effective date?

8 MR. RAND: I just looked at it. I think
9 sometime in late June: June 24th or June 25th,
10 if that's on a weekday.

11 HEARING OFFICER: And so when we get ready
12 to close this hearing, we would just leave this
13 open for those changes?

14 MR. RAND: That's right. I would propose
15 that we keep the record open for one day for me
16 to correct these code signs, which are now not
17 correct, as well as select a date late in June
18 for an effective date, and then we would close
19 the record -- I would propose that we keep the
20 record open for two days, which is sometimes a
21 good idea, because sometimes I get straggling
22 comments in as well. And we'll close the
23 record, let's say, Monday of next week, or by
24 close of business Monday and then submit a
25 final rule to Bureau and go from there, and try

1 to get on the June agenda of legislative
2 council.

3 That's all I have.

4 HEARING OFFICER: What's that date? What's
5 next Monday?

6 MR. RAND: 18th. So I would close the
7 record 4:30 April 18th.

8 HEARING OFFICER: Right. So end of day on
9 April 18th. Are there any public comments?
10 Anybody signed up to speak regarding this
11 particular issue?

12 (No audible response given)

13 HEARING OFFICER: If not, then what I will
14 recommend is that we keep the record open until
15 April 18th, end of day, so 4:30 p.m., so that
16 you can make those changes, and if we do get
17 any stragglers in terms of comments and that
18 sort of thing. Other than that, we'll close
19 the hearing. Thank you.

20 (WHEREUPON, the proceedings were concluded
21 in this matter at 9:20 a.m.)
22
23
24
25

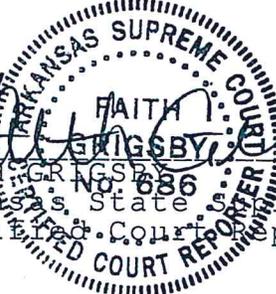
CERTIFICATE

STATE OF ARKANSAS)
) ss
 COUNTY OF PULASKI)

I, Faith Grigsby, CCR, Certified Stenomask Reporter before whom the foregoing testimony was taken, do hereby certify that the witness was duly sworn by me; that the testimony of said witness was taken by me and was thereafter reduced to typewritten form under my supervision; that the deposition is a true and correct record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the outcome of this action.

I FURTHER CERTIFY, that I have no contract with the parties within this action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

WITNESS MY HAND AND SEAL this 19th day of April, 2016.



 FAITH GRIGSBY
 Arkansas State Supreme Court
 Certified Court Reporter #686

EXHIBIT LIST

DATE: APRIL 14, 2016
SUBJECT: PROPOSED RULE 114 – PRIOR AUTHORIZATIONS FOR PAIN MEDICATIONS FOR TERMINAL ILLNESSES
HEARING OFFICER: HONORABLE RUSS GALBRAITH, DEPUTY COMMISSIONER

EXHIBIT #	DESCRIPTION
1.	Designation of Hearing Officer
2.	Copy of Arkansas Insurance Department’s February 19, 2016 NOTICE OF PUBLIC HEARING, concerning Rule 114 “Prior Authorizations for Pain Medications for Terminal Illnesses”
3.	Copy of Proposed Filed Rule 114
4.	Copy of February 18, 2016 Arkansas Insurance Department electronic email to Ms. Pam Dicus, Arkansas Democrat-Gazette requesting notice publication along with the Legal Ad, which ran for 3 days in ADG and billing statement.
5.	Copy of electronic mail distribution to insurance industry regarding proposed Rule 114 and Notice of Public Hearing.
6.	Copy of Arkansas Insurance Department February 19, 2016 letter to Donna Davis of Arkansas Legislative Counsel & Arkansas Bureau of Legislative Research.
6 A.	Legislative Counsel Questionnaire and Financial Impact Statement
6 B.	Economic Impact Statement
6 C.	Rule 114 Summary for Arkansas Bureau of Legislative Research
7.	Copy of February 19, 2016 Arkansas Insurance Department letter to Secretary of State.
8.	Copy of February 19, 2016 letter to Arkansas State Library.

9. Copy of February 19, 2016 Arkansas Insurance Department letter to Ed Armstrong, Office of the Attorney General.
10. Copy of February 19, 2016 Arkansas Insurance Department letter to Katie Beck, Regulatory Liaison, Office of the Governor.
11. Copy of February 19, 2016 Arkansas Insurance Department Letter Pat Brown, Economic Development Commission.
12. Copy of Act 1106 of 2015.
13. Copy of Act 992 of 2015.
14. Public Comments Section.

Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

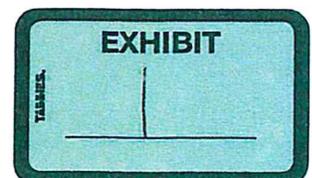
DESIGNATION OF HEARING OFFICER

DATE: April 14, 2016
SUBJECT: PROPOSED RULE 114
HEARING OFFICER: Russ Galbraith
CHIEF DEPUTY COMMISSIONER

Pursuant to Arkansas Code Annotated § 23-61-103(e)(1), I hereby delegate Russ Galbraith, Chief Deputy Commissioner, to serve as the Hearing Officer in the above-referenced matter. Pursuant to this Designation, Mr. Galbraith will have at his disposal all of the powers and duties vested in the office of the Commissioner of Insurance for the State of Arkansas.


ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS

4-12-16
Date



Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

DATE: FEBRUARY 19, 2016

TO: ALL ACCIDENT AND HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATIONS AND HOSPITAL AND MEDICAL SERVICE CORPORATIONS & OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: RULE 114: "PRIOR AUTHORIZATIONS FOR PAIN MEDICATIONS FOR TERMINAL ILLNESSES"

NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication by the Arkansas Insurance Department ("Department") Proposed Rule 114, "PRIOR AUTHORIZATIONS FOR PAIN MEDICATIONS FOR TERMINAL ILLNESSES." The Arkansas Insurance Commissioner ("Commissioner") is filing for public comment and public hearing a proposed regulation implementing Act 992 of 2015, "An Act To Regulate the Prior Authorization Procedure For Treatment Of A Terminal Illness." The proposed Rule addresses coverage of prescription pain medication, as authorized under the Act, for persons with a terminal illness.

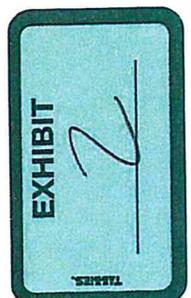
Pursuant to Ark. Code Ann. §§ 23-99-414 and 23-61-108(a)(1), and other applicable laws or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on April 14, 2016 at 9:00 A.M., in the First Floor Hearing Room, Arkansas Insurance Department ("Department"), 1200 West Third Street, Little Rock, Arkansas.

The purpose of the Public Hearing will be to determine whether the Commissioner should adopt Proposed Rule 114, " PRIOR AUTHORIZATIONS FOR PAIN MEDICATIONS FOR TERMINAL ILLNESSES."

All interested persons are encouraged to make comments, statements or opinions to the address below or attend the Public Hearing and present, orally or in writing, statements, arguments or opinions on the proposed Rule. All licensees and other interested persons are responsible for notifying all their personnel, agents, and employees about this Public Hearing.

Persons wishing to testify should notify the Legal Division as soon as possible, and are requested to submit intended statements in writing in advance.

Direct your inquiries to the Legal Division at (501) 371-2820 or insurance.legal@arkansas.gov.



A copy of Proposed Rule 114 can be obtained or viewed on the Legal Division's Internet Web Site at <http://insurance.arkansas.gov/prop-rules.htm>

Sincerely,

A handwritten signature in black ink, appearing to read 'Booth Rand', written over the printed name.

Booth Rand
Managing Attorney
Arkansas Insurance Department
(501) 371-2820

**PROPOSED RULE 114
PRIOR AUTHORIZATIONS FOR PAIN MEDICATIONS
FOR TERMINAL ILLNESSES**

TABLE OF CONTENTS

SECTION 1. AUTHORITY
SECTION 2. DEFINITIONS
SECTION 3. PAIN MEDICATION AUTHORIZATIONS FOR TERMINAL ILLNESSES
SECTION 4. EFFECTIVE DATE

SECTION 1. AUTHORITY

This Rule is issued pursuant to Ark. Code Ann. § 23-99-414 which authorizes the Arkansas Insurance Commissioner ("Commissioner") to promulgate rules necessary to carry out the "Arkansas Health Care Consumer Act" subchapter. Act 992 of 2015, "An Act to Regulate the Prior Authorization Procedure for Treatment of a Terminal Illness," adds various provisions to the prior authorization section in the "Arkansas Health Care Consumer Act" pertaining to prescription pain medication for persons with terminal illnesses. The requirements in Act 992 of 2015 were not later codified in the Prior Authorization subchapter in Act 1106 of 2015, the "Prior Authorization Transparency Act." The Arkansas Insurance Department ("Department") however interprets the provisions in Act 992 of 2015 to be enforceable and valid as enacted. The Department is also promulgating the requirements in Act 992 of 2015 to clarify their application to health benefit plans as defined in this Rule, subject to requirements of this Rule.

SECTION 2. DEFINITIONS

- (1) "Covered person" means a "covered person" as defined in Ark. Code Ann. § 23-99-403(3);
- (2) "Health benefit plan" means a "health benefit plan" as defined in Ark. Code Ann. § 23-99-903(7);
- (3) "Healthcare insurer" means a "healthcare insurer" as defined in Ark. Code Ann. § 23-99-903(8);
- (4) "Prescription pain medication" means any medication prescribed as treatment for pain;
- (5) "Prior Authorization" means "prior authorization" as defined in Ark. Code Ann. § 23-99-903(16).
- (6) "Terminal illness" means an illness, a progressive disease, or an advanced disease state from which:
(A) there is no expectation of recovery; and (B) death as a result of the illness or disease is reasonably expected within six (6) months; and
- (7) "Utilization review entity" means a "utilization review entity" as defined in Ark. Code Ann. § 23-99-903(21);

SECTION 3. PAIN MEDICATION AUTHORIZATIONS

If a prescription pain medication requires a prior authorization by a healthcare insurer or utilization review entity, a prior authorization for prescription pain medication shall not be denied to a covered person with a terminal illness by a healthcare insurer or utilization review entity, however, coverage for individual prescriptions may be subject to quantity limits and FDA approval as provided in the health benefit plan and may be monitored by the utilization review entity or healthcare insurer to limit drug diversion and abuse.



SECTION 4. EFFECTIVE DATE

The effective date of this Rule shall be June 6, 2016.

ALLEN W. KERR
INSURANCE COMMISSIONER

DATE

Arkansas Democrat Gazette

STATEMENT OF LEGAL ADVERTISING

ARK INSURANCE DEPARTMENT
1200 W THIRD
LITTLE ROCK AR 72201

REMIT TO:
ARKANSAS DEMOCRAT-GAZETTE, INC.
P.O. BOX 2221
LITTLE ROCK, AR 72203

ATTN: Booth Rand

DATE : 03/02/16 INVOICE #: 3102891
ACCT #: L801001 P.O. #:

BILLING QUESTIONS CALL 378-3547

STATE OF ARKANSAS,)
COUNTY OF PULASKI,) ss.

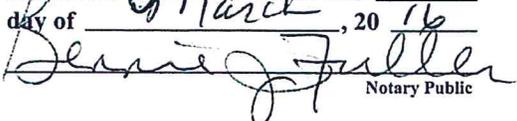
I, Yvette Hines, do solemnly swear that I am the Legal Billing Clerk of the Arkansas Democrat - Gazette, a daily newspaper printed and published in said County, State of Arkansas; that I was so related to this publication at and during the publication of the annexed legal advertisement in the matter of:

HEARING

pending in the Court, in said County, and at the dates of the several publications of said advertisement stated below, and that during said periods and at said dates, said newspaper was printed and had a bona fide circulation in said County; that said newspaper had been regularly printed and published in said County, and had a bona fide circulation therein for the period of one month before the date of the first publication of said advertisement; and that said advertisement was published in the regular daily issues of said newspaper as stated below.

DATE	DAY	LINAGE	RATE	DATE	DAY	LINAGE	RATE
02/29	Mon	33	1.35				
03/01	Tue	33	1.35				
03/02	Wed	33	1.35				

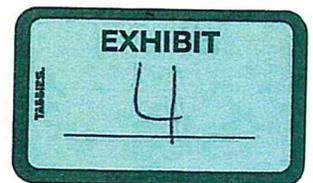
TOTAL COST ----- 133.65
Billing Ad #: 73583880


Subscribed and sworn to me this 2
day of March, 2016

Notary Public



AD COPY

NOTICE OF PUBLIC HEARING
The Arkansas Insurance Department will host a Public Hearing on April 14, 2016 beginning at 9:00 a.m. in the First Floor Hearing Room, Arkansas Insurance Department, 1200 West Third Street (Third and Cross Streets), Little Rock, Arkansas, to consider adoption of proposed Rule 114, "Prior Authorizations for Pain Medications for Terminal Illnesses." Copies of proposed Rule 114 may be obtained by writing or calling the Arkansas Insurance Department, or by visiting our internet site at http://www.state.ar.us/insurance/legal/legal_p1.html. Or www.accessarkansas.org/insurance for links there. For more information, please contact Ms. Loraine Rowland, Legal Division, Arkansas Insurance Department at 501-371-2820. 73583880f



RECEIVED

MAR 03 2016

LEGAL
ARKANSAS INSURANCE DEPT.

CC: Acct.

Brandy Wedsted

From: Legal Ads <legalads@arkansasonline.com>
Sent: Thursday, February 18, 2016 3:56 PM
To: Brandy Wedsted
Subject: Re: Legal Ad - Proposed Rule 114

Hello Brandy, received and processed for 3 days beginning 2/29.
Thanks!
Pam

From: [Brandy Wedsted](#)
Sent: Thursday, February 18, 2016 3:50 PM
To: 'Legal Ads'
Cc: [Brandy Wedsted](#) ; [LoRaine Rowland](#)
Subject: Legal Ad - Proposed Rule 114

Good afternoon Pam!

Please find attached a Legal Ad for Proposed Rule 114. Please confirm that the "Ad" can run on the requested dates.

Thank you,

Brandy Wedsted
Legal Support Specialist/Legal Division
Arkansas Insurance Department
1200 West 3rd Street
Little Rock, AR 72201
Office Phone) 501-371-2832
Office Fax) 501-371-2639
brandy.wedsted@arkansas.gov

Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

Friday, February 19, 2016

Arkansas Democrat-Gazette
P O Box 2221
Little Rock, AR 72203
Attn: Ms. Pam Dicus, Legal Ad Department
Facsimile: 501-378-3591

RE: Legal Notices: Public Hearing on Proposed Rule # 114

Dear Ms. Dicus:

The Insurance Commissioner is proposing to adopt Rule 114, "Prior Authorizations for Pain Medications for Terminal Illnesses." In order to publish it per the Arkansas Administrative Procedure Act, as amended, and per the Arkansas Insurance Code, we need to publish a **FULL RUN** legal ad or notice on the Commissioner's Public Hearing for the Rule set on April 14, 2016 at 9:00 a.m.

In compliance with Ark. Code Ann. § 25-15-204 and § 16-3-102, please find enclosed a legal ad for Notice of Public Hearing which should be published for three (3) consecutive days beginning on February 29, 2016.

Please send the billing invoices to Mrs. Courtney Traylor, Assistant Commissioner, Accounting Division, Arkansas Insurance Department, 1200 West Third, Little Rock, Arkansas 72201-1904, accompanied by a printed copy of the Legal Ad and proof of publication. Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Booth Rand".

Booth Rand
Managing Attorney/Legal Division
booth.rand@arkansas.gov

LRR

Attachment – Legal Ad for Proposed Rule 114 Adoption

cc: LoRraine Rowland, Administrative Analyst

NOTICE OF PUBLIC HEARING

The Arkansas Insurance Department will host a Public Hearing on April 14, 2016 beginning at 9:00 a.m. in the First Floor Hearing Room, Arkansas Insurance Department, 1200 West Third Street (Third and Cross Streets), Little Rock, Arkansas, to consider adoption of proposed Rule 114, "Prior Authorizations for Pain Medications for Terminal Illnesses." Copies of proposed Rule 114 may be obtained by writing or calling the Arkansas Insurance Department, or by visiting our Internet site at http://www.state.ar.us/insurance/legal/legal_p1.html. Or www.accessarkansas.org/insurance for links there. For more information, please contact Ms. LoRaine Rowland, Legal Division, Arkansas Insurance Department at 501-371-2820.

Brandy Wedsted

From: Arkansas Insurance Department
<insurance.legal@arkansas.gov@mail224.atl61.mcsv.net> on behalf of Arkansas Insurance Department <insurance.legal@arkansas.gov>
Sent: Friday, February 19, 2016 11:00 AM
To: Brandy Wedsted
Subject: Proposed Rule 114: "Pain Medication Authorizations For Terminal Illnesses"

Proposed Rule 114: "Pain Medication Authorizations For Terminal Illnesses"

[View this email in your browser](#)

Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

Legal Notice

Proposed Rule 114

Please click on the link below to view the Department's Proposed Rule 114, "Pain Medication Authorizations For Terminal Illnesses".

<http://www.insurance.arkansas.gov/prop-rules.htm>

Direct your inquiries to Booth Rand, Legal Division of the Arkansas Insurance Department at (501) 371-2820 or insurance.legal@arkansas.gov.

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1200 West Third Street, Little Rock, AR 72201-1904 · (501) 371-2600 · (501) 371-2618 fax · www.insurance.arkansas.gov
Information (800) 282-9134 · Consumer Services (800) 852-5494 · Seniors (800) 224-6330 · Criminal Inv. (866) 660-0888

Proposed Rule 114: "Pain Medication Authorizations For Terminal Illnesses"

Switch report ▾

1,545 Recipients

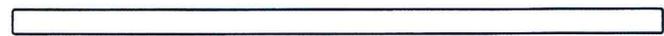
List: AID Legal Notice List

Delivered: Fri, Feb 19, 2016 10:59 am

Subject: Proposed Rule 114: "Pain Medication Authorizations For Terminal Illnesses"

Open rate **20.1%**

Click rate **6.3%**



List average **23.7%**

List average **7.8%**

Industry average (Government) **21.1%**

Industry average (Government) **2.5%**

310 Opened	98 Clicked	1 Bounced	1 Unsubscribed
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Successful deliveries **1,544** 99.9%

Clicks per unique opens **31.6%**

Total opens **653**

Total clicks **139**

Last opened 4/13/16 8:49AM

Last clicked 3/28/16 10:54AM

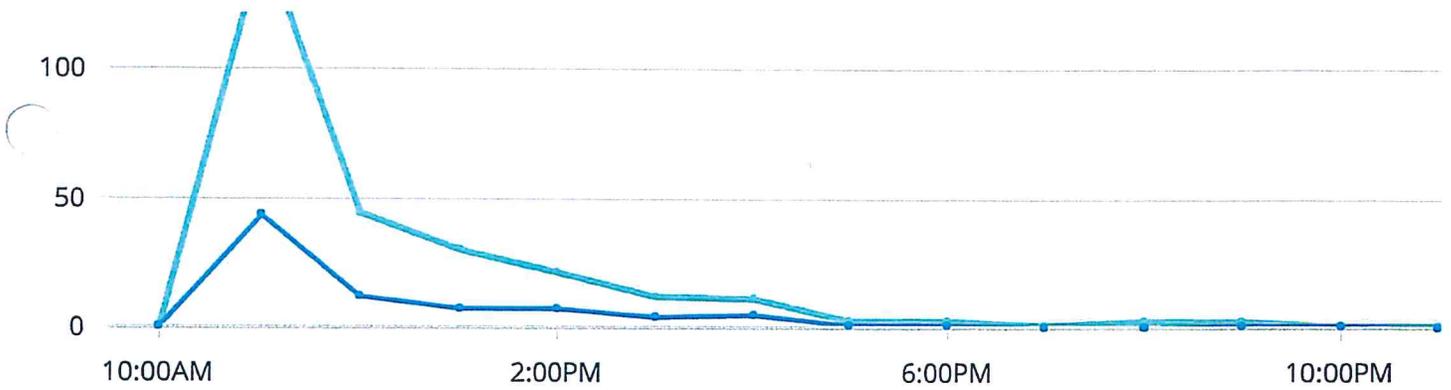
Forwarded **0**

Abuse reports **1**

24-hour performance

Opens Clicks





Top links clicked

<http://www.insurance.arkansas.gov/prop-rules.htm> 139

Subscribers with most opens

adrienne.mann@stewart.com 37

adrian@walkerbr.com 36

guevaram@ushealthgroup.com 26

ragenea_k_thompson@uhc.com 17

brandy.wedsted@arkansas.gov 12

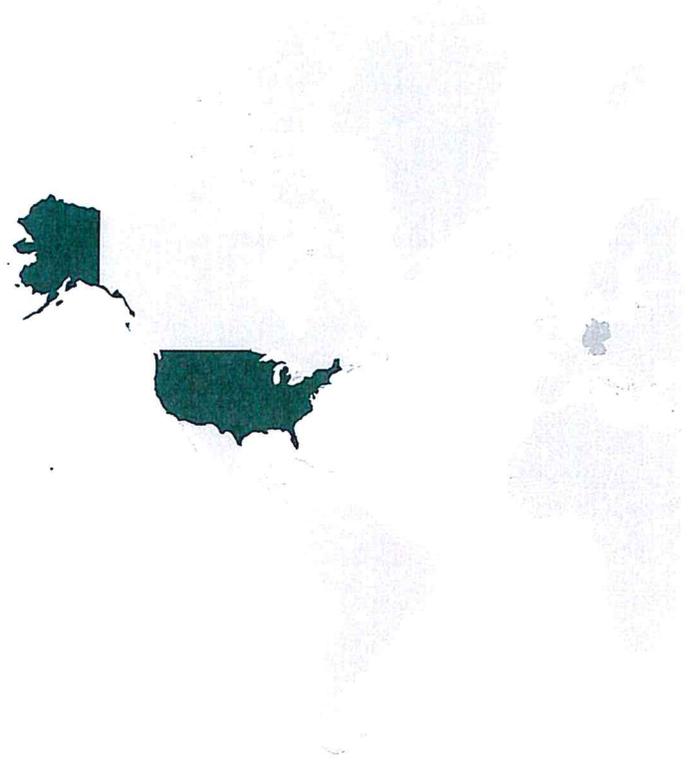
Social performance

0 Tweets	2 EepURL clicks	0 Likes
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Top locations by opens

USA 70 98.6%

Germany 1 1.4%



Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

February 19, 2016

HAND DELIVERY

Ms. Donna Davis
Arkansas Legislative Council
Arkansas Bureau of Legislative Research
State Capitol, Suite 315
Little Rock, Arkansas 72201

RECEIVED
FEB 19 2016
BUREAU OF
LEGISLATIVE RESEARCH

RE: Proposed Rule 114: "Prior Authorizations For Pain Medications For Terminal Illnesses"

Dear Ms. Davis:

Enclosed for your review and for filing with the Subcommittee of the Arkansas Legislative Council, is proposed Rule 114, "Prior Authorizations For Pain Medications For Terminal Illnesses." The Arkansas Insurance Department ("Department") is proposing a rule to implement Act 992 of 2015, "An Act To Regulate the Prior Authorization Procedure For Treatment Of A Terminal Illness." The proposed Rule addresses coverage of prescription pain medication, as authorized under the Act, for persons with a terminal illness.

The Department has scheduled a public hearing for April 14, 2016, at 9:00 A.M., at the Arkansas Insurance Department, to consider adopting this proposed Rule.

I have enclosed a triplicate set of the proposed Rule, our Notice of Public Hearing, the standard Questionnaire, Financial Impact Statement as well as a summary of the proposed Rule.

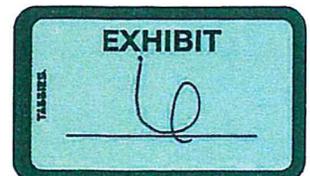
Sincerely,

A handwritten signature in black ink, appearing to read "Booth Rand".

Booth Rand
Managing Attorney/Legal Division
booth.rand@arkansas.gov

cc: LoRaine Rowland, Administrative Analyst

BR/lrr



**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Insurance Department
DIVISION Legal Division
DIVISION DIRECTOR Suzanne Tipton, Deputy Commissioner & General Counsel
CONTACT PERSON Booth Rand, Managing Attorney
ADDRESS 1200 West Third Street, Little Rock, Arkansas 72201-1904
PHONE NO. 501-371-2820 FAX NO. 501-371-2618 MAIL booth.rand@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Booth Rand, Managing Attorney
PRESENTER E-MAIL booth.rand@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Rule 114: Prior Authorizations for Pain Medications for Terminal Illnesses

2. What is the subject of the proposed rule? The proposed Rule clarifies coverage limits under Act 992 of 2015, "An Act to Regulate the Prior Authorization Procedure for Treatment of a Terminal Illness"

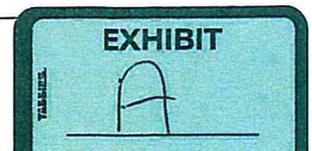
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____



Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation. See attached Summary.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. N/A

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. This Rule is issued pursuant to Ark. Code Ann. § 23-99-414 which authorizes the Arkansas Insurance Commissioner ("Commissioner") to promulgate rules necessary to carry out the "Arkansas Health Care Consumer Act" subchapter. Act 992 of 2015, "An Act to Regulate the Prior Authorization Procedure for Treatment of a Terminal Illness," adds various provisions to the prior authorization section in the "Arkansas Health Care Consumer Act."

7. What is the purpose of this proposed rule? Why is it necessary? See attached Summary. The proposed Rule clarifies coverage restrictions under Act 992 of 2015, "An Act to Regulate the Prior Authorization Procedure for Treatment of a Terminal Illness" to be consistent with health plan restrictions and patient safety for pain medications for persons with terminal illnesses.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://www.insurance.arkansas.gov/prop-rules.htm>

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: April 14, 2016

Time: 9:00 A.M.

Arkansas Insurance Department, 1200
West Third Street, Little Rock,

Place: Arkansas

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

April 14, 2016 unless extended by the Commissioner following the April 14, 2016 public hearing.

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

January 1, 2016; however this is flexible to be effective later or earlier depending upon approval by Governor's office, timing of the 30 days hearing notice, and subsequent ALC review calendar

availability.

12. Do you expect this rule to be controversial? Yes No

If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?

Please provide their position (for or against) if known.

We do not know of these persons or groups at this time, but will update this information in public comment summaries after it is scheduled.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Insurance Department
DIVISION Legal Division
PERSON COMPLETING THIS STATEMENT Booth Rand, Managing Attorney
TELEPHONE NO. 501-519-0484 **FAX NO.** 501-371-2618 **EMAIL:** booth.rand@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule 109: Orthotic and Prosthetic Reimbursement

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue N/A
Federal Funds N/A
Cash Funds N/A
Special Revenue N/A
Other (Identify) N/A

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue N/A
 Federal Funds N/A
 Cash Funds N/A
 Special Revenue N/A
 Other (Identify) N/A
 Total N/A

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ Unknown

\$ _____

We do not know right now what the exact cost impact to insurers and health benefit plans this reimbursement adjustment will create but we do not believe it significant and will update this information as soon as available.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ None

\$ _____

We already review these mandates with current staffing

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS
EO 05-04: Regulatory Flexibility**

Department: Arkansas Insurance Department
Contact Person: Booth Rand
Contact Phone: 501-371-2820

Division: Legal
Date: February 19, 2016
Contact Email: booth.rand@arkansas.gov

Title or Subject:

Proposed Rule 114 "Prior Authorizations for Pain Medications for Terminal Illnesses"

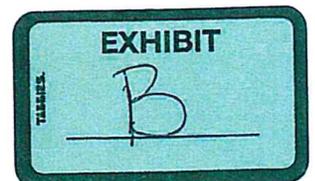
Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

The proposed rule is needed to clarify Act 992 of 2015, "An Act to Regulate the Prior Authorization Procedure for Treatment of a Terminal Illness." The proposed rule explains in Section Three (3) of the Rule that the intent of this Act was not to permit persons with terminal illnesses to receive an unlimited supply of pain medication in the prescription drug coverage in health plans beyond coverage limits in the health plan, nor permit persons to have the health plans cover non FDA approved pain medication. This is due to medical safety issues, potential abuse, and is consistent with already existing quantity limit restrictions in the health policies. The proposed rule is simply clarifying this, and the sponsor of the Act intended to agree to place this explanation or wording in the legislation but was unable to do so due to time left in the session. The understanding was that the Insurance Department could later issue a Rule explaining this limitation.

2. What are the top three benefits of the proposed rule or regulation?
 1. Makes Act 992 of 2015 consistent with patient safety with pain medication.
 2. Makes Act 992 of 2015 consistent with health plan prescription coverage pain medication quantity limits.
 3. Reduces confusion that the law in Act 992 now requires unlimited coverage and authorizations of pain medications without being subject to plan limits or medical patient safety or monitoring.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

Confusion as to the scope of coverage for pain medication for persons with terminal illnesses.



4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.

None.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

None.

6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

None.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

None.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

None.

9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.

None.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

The propose Rule does not require "small business owners" to implement provisions in the proposed Rule.

11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?

This proposed rule is not patterned after any state or federal rule or law or model. It simply is a AID based rule being promulgated to clarify the meaning of a State mandated insurance coverage requirement related to prior authorizations for pain medication for persons with terminal illnesses.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

None so far as of the date of filing. We will be glad to submit this summary and comments as soon as, or if we receive them.

SUMMARY

AID PROPOSED RULE 114: PRIOR AUTHORIZATIONS FOR PAIN MEDICATIONS FOR TERMINAL ILLNESSES

- The proposed rule is needed to clarify Act 992 of 2015, “An Act to Regulate the Prior Authorization Procedure for Treatment of a Terminal Illness.” The rule is needed to explain that the intent of the Act above was not to permit a person to receive an unlimited amount of pain medication in prescription coverage for persons with terminal illnesses without being subject to plan quantity limits or medical safety monitoring.
- The sponsor agreed to this restriction however an amendment was not allowed to timely be added before expiration of the last regular legislative session, and the objective was that the Insurance Department could promulgate a rule describing this restriction as outlined in Section Three (3) of the proposed rule.
- An insurer and sponsoring Senator have now requested this Rule to AID. We have sent this draft proposed to the Sponsor of Act 992 of 2015, Senator Irvin, who reviewed and has agreed or approved as to the currently proposed language. AID also agrees that the clarification makes the law more consistent with health plan prescription coverage which may have quantitative limits as well as FDA required approval. The proposed rule is therefore needed to be consistent with what’s already restricted in health plan coverage and medical safety or utilization.



Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

February 19, 2016

Arkansas Secretary of State
State Capitol Building
Little Rock, AR 72201
Attn. Arkansas Register

Re: Rule 114, "Prior Authorizations for Pain Medications for Terminal Illnesses"

Dear Secretary:

Arkansas Act 1478 of 2003 adds to requirements for adoption and re-adoption of public agency rules and regulations. In that regard, the new Act:

- (a) Requires notice of proposed Rule 114, as well as the Public Rule Hearing at the Arkansas Insurance Department, to be published by the Arkansas Secretary Of State on the Internet for thirty (30) days pursuant to Ark. Code Ann. § 25-15-218 of the Arkansas Administrative Procedure Act, as amended; and
- (b) Requires DOI filing of its adopted and proposed rules and notices with the Arkansas Secretary Of State in an electronic format acceptable to the Secretary.

In that regard, the Department has scheduled a public hearing as to proposed adoption of Rule 114. Enclosed are the DOI Notices of Public Hearing and a copy of the proposed rule.

Please arrange to publish the information in a format acceptable to the Secretary for at least 30 days in advance. Can you send us confirmation that we can use in the transcript as a public hearing exhibit?

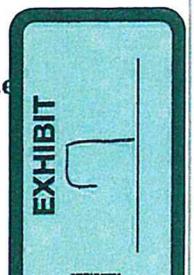
An electronic filing will be made within the statutorily required 7 days. Thanks for your help.

Sincerely,


Booth Rand
Managing Attorney/Legal Division
Booth.rand@arkansas.gov

Enclosures

FILED
FEB 19 2016
Arkansas
Secretary of State



ARKANSAS STATE LIBRARY



Agency Certification Form For Depositing Orders At the Arkansas State Library

Documents Services • Arkansas State Library
One Capitol Mall • Little Rock, AR 72201-1094
501-682-2326 phone; 501-682-1532 FAX

For Office Use Only		
Effective Date:		Classification Number:
Name of Agency: Arkansas Insurance Department, Legal Division 1200 West Third Street, Little Rock, Arkansas 72201-1904		
Contact Person: LoRraine Rowland, Administrative Analyst		Telephone: 501-371-2831
Statutory Authority for Promulgating Orders: §23-61-205, §23-61-306		
RULE 114		
		Date Signed
Rule 114	"Prior Authorizations for Pain Medications for Terminal Illnesses " 2/19/2016	
Adopted by State Agency	Filed with Secretary of State	Effective Date
Assorted See Above	February 19, 2016	Assorted See Above
Certification of Authorized Officer		
I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.		
Signature: <u>LoRraine Rowland</u>		Date: <u>02/19/2016</u>
Title: <u>Administrative Analyst</u>		

1/14/99



Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

February 19, 2016

Mr. Ed Armstrong, ESQ.
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

RE: *Arkansas Insurance Department Proposed Rule 114: "Prior Authorizations for Pain Medications for Terminal Illnesses"*

Dear Mr. Armstrong:

Enclosed for your review is the Arkansas Insurance Department's proposed Rule 114, "Prior Authorizations for Pain Medications for Terminal Illnesses."

The Arkansas Insurance Department ("Department") is proposing a Rule to implement Act 992 of 2015, "An Act To Regulate the Prior Authorization Procedure For Treatment Of A Terminal Illness." The proposed Rule addresses coverage of prescription pain medication for persons with a terminal illness.

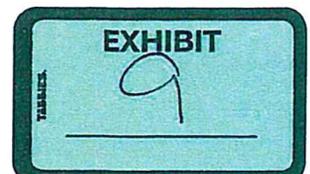
The Department has scheduled a public hearing for April 14, 2016, at 9:00 A.M., at the Arkansas Insurance Department, to consider adopting this proposed Rule.

Please do not hesitate to contact me at 371-2820 if you have any questions.

Sincerely,


Booth Rand
Managing Attorney/Legal Division
booth.rand@arkansas.gov

cc: LoRaine Rowland, Administrative Analyst



Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

February 19, 2016

VIA STATE MESSENGER

Ms. Katie Beck
Regulatory Liaison
Office of the Governor
State Capitol Building
Little Rock, AR 72201

RE: Arkansas Insurance Department Proposed Rule 114: Prior Authorizations for Pain Medications for Terminal Illnesses

Dear Ms. Beck:

Katie, as previously sent to the Governor's office for review and approval, please find enclosed a copy of a proposed filed Rule by the Arkansas Insurance Department, Rule 114, "Prior Authorizations for Pain Medications for Terminal Illnesses." Last fall, the Commissioner and I met with Senator Irvin, Vu Ritchie, Justin Tate, and Carlton Saffa to explain this proposed Rule. I'm sending you a brief summary explaining the purpose of this proposed Rule. Mr. Ritchie notified AID via an email on November 10, 2015 that the Governor's office approved issuance of this proposed Rule. We have not modified the draft of the proposed Rule since the date of the approval other than changing the rule number and the effective date. It was earlier numbered Rule 105, and, due to the number of rules we had underway during that time, we have had to renumber this to Rule 114. The proposed effective date is June 6, 2016.

The Department has scheduled a public hearing to consider comments for adoption of this proposed Rule, and this is set for April 14, 2016, at 9:00 A.M. at AID.

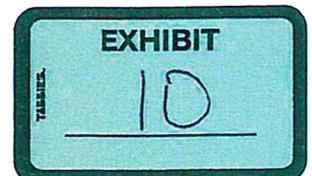
Please do not hesitate to contact me at 371-2820 if you have any questions.

Sincerely,

Booth Rand
Managing Attorney/Legal Division
booth.rand@arkansas.gov

cc: LoRaine Rowland, Administrative Analyst

Mr. Vu Ritchie, Deputy Legal Counsel
Office of Governor Asa Hutchinson



Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

February 19, 2016

Ms. Pat Brown
Economic Development Commission
One Capitol Mall
Little Rock, AR 72202

RE: Arkansas Insurance Department Rule 114: "Prior Authorizations for Pain Medications for Terminal Illnesses"

Dear Ms. Brown:

Enclosed for your review is the Arkansas Insurance Department's proposed Rule 114, "Prior Authorizations for Pain Medications for Terminal Illnesses."

The Arkansas Insurance Department ("Department") is proposing a rule to implement Act 992 of 2015, "An Act To Regulate the Prior Authorization Procedure For Treatment Of A Terminal Illness." The proposed Rule addresses coverage of prescription pain medication, as authorized under the Act, for persons with a terminal illness.

The Department has scheduled a public hearing for April 14, 2016, at 9:00 A.M., at the Arkansas Insurance Department, to consider adopting this proposed Rule.

Please do not hesitate to contact me at 371-2820 if you have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Lorraine Rowland".

LoRraine Rowland
Administrative Analyst/Legal Division
Lorraine.rowland@arkansas.gov
501-371-2831

Enclosures

LRR/



Stricken language would be deleted from and underlined language would be added to present law.
Act 1106 of the Regular Session

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: 5/12/15

A Bill

SENATE BILL 318

5 By: Senator Irvin
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE PRIOR AUTHORIZATION
9 TRANSPARENCY ACT; TO ENSURE TRANSPARENCY IN USE OF
10 PRIOR AUTHORIZATIONS FOR MEDICAL TREATMENT; AND FOR
11 OTHER PURPOSES.
12
13

Subtitle

15 TO ESTABLISH THE PRIOR AUTHORIZATION
16 TRANSPARENCY ACT; AND TO ENSURE
17 TRANSPARENCY IN USE OF PRIOR
18 AUTHORIZATIONS FOR MEDICAL TREATMENT.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 *SECTION 1. Arkansas Code § 23-99-420 is repealed.*

24 ~~*23-99-420. Prior authorization.*~~

25 ~~*(a) As used in this section:*~~

26 ~~*(1) "Fail first" means a protocol by a healthcare insurer*~~
27 ~~*requiring that a healthcare service preferred by a healthcare insurer shall*~~
28 ~~*fail to help a patient before the patient receives coverage for the*~~
29 ~~*healthcare service ordered by the patient's healthcare provider;*~~

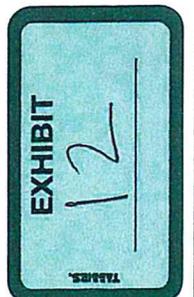
30 ~~*(2) "Health benefit plan" means any individual, blanket, or group*~~
31 ~~*plan, policy, or contract for healthcare services issued or delivered by a*~~
32 ~~*healthcare insurer in the state;*~~

33 ~~*(3)(A) "Healthcare insurer" means an insurance company, a health*~~
34 ~~*maintenance organization, and a hospital and medical service corporation.*~~

35 ~~*(B) "Healthcare insurer" does not include workers'*~~
36 ~~*compensation plans or Medicaid;*~~



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1 ~~(4) "Healthcare provider" means a doctor of medicine, a doctor of~~
2 ~~osteopathy, or another healthcare professional acting within the scope of~~
3 ~~practice for which he or she is licensed;~~

4 ~~(5) "Healthcare service" means a healthcare procedure, treatment,~~
5 ~~service, or product, including without limitation prescription drugs and~~
6 ~~durable medical equipment ordered by a healthcare provider;~~

7 ~~(6) "Medicaid" means the state federal medical assistance program~~
8 ~~established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et~~
9 ~~seq.;~~

10 ~~(7) "Prior authorization" means the process by which a healthcare~~
11 ~~insurer or a healthcare insurer's contracted private review agent determines~~
12 ~~the medical necessity or medical appropriateness, or both, of otherwise~~
13 ~~covered healthcare services before the rendering of the healthcare services,~~
14 ~~including without limitation:~~

15 ~~(A) Preadmission review;~~

16 ~~(B) Pretreatment review;~~

17 ~~(C) Utilization review;~~

18 ~~(D) Case management; and~~

19 ~~(E) Any requirement that a patient or healthcare provider~~
20 ~~notify the healthcare insurer or a utilization review agent before providing~~
21 ~~a healthcare service;~~

22 ~~(8)(A) "Private review agent" means a nonhospital-affiliated~~
23 ~~person or entity performing utilization review on behalf of:~~

24 ~~(i) An employer of employees in the State of~~
25 ~~Arkansas; or~~

26 ~~(ii) A third party that provides or administers~~
27 ~~hospital and medical benefits to citizens of this state, including:~~

28 ~~(a) A health maintenance organization issued a~~
29 ~~certificate of authority under and by virtue of the laws of the State of~~
30 ~~Arkansas; and~~

31 ~~(b) A health insurer, nonprofit health service~~
32 ~~plan, health insurance service organization, or preferred provider~~
33 ~~organization or other entity offering health insurance policies, contracts,~~
34 ~~or benefits in this state.~~

35 ~~(B) "Private review agent" includes a healthcare insurer if~~
36 ~~the healthcare insurer performs prior authorization determinations.~~

1 ~~(C) "Private review agent" does not include automobile,~~
2 ~~homeowner, or casualty and commercial liability insurers or their employees,~~
3 ~~agents, or contractors;~~

4 ~~(9) "Self insured health plan for employees of governmental~~
5 ~~entity" means a trust established under §§ 14-54-101 and 25-20-104 to provide~~
6 ~~benefits such as accident and health benefits, death benefits, dental~~
7 ~~benefits, and disability income benefits; and~~

8 ~~(10) "Step therapy" means a protocol by a healthcare insurer~~
9 ~~requiring that a patient not be allowed coverage of a prescription drug~~
10 ~~ordered by the patient's healthcare provider until other less expensive drugs~~
11 ~~have been tried.~~

12 ~~(b) The purpose of this section is to ensure that prior authorization~~
13 ~~determination protocols safeguard a patient's best interests.~~

14 ~~(c)(1) An adverse prior authorization determination made by a~~
15 ~~utilization review agent shall be based on the medical necessity or~~
16 ~~appropriateness of the healthcare services and shall be based on written~~
17 ~~clinical criteria.~~

18 ~~(2) An adverse prior authorization determination shall be made by~~
19 ~~a qualified healthcare professional.~~

20 ~~(d) This section applies to a healthcare insurer whether or not the~~
21 ~~healthcare insurer is acting directly or indirectly or through a private~~
22 ~~review agent and to a self-insured health plan for employees of governmental~~
23 ~~entities. However, a self-insured plan for employees of governmental entities~~
24 ~~is not subject to subdivision (g)(4)(C) of this section or oversight by the~~
25 ~~Arkansas State Medical Board, State Board of Health, or the State Insurance~~
26 ~~Department.~~

27 ~~(e) If the patient or the patient's healthcare provider, or both,~~
28 ~~receive verbal notification of the adverse prior authorization determination,~~
29 ~~the qualified healthcare professional who makes an adverse prior~~
30 ~~authorization determination shall provide the information required for the~~
31 ~~written notice under subdivision (g)(1) of this section.~~

32 ~~(f) Written notice of an adverse prior authorization determination~~
33 ~~shall be provided to the patient's healthcare provider requesting the prior~~
34 ~~authorization by fax or hard copy letter sent by regular mail, as requested~~
35 ~~by the patient's healthcare provider.~~

36 ~~(g) The written notice required under subsection (e) of this section~~

1 ~~shall include:~~

2 ~~(1)(A) The name, title, address, and telephone number of the~~
3 ~~healthcare professional responsible for making the adverse determination.~~

4 ~~(B) For a physician, the notice shall identify the~~
5 ~~physician's board certification status or board eligibility.~~

6 ~~(C) The notice under this subsection shall identify each~~
7 ~~state in which the healthcare professional is licensed and the license number~~
8 ~~issued to the professional by each state;~~

9 ~~(2) The written clinical criteria, if any, and any internal rule,~~
10 ~~guideline, or protocol on which the healthcare insurer relied when making the~~
11 ~~adverse prior authorization determination and how those provisions apply to~~
12 ~~the patient's specific medical circumstance;~~

13 ~~(3) Information for the patient and the patient's healthcare~~
14 ~~provider through which the patient or healthcare provider may request a copy~~
15 ~~of any report developed by personnel performing the utilization review that~~
16 ~~led to the adverse prior authorization determination; and~~

17 ~~(4)(A) Information explaining to the patient and the patient's~~
18 ~~healthcare provider the right to appeal the adverse prior authorization~~
19 ~~determination.~~

20 ~~(B) The information required under subdivision (g)(4)(A) of~~
21 ~~this section shall include instructions concerning how an appeal may be~~
22 ~~perfected and how the patient and the patient's healthcare provider may~~
23 ~~ensure that written materials supporting the appeal will be considered in the~~
24 ~~appeal process.~~

25 ~~(C) The information required under subdivision (g)(4)(A) of~~
26 ~~this section shall include addresses and telephone numbers to be used by~~
27 ~~healthcare providers and patients to make complaints to the Arkansas State~~
28 ~~Medical Board, the State Board of Health, and the State Insurance Department.~~

29 ~~(h)(1) When a healthcare service for the treatment or diagnosis of any~~
30 ~~medical condition is restricted or denied for use by prior authorization or~~
31 ~~step therapy or a fail first protocol in favor of a healthcare service~~
32 ~~preferred by the healthcare insurer, the patient's healthcare provider shall~~
33 ~~have access to a clear and convenient process to expeditiously request an~~
34 ~~override of that restriction or denial from the healthcare insurer.~~

35 ~~(2) Upon request, the patient's healthcare provider shall be~~
36 ~~provided contact information, including a phone number, for the person or~~

1 ~~persons who should be contacted to initiate the request for an expeditious~~
2 ~~override of the restriction or denial.~~

3 ~~(i) Requested healthcare services shall be deemed preauthorized if a~~
4 ~~healthcare insurer or self-insured health plan for employees of governmental~~
5 ~~entities fails to comply with this section.~~

6 ~~(j)(1) On and after January 1, 2014, to establish uniformity in the~~
7 ~~submission of prior authorization forms, a healthcare insurer shall utilize~~
8 ~~only a single standardized prior authorization form for obtaining a prior~~
9 ~~authorization in written or electronic form for prescription drug benefits.~~

10 ~~(2) A healthcare insurer may make the form required under~~
11 ~~subdivision (j)(1) of this section accessible through multiple computer~~
12 ~~operating systems.~~

13 ~~(3) The prior authorization form required under subdivision~~
14 ~~(j)(1) of this section shall:~~

15 ~~(A) Not exceed two (2) pages; and~~

16 ~~(B) Be designed to be submitted electronically from a~~
17 ~~prescribing provider to a healthcare insurer.~~

18 ~~(4) This subsection does not prohibit a prior authorization by~~
19 ~~verbal means without a form.~~

20 ~~(5) If a healthcare insurer fails to use or accept the prior~~
21 ~~authorization form developed under this subsection or fails to respond as~~
22 ~~soon as reasonably possible but no later than seventy-two (72) hours after~~
23 ~~receipt of a completed prior authorization request using the form developed~~
24 ~~under this subsection, the prior authorization request is granted.~~

25 ~~(6)(A) On and after January 1, 2014, each healthcare insurer~~
26 ~~shall submit its prior authorization form to the State Insurance Department~~
27 ~~to be kept on file.~~

28 ~~(B) A copy of a subsequent replacement or modification of a~~
29 ~~healthcare insurer's prior authorization form shall be filed with the~~
30 ~~department within fifteen (15) days before the prior authorization form is~~
31 ~~used or before implementation of the replacement or modification.~~

32
33 SECTION 2. Arkansas Code Title 23, Chapter 99, is amended to add an
34 additional subchapter to read as follows:

35
36 Subchapter 9 – Prior Authorization Transparency Act

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23-99-901. Title.

This subchapter shall be known and may be cited as the "Prior Authorization Transparency Act".

23-99-902. Legislative findings and intent.

(a) The General Assembly finds that:

(1) A physician-patient relationship is paramount and should not be subject to third-party intrusion; and

(2) Prior authorizations can place attempted cost savings ahead of optimal patient care.

(b) The General Assembly intends for this subchapter to:

(1) Ensure that prior authorizations do not hinder patient care or intrude on the practice of medicine; and

(2) Guarantee that prior authorizations include the use of written clinical criteria and reviews by appropriate physicians to secure a fair authorization review process for patients.

23-99-903. Definitions.

As used in this subchapter:

(1)(A) "Adverse determination" means a decision by a utilization review entity to deny, reduce, or terminate coverage for a healthcare service furnished or proposed to be furnished to a subscriber on the basis that the healthcare service is not medically necessary or is experimental or investigational in nature.

(B) "Adverse determination" does not include a decision to deny, reduce, or terminate coverage for a healthcare service on any basis other than medical necessity or that the healthcare service is experimental or investigational in nature;

(2) "Authorization" means that a utilization review entity has:

(A) Reviewed the information provided concerning a healthcare service furnished or proposed to be furnished;

(B) Found that the requirements for medical necessity and appropriateness of care have been met; and

(C) Determined to pay for the healthcare service according to the provisions of the health benefit plan;

1 (3) "Clinical criteria" means any written policy, written
2 screening procedures, drug formularies, lists of covered drugs, determination
3 rules, determination abstracts, clinical protocols, practice guidelines,
4 medical protocols, and other criteria or rationale used by the utilization
5 review entity to determine the necessity and appropriateness of a healthcare
6 service;

7 (4) "Emergency healthcare service" means a healthcare service
8 provided in a fixed facility in the first few hours after an injury or after
9 the onset of an acute medical or obstetric condition that manifests itself by
10 one (1) or more symptoms of such severity, including severe pain, that in the
11 absence of immediate medical care would reasonably be expected to result in:

12 (A) Serious impairment of bodily function;

13 (B) Serious dysfunction of or damage to any bodily organ
14 or part; or

15 (C) Death or threat of death;

16 (5) "Expedited prior authorization" means prior authorization
17 and notice of that prior authorization for an urgent healthcare service to a
18 subscriber or the subscriber's healthcare provider within one (1) business
19 day after the utilization review entity receives all information needed to
20 complete the review of the requested urgent healthcare service;

21 (6) "Fail first" means a protocol by a healthcare insurer
22 requiring that a healthcare service preferred by a healthcare insurer shall
23 fail to help a patient before the patient receives coverage for the
24 healthcare service ordered by the patient's healthcare provider;

25 (7) "Health benefit plan" means any individual, blanket, or
26 group plan, policy, or contract for healthcare services issued or delivered
27 by a healthcare insurer in this state;

28 (8)(A) "Healthcare insurer" means an insurance company, health
29 maintenance organization, and a hospital and medical service corporation.

30 (B) "Healthcare insurer" does not include workers'
31 compensation plans or Medicaid;

32 (9) "Healthcare provider" means a doctor of medicine, a doctor
33 of osteopathy, or another licensed health care professional acting within the
34 professional's licensed scope of practice;

35 (10)(A) "Healthcare service" means a healthcare procedure,
36 treatment, or service;

1 (i) Provided by a facility licensed in this state or
2 in the state where the facility is located; or

3 (ii) Provided by a doctor of medicine, a doctor of
4 osteopathy, or by a healthcare professional within the scope of practice for
5 which the healthcare professional is licensed in this state.

6 (B) "Healthcare service" includes the provision of
7 pharmaceutical products or services or durable medical equipment;

8 (11) "Medicaid" means the state-federal medical assistance
9 program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396
10 et seq.;

11 (12) "Medically necessary healthcare service" means a healthcare
12 service that a healthcare provider provides to a patient in a manner that is:

13 (A) In accordance with generally accepted standards of
14 medical practice;

15 (B) Clinically appropriate in terms of type, frequency,
16 extent, site, and duration; and

17 (C) Not primarily for the economic benefit of the health
18 plans and purchasers or for the convenience of the patient, treating
19 physician, or other healthcare provider;

20 (13) "Nonmedical approval" means a decision by a utilization
21 review entity to approve coverage and payment for a healthcare service
22 according to the provisions of the health benefit plan on any basis other
23 than whether the healthcare service is medically necessary or is experimental
24 or investigational in nature;

25 (14) "Nonmedical denial" means a decision by a utilization
26 review entity to deny, reduce, or terminate coverage for a healthcare service
27 on any basis other than whether the healthcare service is medically necessary
28 or the healthcare service is experimental or investigational in nature;

29 (15) "Nonmedical review" means the process by which a
30 utilization review entity decides to approve or deny coverage of or payment
31 for a healthcare service before or after it is given on any basis other than
32 whether the healthcare service is medically necessary or the healthcare
33 service is experimental or investigational in nature;

34 (16)(A) "Prior authorization" means the process by which a
35 utilization review entity determines the medical necessity and medical
36 appropriateness of an otherwise covered healthcare service before the

1 healthcare service is rendered, including without limitation preadmission
2 review, pretreatment review, utilization review, and case management.

3 (B) "Prior authorization" may include the requirement by a
4 health insurer or a utilization review entity that a subscriber or healthcare
5 provider notify the health insurer or utilization review entity of the
6 subscriber's intent to receive a healthcare service before the healthcare
7 service is provided;

8 (17) "Self-insured health plan for employees of governmental
9 entity" means a trust established under § 14-54-101 et seq. or § 25-20-104 to
10 provide benefits such as accident and health benefits, death benefits,
11 disability benefits, and disability income benefits;

12 (18) "Step therapy" means a protocol by a healthcare insurer
13 requiring that a subscriber not be allowed coverage of a prescription drug
14 ordered by the subscriber's healthcare provider until other less expensive
15 drugs have been tried;

16 (19)(A) "Subscriber" means an individual eligible to receive
17 coverage of healthcare services by a healthcare insurer under a health
18 benefit plan.

19 (B) "Subscriber" includes a subscriber's legally
20 authorized representative;

21 (20) "Urgent healthcare service" means a healthcare service for
22 a non-life-threatening condition that, in the opinion of a physician with
23 knowledge of a subscriber's medical condition, requires prompt medical care
24 in order to prevent:

25 (i) A serious threat to life, limb, or eyesight;

26 (ii) Worsening impairment of a bodily function that
27 threatens the body's ability to regain maximum function;

28 (iii) Worsening dysfunction or damage of any bodily
29 organ or part that threatens the body's ability to recover from the
30 dysfunction or damage; or

31 (iv) Severe pain that cannot be managed without
32 prompt medical care; and

33 (21)(A) "Utilization review entity" means an individual or
34 entity that performs prior authorization or nonmedical review for at least
35 one (1) of the following:

36 (i) An employer with employees in this state who are

1 covered under a health benefit plan or health insurance policy;
2 (ii) An insurer that writes health insurance
3 policies;
4 (iii) A preferred provider organization or health
5 maintenance organization; or
6 (iv) Any other individual or entity that provides,
7 offers to provide, or administers hospital, outpatient, medical, or other
8 health benefits to a person treated by a healthcare provider in this state
9 under a policy, plan, or contract.
10 (B) A health insurer is a utilization review entity if it
11 performs prior authorization.
12 (C) "Utilization review entity" does not include an
13 insurer of automobile, homeowner, or casualty and commercial liability
14 insurance or the insurer's employees, agents, or contractors.
15
16 23-99-904. Disclosure required.
17 (a)(1) A utilization review entity shall post all of its prior
18 authorization and nonmedical review requirements and restrictions, including
19 any written clinical criteria, on the public part of its website.
20 (2) The information described in subdivision (a)(1) of this
21 section shall be explained in detail and in clear and ordinary terms.
22 (b) Before a utilization review entity implements a new or amended
23 prior authorization or nonmedical review requirement or restriction as
24 described in subdivision (a)(1) of this section, the utilization review
25 entity shall update its website to reflect the new or amended requirement or
26 restriction.
27 (c) Before implementing a new or amended prior authorization or
28 nonmedical review requirement or restriction, a utilization review entity
29 shall provide contracted healthcare providers written notice of the new or
30 amended requirement or restriction at least sixty (60) days before
31 implementation of the new or amended requirement or restriction.
32 (d)(1) A utilization review entity shall make statistics available
33 regarding prior authorization approvals and denials and nonmedical approvals
34 and denials on its website in a readily accessible format.
35 (2) The utilization review entity shall include categories for:
36 (A) Physician specialty;

- 1 (B) Medication or a diagnostic test or procedure;
- 2 (C) Indication offered; and
- 3 (D) Reason for denial.
- 4

5 23-99-905. Prior authorization – Nonurgent healthcare service.

6 (a) If a utilization review entity requires prior authorization of a
7 nonurgent healthcare service, the utilization review entity shall make an
8 authorization or adverse determination and notify the subscriber and the
9 subscriber's nonurgent healthcare provider of the decision within two (2)
10 business days of obtaining all necessary information to make the
11 authorization or adverse determination.

12 (b) For purposes of this section, "necessary information" includes the
13 results of any face-to-face clinical evaluation or second opinion that may be
14 required.

15

16 23-99-906. Prior authorization - Urgent healthcare service.

17 A utilization review entity shall render an expedited authorization or
18 adverse determination concerning an urgent healthcare service and notify the
19 subscriber and the subscriber's healthcare provider of that expedited prior
20 authorization or adverse determination no later than one (1) business day
21 after receiving all information needed to complete the review of the
22 requested urgent healthcare service.

23

24 23-99-907. Prior authorization – Emergency healthcare service.

25 (a) A utilization review entity shall not require prior authorization
26 for prehospital transportation or for provision of an emergency healthcare
27 service.

28 (b)(1) A utilization review entity shall allow a subscriber and the
29 subscriber's healthcare provider a minimum of twenty-four (24) hours
30 following an emergency admission or provision of an emergency healthcare
31 service for the subscriber or healthcare provider to notify the utilization
32 review entity of the admission or provision of an emergency healthcare
33 service.

34 (2) If the admission or emergency healthcare service occurs on a
35 holiday or weekend, a utilization review entity shall not require
36 notification until the next business day after the admission or provision of

1 the emergency healthcare service.

2 (c)(1) A utilization review entity shall cover emergency healthcare
3 services necessary to evaluate and assess the health condition of a
4 subscriber or to stabilize a subscriber.

5 (2) If a healthcare provider certifies in writing to a
6 utilization review entity within seventy-two (72) hours of a subscriber's
7 admission that the subscriber's condition required an emergency healthcare
8 service, that certification will create a presumption that the emergency
9 healthcare service was medically necessary, and such presumption may be
10 rebutted only if the utilization review entity can establish, with clear and
11 convincing evidence, that the emergency healthcare service was not medically
12 necessary.

13 (d)(1) The determination by a utilization review entity of medical
14 necessity or medical appropriateness of an emergency healthcare service shall
15 not be based on whether the emergency healthcare service was provided by a
16 healthcare provider that is a member of the health benefit plan's provider
17 network.

18 (2) Restrictions on coverage for an emergency healthcare service
19 provided by a healthcare provider that is not a member of the health benefit
20 plan's provider network shall not be greater than restrictions on coverage
21 for an emergency healthcare service provided by a healthcare provider that is
22 a member of the health benefit plan's provider network.

23 (e)(1) If a subscriber receives an emergency healthcare service that
24 requires an immediate post-evaluation or post-stabilization healthcare
25 service, a utilization review entity shall make an authorization within sixty
26 (60) minutes of receiving a request.

27 (2) If the authorization is not made within sixty (60) minutes,
28 the emergency healthcare service shall be approved.

29
30 23-99-908. Retrospective denial.

31 (a) A utilization review entity shall not revoke, limit, condition, or
32 restrict an authorization for a period of forty-five (45) business days from
33 the date the healthcare provider received the authorization.

34 (b) Any correspondence, contact, or other action by a utilization
35 review entity that disclaims, denies, attempts to disclaim, or attempts to
36 deny payment for healthcare services that have been authorized within the

1 forty-five-day period under subsection (a) of this section is void.

2
3 23-99-909. Waiver prohibited.

4 (a) The provisions of this subchapter shall not be waived by contract.

5 (b) Any contractual arrangements or actions taken in conflict with
6 this subchapter or that purport to waive any requirements of this subchapter
7 are void.

8
9 23-99-910. State physician required.

10 A physician shall be licensed by the Arkansas State Medical Board
11 before making recommendations or decisions regarding prior authorization or
12 nonmedical review requests.

13
14 23-99-911. Application.

15 (a) This subchapter applies to:

16 (1) A healthcare insurer whether or not the healthcare insurer
17 is acting directly or indirectly through a private utilization review entity;
18 and

19 (2)(A) A self-insured health plan for employees of governmental
20 entities.

21 (B) A self-insured plan for employees of governmental
22 entities is not subject to § 23-99-912(b)(4)(C) or the Arkansas State Medical
23 Board, State Board of Health, or the State Insurance Department.

24 (b) This subchapter applies to any healthcare service, whether or not
25 the health benefit plan requires prior authorization or nonmedical review for
26 the healthcare service.

27 (c) A request by a healthcare provider for authorization or approval
28 of a service regulated under this subchapter before it is given shall be
29 subject to this subchapter.

30
31 23-99-912. Form of notice.

32 (a)(1) Notice of an adverse determination or a nonmedical denial shall
33 be provided to the healthcare provider that initiated the prior authorization
34 or nonmedical review.

35 (2) Notice may be made by fax or hard copy letter sent by
36 regular mail or verbally, as requested by the subscriber's healthcare

1 provider.

2 (b) The written or verbal notice required under this section shall
3 include:

4 (1)(A) The name, title, address, and telephone number of the
5 healthcare professional responsible for making the adverse determination or
6 nonmedical denial.

7 (B) For a physician, the notice shall identify the
8 physician's board certification status or board eligibility.

9 (C) The notice under this section shall identify each
10 state in which the healthcare professional is licensed and the license number
11 issued to the professional by each state;

12 (2) The written clinical criteria, if any, and any internal
13 rule, guideline, or protocol on which the healthcare insurer relied when
14 making the adverse determination or nonmedical denial and how those
15 provisions apply to the subscriber's specific medical circumstance;

16 (3) Information for the subscriber and the subscriber's
17 healthcare provider that describes the procedure through which the subscriber
18 or healthcare provider may request a copy of any report developed by
19 personnel performing the review that led to the adverse determination or
20 nonmedical denial; and

21 (4)(A) Information that explains to the subscriber and the
22 subscriber's healthcare provider the right to appeal the adverse
23 determination or nonmedical denial.

24 (B) The information required under subdivision (b)(4)(A)
25 of this section shall include instructions concerning how to perfect an
26 appeal and how the subscriber and the subscriber's healthcare provider may
27 ensure that written materials supporting the appeal will be considered in the
28 appeal process.

29 (C) The information required under subdivision (b)(4)(A)
30 of this section shall include addresses and telephone numbers to be used by
31 healthcare providers and subscribers to make complaints to the Arkansas State
32 Medical Board, the State Board of Health, and the State Insurance Department.

33 (c)(1) When a healthcare service for the treatment or diagnosis of any
34 medical condition is restricted or denied for use by nonmedical review, step
35 therapy, or a fail first protocol in favor of a healthcare service preferred
36 by the healthcare insurer, the subscriber's healthcare provider shall have

1 access to a clear and convenient process to expeditiously request an override
2 of that restriction or denial from the healthcare insurer.

3 (2) Upon request, the subscriber's healthcare provider shall be
4 provided contact information, including a phone number, for a person to
5 initiate the request for an expeditious override of the restriction or
6 denial.

7 (d) The appeal process described in subdivision (b)(2), subdivision
8 (b)(3), and subdivision (b)(4) of this section shall not apply when a
9 healthcare service is denied due to the fact that the healthcare service is
10 not a covered service under the health benefit plan.

11
12 23-99-913. Deemed approval.

13 If a healthcare insurer or self-insured health plan for employees of
14 governmental entities fails to comply with this subchapter, the requested
15 healthcare services shall be deemed authorized or approved.

16
17 23-99-914. Standardized form required.

18 (a) On and after January 1, 2014, to establish uniformity in the
19 submission of prior authorization and nonmedical review forms, a healthcare
20 insurer shall utilize only a single standardized prior authorization and
21 nonmedical review form for obtaining approval in written or electronic form
22 for prescription drug benefits.

23 (b) A healthcare insurer may make the form required under subsection
24 (a) of this section accessible through multiple computer operating systems.

25 (c) The form required under subsection (a) of this section shall:

26 (1) Not exceed two (2) pages; and

27 (2) Be designed to be submitted electronically from a
28 prescribing provider to a healthcare insurer.

29 (d) This section does not prohibit prior authorization or nonmedical
30 review by verbal means without a form.

31 (e) If a healthcare insurer fails to use or accept the form developed
32 under this section or fails to respond as soon as reasonably possible, but no
33 later than one (1) business day for prior authorizations for urgent
34 healthcare services, sixty (60) minutes for emergency healthcare services, or
35 seventy-two (72) hours for all other services, after receipt of a completed
36 prior authorization or nonmedical review request using the form developed

1 under this section, the prior authorization or nonmedical review request is
2 deemed authorized or approved.

3 (f)(1) On and after January 1, 2014, each healthcare insurer shall
4 submit its prior authorization and nonmedical review form to the State
5 Insurance Department to be kept on file.

6 (2) A copy of a subsequent replacement or modification of a
7 healthcare insurer's prior authorization and nonmedical review form shall be
8 filed with the department within fifteen (15) days before the form is used or
9 before implementation of the replacement or modification.

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/s/Irvin

APPROVED: 04/06/2015

Stricken language would be deleted from and underlined language would be added to present law.
Act 992 of the Regular Session

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

As Engrossed: S3/3/15
A Bill

SENATE BILL 316

4
5 By: Senator Irvin
6

7 **For An Act To Be Entitled**

8 AN ACT TO REGULATE THE PRIOR AUTHORIZATION PROCEDURE
9 FOR TREATMENT OF A TERMINAL ILLNESS UNDER CERTAIN
10 CONDITIONS; AND FOR OTHER PURPOSES.
11

12
13 **Subtitle**

14 TO REGULATE THE PRIOR AUTHORIZATION
15 PROCEDURE FOR TREATMENT OF A TERMINAL
16 ILLNESS UNDER CERTAIN CONDITIONS.
17

18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 *SECTION 1. Arkansas Code § 23-99-420(a), concerning definitions in the*
22 *Arkansas Health Care Consumer Act, is amended to add additional subdivisions*
23 *to read as follows:*

24 (11) "Prescription pain medication" means any medication
25 prescribed as treatment for pain; and

26 (12) "Terminal illness" means an illness, a progressive disease,
27 or an advanced disease state from which:

28 (A) There is no expectation of recovery; and

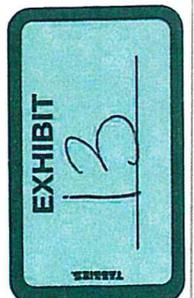
29 (B) Death as a result of the illness or disease is
30 reasonably expected within six (6) months.
31

32 *SECTION 2. Arkansas Code § 23-99-420, concerning prior authorizations*
33 *under the Arkansas Health Care Consumer Act, is amended to add an additional*
34 *subsection to read as follows:*

35 (k) If covered pain medication that is prescribed to a covered person
36 requires a prior authorization, then the prior authorization shall not be



01-27-2015 11:13:56 ANS076



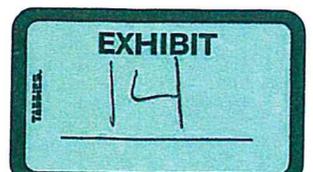
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denied if the covered person has a terminal illness.

/s/ Irvin

APPROVED: 04/02/2015

Public Comments Section



FAX Message



Arkansas Medical Society

Post Office Box 55088
Little Rock, Arkansas 72215

501-224-8967 | 800-542-1058 | 501-224-6489 (fax)
ams@arkmed.org | www.ArkMed.org

Serving Arkansas Physicians Since 1875

To: Booth Road Date: 4/11/16

FAX Number: (501)371-2618 Number of pages including this page: 2

From:

- David Wroten Kay Waldo Scott Smith Billie Jean Davenport
- Nadine Gentry Laura Hawkins Courtney Hirscheider Teresa Newcomb
- Nicole Richards Penny Henderson

- Please review Please reply Urgent

Booth

*Love you go. Thanks for
all you do!*

Scott

RECEIVED

APR 11 2016

LEGAL
ARKANSAS INSURANCE DEPT.



ARKANSAS MEDICAL SOCIETY

P.O. Box 55088 • Little Rock, AR • 72215-5088
Telephone (501) 224-8967 • WATS 1-800-542-1058 • FAX (501) 224-6489 • E-MAIL ams@arkmed.org • WEB PAGE www.arkmed.org

April 11, 2016

The Honorable Allen W. Kerr, Commissioner
Arkansas Insurance Department
1200 West Third Street
Little Rock, AR 72201

ATTN: Mr. Booth Rand, Managing Attorney

Re: Arkansas Insurance Department Proposed Rule 114 (Prior Authorizations for Pain Medications for Terminal Illnesses)

Dear Commissioner Kerr:

On behalf of the over 4,500 members of the Arkansas Medical Society, I would like to express our support for Proposed Rule 114 regarding prior authorization denial for pain medication to terminally ill patients. Act 992 of 2015, upon which this rule is based, is intended to lessen the potential delay of pain relief medications being administered to those in their last months of life.

We have heard of too many totally unnecessary instances in which cumbersome prior authorization procedures delay care to the terminally ill, the most vulnerable of all patients. Compassionate care with appropriate and timely administration of pain relief medication is incredibly important.

It is easy for a physician to make these patients comfortable, but only when administration of needed medicines is not needlessly delayed by a bureaucratic prior authorization process. The rule appears to keep the Act intact while at the same time taking into consideration concerns voiced about drug abuse and diversion.

Thank you for your work on this rule.

Sincerely,

A handwritten signature in black ink that reads "H. Scott Smith".

H. Scott Smith, JD
Director of Governmental Affairs
Arkansas Medical Society

April 12, 2016

VIA ELECTRONIC AND U.S. MAIL

Mr. Booth Rand
Managing Attorney
Arkansas Insurance Department
1200 West Third Street
Little Rock, Arkansas 72201-1904
booth.rand@arkansas.gov

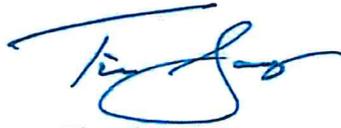
Re: Comment on Proposed Rule 114,
"Prior Authorizations for Pain Medications for Terminal Illnesses"
Public Hearing: April 14, 2016, 9:00 a.m.

Dear Mr. Rand:

In response to the Notice of Public Hearing on Proposed Rule 114, Arkansas Blue Cross and Blue Shield believes that the proposed rule provides needed clarity with respect to the Department's position on the applicability of uncodified Act 992 of 2015, and strikes a sensible balance between the needs of individuals with terminal illnesses and concerns related to potential misuse or diversion of prescription pain medications. Accordingly, we urge the Commissioner to adopt the rule as proposed.

Mr. Rand, please let me know if you have any questions. I plan to be present at the hearing on April 14.

Cordially yours,



Tim Gauger

TG:ad

