

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



Michael Preston
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

July 26, 2021

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

Re: Proposed New Rule 120 "Coverage for Early Refills of Prescription Eye Drops"

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 New Rule 120, 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 New Rule 120 "Coverage for Early Refills of Prescription Eye Drops." Enclosed are the DOI Notices of Public Hearing and a copy of the proposed new 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,

Clara Mezza
Legal Administrative Coordinator/Legal Division
clara.mezza@arkansas.gov
501-683-3497

Enclosures

PROPOSED RULE 120

COVERAGE FOR EARLY REFILLS OF PRESCRIPTION EYE DROPS

1. AUTHORITY
2. APPLICABILITY AND SCOPE
3. DEFINITIONS
4. REQUIREMENT TO PROVIDE EARLY REFILLS OF PRESCRIPTION EYE DROPS
5. ENFORCEMENT
6. EFFECTIVE DATE

SECTION 1. AUTHORITY

This Rule is issued pursuant to the authority granted the Arkansas Insurance Commissioner (“Commissioner”) by Act 357 of 2021, codified at Ark. Code Ann. § 23-79-2101 et seq., which provides the Commissioner with authority necessary to promulgate rules to implement Act 357 of 2021, “Arkansas Coverage for Early Refills of Prescription Eye Drops Act.”

SECTION 2. APPLICABILITY AND SCOPE

This Rule shall apply to all entities defined by Ark. Code Ann. § 23-79-2102 as “healthcare insurers” that provide coverage for prescription eye drops under a health benefit plan to a covered person on and after January 1, 2022.

SECTION 3. DEFINITIONS

The following words and terms, when used in this Rule, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Covered person" means a person who is and continues to remain eligible for coverage under a health benefit plan and is covered under the health benefit plan.

(2) (a) “Health benefit plan” means:

(1) An individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer; and

(2) Any health benefit program receiving state or federal appropriations from the State of Arkansas, including the Arkansas Medicaid Program and the Arkansas Works Program, or any successor program.

(b) "Health benefit plan" includes:

(1) Indemnity and managed care plans; and

(2) Nonfederal governmental plans as defined in 29 U.S.C. § 1002(32), as it existed on January 1, 2021.

(c) "Health benefit plan" does not include:

(1) A disability income plan;

(2) A credit insurance plan;

(3) Insurance coverage issued as a supplement to liability insurance;

(4) A medical payment under automobile or homeowners insurance plans;

(5) A health benefit plan provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(6) A plan that provides only indemnity for hospital confinement;

(7) An accident-only plan;

(8) A specified disease plan;

(9) A long-term-care-only plan;

(10) A dental-only plan; or

(11) A vision-only plan.

(3) "Healthcare insurer" means an entity subject to the insurance laws of this state or the jurisdiction of the Insurance Commissioner that contracts or offers to contract to provide health insurance coverage, including without limitation an insurance company, a health maintenance organization, a hospital medical service corporation, a self-insured governmental or church plan in this state, or the Arkansas Medicaid Program.

(4) "Healthcare professional" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession.

(5) "Prescription eye drops" means a prescription topical eye medication that is delivered through eye drops and is used to treat a chronic condition of the eye.

SECTION 4. REQUIREMENT TO PROVIDE EARLY REFILLS OF PRESCRIPTION EYE DROPS

A healthcare insurer that provides coverage for prescription eye drops under a health benefit plan shall provide coverage for early refills of prescription eye drops to a covered person on and after January 1, 2022, if:

(a) For a thirty-day supply:

(1) The amount of time has passed after which a covered person should have used seventy percent (70%) of the dosage of the prescription eye drops according to a healthcare professional's instructions on the prescription; or

(2) Twenty-two (22) days have passed from:

(A) The original date the prescription eye drops were distributed to a covered person; or

(B) The date the most recent refill of the prescription eye drops was distributed to a covered person;

(b) The healthcare professional indicates on the original prescription that additional quantities of the prescription eye drops are needed;

(c) A refill request of a covered person for prescription eye drops does not exceed the number of additional quantities needed as described in section (b) of this section; and

(d) The prescription eye drops prescribed by a healthcare professional are a covered benefit under the health benefit plan of the covered person.

SECTION 5. ENFORCEMENT

Violations of this Rule shall constitute an unfair or deceptive act under Ark. Code Ann. § 23-66-206. Therefore, the penalties, actions or orders, including but not limited to monetary fines, suspension, or revocation of license, as authorized under Ark. Code Ann. §§ 23-66-209 and 23-66-210, shall apply to violations of this Rule.

SECTION 6. EFFECTIVE DATE

The effective date of this Rule is November 1, 2021.

ALAN MCCLAIN
INSURANCE COMMISSIONER

DATE

SUMMARY

ARKANSAS INSURANCE DEPARTMENT PROPOSED RULE 120

Coverage for Early Refills of Prescription Eye Drops

=====

To: Arkansas Legislative Council & Arkansas Bureau of Legislative Research

From: Crystal Phelps, Associate Counsel, Arkansas Insurance Department

CC: Alan McClain, Arkansas Insurance Commissioner; Steve Porch, General Counsel, Arkansas Department of Commerce; Russ Galbraith, Deputy Insurance Commissioner; Jim Brader, General Counsel; Jennifer Bruce, Public and Legislative Affairs Director

Date: July 22, 2021

=====

LEGISLATIVE AUTHORITY FOR RULE

Section 2(a)(1) of Act 357 of 2021 requires the Arkansas Insurance Department ("AID") to issue rules implementing Act 357.

BACKGROUND AND PURPOSE OF RULE

The purpose of this Rule is to implement Act 357 of 2021, which describes circumstances under which health benefit plans are required to provide coverage for early refills of prescription eye drops.

EXPLANATION OF THE PROPOSED RULE

Patients suffering from glaucoma and other degenerative eye diseases use daily prescription eye drops to prevent further harm. Many patients, particularly older patients, either spill some portion of the prescription eye drops or waste some portion of the drops due to failure to properly aim the drop into the eye. Such patients are then at risk of running out of their drops before a health benefit plan will provide coverage for a refill. Without the availability of early coverage, patients would either have to pay full price for an early refill or go without the drops and risk further endangering their vision. This rule explains when insurers are required to allow early refills.

According to the American Academy of Ophthalmology, more than 50% of the United States offers early refills of prescription eye drops. Oklahoma and Tennessee also allow early refills of prescription eye drops. The Centers for Medicare and Medicaid Services have similar guidelines for refilling eye drops for the Medicare Part D program.

Violations of this rule are considered to be unfair or deceptive acts under Ark. Code Ann. § 23-66-206, the Trade Practices Act. Therefore, the penalties, actions or orders, including but not limited to monetary fines, suspension, or revocation of license, as authorized under Ark. Code Ann. §§ 23-66-209 and 23-66-210, apply to violations of this Rule



Michael Preston
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

DATE: JULY 23, 2021
TO: ALL INTERESTED PARTIES
FROM: ARKANSAS INSURANCE DEPARTMENT
SUBJECT: RULE 120: "Coverage for Early Refills of Prescription Eye Drops"

NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication by the Arkansas Insurance Department ("AID") Proposed Rule 120, "Coverage for Early Refills of Prescription Eye Drops".

Pursuant to Arkansas Administrative Procedures Act, and other applicable laws or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on August 26, 2021 at 09:30 A.M., in the Second Floor Hearing Room ("Diamond Mine"), at the Arkansas Department of Commerce, 1 Commerce Way, Little Rock, AR 72202.

The Arkansas Insurance Commissioner is considering adopting proposed Rule 120 "Coverage for Early Refills of Prescription Eye Drops" to implement Act 357 of 2021, which describes circumstances under which health benefit plans are required to provide coverage for early refills of prescription eye drops. The Rule also creates a mechanism for enforcement and establishes penalties for nonconformance.

This Notice is required by Ark. Code Ann. § 25-15-206 of the Arkansas Administrative Procedures Act. Copies of the proposed Rule may be obtained by writing or calling the Arkansas Insurance Department, or by visiting its Internet site at <https://www.insurance.arkansas.gov/pages/industry-regulation/legal/proposed-rules/>. Comments from the public will be accepted until 4:30 PM on August 27, 2021 and may be submitted to the Department in writing at the address above or electronically to the following email address: insurance.legal@arkansas.gov.

Sincerely,

Crystal Phelps,
Associate Counsel
Arkansas Insurance Department

NOTICE OF PUBLIC HEARING

The Arkansas Insurance Department will host a Public Hearing on August 26, 2021, at 9:30 AM, in the Second Floor Diamond Mine Hearing Room, in the Arkansas Department of Commerce Building, One Commerce Way, Little Rock, Arkansas 72202. The Arkansas Insurance Commissioner is considering adopting proposed Rule 120 “Coverage for Early Refills of Prescription Eye Drops” to implement Act 357 of 2021, which describes circumstances under which health benefit plans are required to provide coverage for early refills of prescription eye drops. The Rule also creates a mechanism for enforcement and establishes penalties for nonconformance. This Notice is required by Ark. Code Ann. § 25-15-206 of the Arkansas Administrative Procedures Act. Copies of the proposed Rule may be obtained by writing or calling the Arkansas Insurance Department, or by visiting its Internet site at <https://www.insurance.arkansas.gov/pages/industry-regulation/legal/proposed-rules/> . Comments from the public will be accepted until 4:30 PM on August 27, 2021 and may be submitted to the Department in writing at the address above or electronically to the following email address: insurance.legal@arkansas.gov.



Michael Preston
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

NOTICE OF PUBLIC HEARING

The Arkansas Insurance Department will host a Public Hearing on August 26, 2021, at 9:30 AM, in the Second Floor Diamond Mine Hearing Room, in the Arkansas Department of Commerce Building, One Commerce Way, Little Rock, Arkansas 72202. The Arkansas Insurance Commissioner is considering adopting proposed Rule 120 “Coverage for Early Refills of Prescription Eye Drops” to implement Act 357 of 2021, which describes circumstances under which health benefit plans are required to provide coverage for early refills of prescription eye drops. The Rule also creates a mechanism for enforcement and establishes penalties for nonconformance. This Notice is required by Ark. Code Ann. § 25-15-206 of the Arkansas Administrative Procedures Act. Copies of the proposed Rule may be obtained by writing or calling the Arkansas Insurance Department, or by visiting its Internet site at <https://www.insurance.arkansas.gov/pages/industry-regulation/legal/proposed-rules/>. Comments from the public will be accepted until 4:30 PM on August 27, 2021 and may be submitted to the Department in writing at the address above or electronically to the following email address: insurance.legal@arkansas.gov.

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

Department: Arkansas Insurance Department
Contact Person: Crystal Phelps
Contact Phone: (501) 371-2841

Division: Legal
Date: July 22, 2021
Contact Email: crystal.phelps@arkansas.gov

Title or Subject:

Proposed Rule 120: Coverage for Early Refills of Prescription Eye Drops

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.

Proposed Rule 120 implements Act 357 of 2021 requiring early refills of prescription eye drops under described circumstances. The Arkansas Insurance Department is unaware of complaints.

2. What are the top three benefits of the proposed rule or regulation?

(1) The Proposed Rule requires an insurer that provides coverage for prescription eye drops under a health plan to provide consumers with early refills under certain circumstances; (2) the Proposed Rule prevents individuals with chronic eye conditions from suffering harm to or loss of vision as a result of accidentally spilling, spoiling, or wasting prescribed eye drops; and (3) the Proposed Rule satisfies the requirement of Act 357 of 2021 requiring the Arkansas Insurance Commissioner to promulgate rules necessary to implement Act 357 of 2021.

See attached Summary.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

Patients with chronic vision problems and without access to prescription eye drops risk further harming or even losing their vision if they are unable to obtain prescription eye drops when needed.

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 Proposed 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?

According to the American Academy of Ophthalmology, more than 50% of the United States offers early refills of prescription eye drops. Oklahoma and Tennessee also allow early refills. The Centers for Medicare and Medicaid Services have adopted similar guidelines for the Medicare Part D program.

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

We have received no comments from small businesses at this time.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Insurance Department

DIVISION Legal Division

PERSON COMPLETING THIS STATEMENT Crystal Phelps

TELEPHONE (501) 371-2841 **FAX** (501) 371-2618 **EMAIL:** crystal.phelps@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 120 Coverage for Early Refills of Prescription Eye Drops

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?

NONE or NOT APPLICABLE.

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

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

NONE

Current Fiscal Year

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

Total _____

Next Fiscal Year

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.

Healthcare insurers required to early refill eye drop prescriptions may end up providing more medication to an insured than would have been provided without the availability of early refills.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

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.

NONE

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

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?
- NOT APPLICABLE 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.

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

DEPARTMENT/AGENCY Arkansas Insurance Department
DIVISION Legal Division
DIVISION DIRECTOR Jim Brader
CONTACT PERSON Crystal Phelps
ADDRESS 1200 West Third Street
(501) 371- **E-**
PHONE NO. (501) 371-2841 **FAX NO.** 2618 **MAIL** crystal.phelps@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Crystal Phelps, Associate Counsel
PRESENTER E-MAIL crystal.phelps@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:

Jessica Sutton, ESQ.
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 120 Coverage for Early Refills of Prescription Eye Drops
2. What is the subject of the proposed rule? Proposed Rule 120 implements Act 357 of 2021 which addresses insurance coverage requirements for early refills of prescription eye drops.
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? N/A
- When does the emergency rule N/A

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. _____

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.

Act 357 of 2021, Section 2 (a)(1) requires the Arkansas Insurance Department ("AID") to issue rules for the implementation and administration of coverage for early refills of prescription eye drops.

7. What is the purpose of this proposed rule? Why is it necessary?

Persons suffering from chronic eye diseases need prescription eye drops to prevent their vision from worsening. However, such persons, particularly older persons, often inadvertently spill or waste eye drops causing them to run out of a medication before a health plan will cover the plan. This Rule describes circumstances under which patients are able to obtain early refills of prescription eye drops.

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). <https://www.insurance.arkansas.gov/pages/industry-regulation/>

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

If yes, please complete the following:

Date: August 26, 2021

Time: 9:30 AM

Arkansas Department of Commerce,
Second Floor Hearing Room, 1
Commerce Way , Little Rock, AR

Place: 72202

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

August 27 at 4:30 PM

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

November 1, 2021

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. We will update this after we send out our NOPH (“Notice of Public Hearing”) and receive newspaper documentation from the Arkansas Democrat-Gazette.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e).

14. 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.

The Department does not know at this time but will update BLR and ALC in the public comments summary following the close of the comment period and public hearing.



Michael Preston
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

July 26, 2021

Ms. Jessica Whittaker, ESQ.
Arkansas Legislative Council
Arkansas Bureau of Legislative Research
State Capitol, Suite 315
Little Rock, Arkansas 72201

RE: Proposed New Rule 120 "Coverage for Early Refills of Prescription Eye Drops"

Dear Ms. Whittaker:

Enclosed for your review and for filing with the Arkansas Legislative Council is Proposed New Rule 120 "Coverage for Early Refills of Prescription Eye Drops."

Pursuant to Arkansas Administrative Procedure Act, and other applicable laws or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on August 26, 2021, at 09:30 A.M., in the Second Floor Hearing Room (Diamond Mine Room), at the Arkansas Department of Commerce, 1 Commerce Way, Little Rock, AR 72202.

The purpose of the Public Hearing will be to determine whether the Department should adopt the Proposed New Rule 120 "Coverage for Early Refills of Prescription Eye Drops." The Arkansas Insurance Commissioner is considering adopting Proposed New Rule 120 "Coverage for Early Refills of Prescription Eye Drops" to implement Act 357 of 2021, which describes circumstances under which health benefit plans are required to provide coverage for early refills of prescription eye drops. The Rule also creates a mechanism for enforcement and establishes penalties for nonconformance.

I have enclosed 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 blue ink that reads "Crystal Phelps". The signature is fluid and cursive, with the first name "Crystal" and last name "Phelps" clearly visible.

Crystal Phelps
Associate Counsel/Legal Division
crystal.phelps@arkansas.gov

cc: Brandy Wedsted, Administrative Analyst
Clara Mezza, Insurance Administrative Coordinator

State of Arkansas

As Engrossed: H3/8/21

93rd General Assembly

A Bill

Regular Session, 2021

HOUSE BILL 1450

By: Representatives *Magie, Eubanks*

By: Senator Bledsoe

For An Act To Be Entitled

AN ACT TO REQUIRE A HEALTH BENEFIT PLAN TO PROVIDE
COVERAGE FOR EARLY REFILLS OF PRESCRIPTION EYE DROPS;
TO ESTABLISH THE ARKANSAS COVERAGE FOR EARLY REFILLS
OF PRESCRIPTION EYE DROPS ACT; AND FOR OTHER
PURPOSES.

Subtitle

TO REQUIRE A HEALTH BENEFIT PLAN TO
PROVIDE COVERAGE FOR EARLY REFILLS OF
PRESCRIPTION EYE DROPS; AND TO ESTABLISH
THE ARKANSAS COVERAGE FOR EARLY REFILLS
OF PRESCRIPTION EYE DROPS ACT.

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

SECTION 1. Arkansas Code Title 23, Chapter 79, is amended to add an
additional subchapter to read as follows:

Subchapter 21 – Arkansas Coverage for Early Refills of Prescription Eye Drops

Act

23-79-2101. Title.

This subchapter shall be known and may be cited as the "Arkansas
Coverage for Early Refills of Prescription Eye Drops Act".

23-79-2102. Definitions.

As used in this subchapter:



1 (1) "Covered person" means a person who is and continues to
2 remain eligible for coverage under a health benefit plan and is covered under
3 the health benefit plan;

4 (2)(A) "Health benefit plan" means:

5 (i) An individual, blanket, or group plan, policy,
6 or contract for healthcare services issued or delivered by a healthcare
7 insurer; and

8 (ii) Any health benefit program receiving state or
9 federal appropriations from the State of Arkansas, including the Arkansas
10 Medicaid Program and the Arkansas Works Program, or any successor program.

11 (B) "Health benefit plan" includes:

12 (i) Indemnity and managed care plans; and

13 (ii) Nonfederal governmental plans as defined in 29
14 U.S.C. § 1002(32), as it existed on January 1, 2021.

15 (C) "Health benefit plan" does not include:

16 (i) A disability income plan;

17 (ii) A credit insurance plan;

18 (iii) Insurance coverage issued as a supplement to
19 liability insurance;

20 (iv) A medical payment under automobile or
21 homeowners insurance plans;

22 (v) A health benefit plan provided under Arkansas
23 Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et
24 seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

25 (vi) A plan that provides only indemnity for
26 hospital confinement;

27 (vii) An accident-only plan;

28 (viii) A specified disease plan;

29 (ix) A long-term-care-only plan;

30 (x) A dental-only plan; or

31 (xi) A vision-only plan;

32 (3) "Healthcare insurer" means an entity subject to the
33 insurance laws of this state or the jurisdiction of the Insurance
34 Commissioner that contracts or offers to contract to provide health insurance
35 coverage, including without limitation an insurance company, a health
36 maintenance organization, a hospital medical service corporation, a self-

1 insured governmental or church plan in this state, or the Arkansas Medicaid
2 Program;

3 (4) "Healthcare professional" means a person who is licensed,
4 certified, or otherwise authorized by the laws of this state to administer
5 health care in the ordinary course of the practice of his or her profession;
6 and

7 (5) "Prescription eye drops" means a prescription topical eye
8 medication that is delivered through eye drops and is used to treat a chronic
9 condition of the eye.

10
11 23-79-2103. Prescription eye drops – Early refills – Requirements.

12 A healthcare insurer that provides coverage for prescription eye drops
13 under a health benefit plan shall provide coverage for early refills of
14 prescription eye drops to a covered person on and after January 1, 2022, if:

15 (1) For a thirty-day supply:

16 (A) The amount of time has passed after which a covered
17 person should have used seventy percent (70%) of the dosage of the
18 prescription eye drops according to a healthcare professional's instructions
19 on the prescription; or

20 (B) Twenty-two (22) days have passed from:

21 (i) The original date the prescription eye drops
22 were distributed to a covered person; or

23 (ii) The date the most recent refill of the
24 prescription eye drops was distributed to a covered person;

25 (2) The healthcare professional indicates on the original
26 prescription that additional quantities of the prescription eye drops are
27 needed;

28 (3) A refill request of a covered person for prescription eye
29 drops does not exceed the number of additional quantities needed as described
30 in subdivision (2) of this section; and

31 (4) The prescription eye drops prescribed by a healthcare
32 professional are a covered benefit under the health benefit plan of the
33 covered person.

34
35 SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

36 (a)(1) Except as provided in subdivision (a)(2) of this section, the

1 Insurance Commissioner shall promulgate rules necessary to implement this
2 act.

3 (2) The Secretary of the Department of Human Services shall
4 promulgate rules necessary to implement this act that may apply to the
5 Arkansas Medicaid Program.

6 (b)(1) When adopting the initial rules to implement this act, the
7 final rule shall be filed with the Secretary of State for adoption under §
8 25-15-204(f):

9 (A) On or before January 1, 2022; or

10 (B) If approval under § 10-3-309 has not occurred by
11 January 1, 2022, as soon as practicable after approval under § 10-3-309.

12 (2) The commissioner and secretary shall file the proposed rule
13 with the Legislative Council under § 10-3-309(c) sufficiently in advance of
14 January 1, 2022, so that the Legislative Council may consider the rule for
15 approval before January 1, 2022.

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17 */s/Eubanks*
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20 **APPROVED: 3/15/21**
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