

# 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](http://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 \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_



Hugh McDonald  
SECRETARY OF COMMERCE

Alan McClain  
COMMISSIONER,  
ARKANSAS INSURANCE  
DEPARTMENT

October 3, 2023

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

sent via email: [register@sos.arkansas.gov](mailto:register@sos.arkansas.gov)

Re: Public Hearing on Proposed New Rule 69 "Establishment of Audit Process Concerning Qualified Payment Amounts for No Surprises Act"

Dear Secretary:

The Arkansas Insurance Department has scheduled a public hearing as to Public Hearing on Proposed New Rule 69 "Establishment of Audit Process Concerning Qualified Payment Amounts for No Surprises Act". 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,

Clara Mezza  
Administrative Analyst  
Arkansas Insurance Department/Legal Division  
[clara.mezza@arkansas.gov](mailto:clara.mezza@arkansas.gov)  
501-683-3497

Enclosures



Hugh McDonald  
SECRETARY OF COMMERCE

Alan McClain  
COMMISSIONER,  
ARKANSAS INSURANCE  
DEPARTMENT

DATE: October 3, 2023

TO: ALL INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: RULE 69: "Establishment of Audit Process Concerning Qualified Payment Amounts for No Surprises Act"

### **NOTICE OF PUBLIC HEARING**

Please find attached or available by electronic publication by the Arkansas Insurance Department ("AID") Proposed Rule 69, "Establishment of Audit Process Concerning Qualified Payment Amounts for No Surprises Act".

Pursuant to Arkansas Administrative Procedures Act, and other applicable laws or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on November 14, 2023 at 10:00 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 69 "Establishment of Audit Process Concerning Qualified Payment Amounts for No Surprises Act" to implement Act 580 of 2023, which requires the Commissioner to develop a state audit process to ensure compliance with the requirements of the No Surprises Act of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, related to the calculation of a qualified payment amount.

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 November 13, 2023, and may be submitted to the Department in writing at the address above or electronically to the following email address: [insurance.legal@arkansas.gov](mailto:insurance.legal@arkansas.gov).

Sincerely,

*Daniel W. Honey*

Daniel W. Honey  
Counsel, Product Compliance  
Arkansas Insurance Department  
501-371-2820  
Email: [dan.honey@arkansas.gov](mailto:dan.honey@arkansas.gov)

**PROPOSED NEW RULE 69**

**ESTABLISHMENT OF AUDIT PROCESS CONCERNING QUALIFIED PAYMENT  
AMOUNTS FOR NO SURPRISES ACT**

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**Section 1. Authority**

This Rule is issued pursuant to the authority granted the Arkansas Insurance Commissioner (“Commissioner”) under Ark. Code Ann. § 23-61-108(a)(1) and by Ark. Code Ann. § 23-61-108(b)(1) to promulgate rules necessary for the effective regulation of the business of insurance and as required for this State to be in compliance with federal laws, namely the No Surprises Act (NSA) of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-120, and Act 580 of 2023, codified as A.C.A. §23-66-216.

**Section 2. Purpose**

The purpose of this Rule is to authorize the Commissioner to establish an effective state audit process to ensure compliance with the requirements of the NSA related to the determination and development of methodology concerning the calculation of a qualified payment amount.

**Section 3. Definitions**

Unless otherwise separately defined in this rule and consistent with state law, the terms or phrases as used in this rule shall follow the definitions of such terms or phrases as defined in A.C. A. §23-66-216, and the Consolidated Appropriations Act, 2021, Pub. L. No. 116-120.

- (1) “Commissioner” means the Arkansas Insurance Commissioner.

(2) “Health benefit plan” means any individual, blanket, or group plan, policy or contract for health care services issued, renewed or extended in this state by a health carrier on or after January 1, 2024. “Health benefit plan” does not include a plan providing health care services pursuant to Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq., nor include an accident-only, specified disease, hospital indemnity, long-term care, disability income, or limited-benefit health insurance policy. The provisions of this Rule shall not apply to Medicare supplement or Medicare Advantage policies or policies offering coverage through Medicare. This Rule shall also not apply to vision or dental only plans.

(3) “Health carrier” means an entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. A Health Carrier does not include an automobile insurer paying medical or hospital benefits under Ark. Code Ann. §23-89-202(1) nor shall it include a self-insured employer health benefits plan. A Health Carrier also does not include any person, company, or organization, licensed or registered to issue or who issues any insurance policy or insurance contract in this State providing medical or hospital benefits for accidental injury or accidental disability.

#### **Section 4. Applicability and Scope**

This Rule applies to all health carriers that offer health benefit plans in this State which are issued or renewed on or after January 1, 2024.

#### **Section 5. Audit Requirement**

(a) The Commissioner shall develop a state audit process to ensure that a health benefit plan or health carrier calculates the qualified payment amount established under the No Surprises Act of the Consolidated Appropriations Act, 2021, Pub. L. 116-220.

(b) The federal qualified health payment amount methodologies shall be included in all health policy forms for review and approval by the Commissioner.

(c) The audit process required pursuant to this rule, and specifically §5(a) above, shall be consistent with and included in the already required examination of insurers as contemplated by A.C.A. §23-61-201 et seq. The Commissioner, per his or her discretion may conduct an examination of health carriers concerning potential

violations of the administration the qualified payment amount methodology of the NSA to ensure compliance with the requirements not more often than every five (5) years on an as needed basis if and when justified by a significant number of complaints against a particular carrier.

(d) The resulting examination report concerning potential violations of the NSA as it relates to the qualified payment amount calculation methodology shall be shared with the federal Department of Health and Human Services (HHS) in order that the Commissioner and HHS may impose appropriate sanctions and engage is proper administration to carry out all requirements of state and federal law.

## **Section 6. Enforcement**

The penalties, license actions or orders as authorized under Ark. Code Ann. § 23-66-210 shall apply to violations of this Rule.

## **Section 8. Effective Date**

The effective date of this Rule is January 1, 2024.

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ALAN MCCLAIN  
INSURANCE COMMISSIONER

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DATE