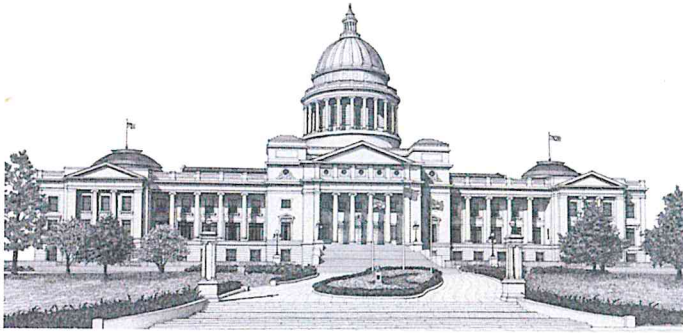


ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency State Insurance Department

Department Arkansas Department of Commerce

Contact Booth Rand, Managing Attorney E-mail booth.rand@arkansas.gov Phone 501-371-2820

Statutory Authority for Promulgating Rules Ark. Code Ann. §23-92-509(a)(2)(I), 23-92-509(a)(2)(D) and 23-92-509(b)(2)(A)

Rule Title: Emergency Rule 128: Fair and Reasonable Pharmacy Reimbursements

Intended Effective Date
(Check One)

Date



Emergency (ACA 25-15-204)

Legal Notice Published

9/8, 9/9, 9/10



10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment

11/11/2024



Other

(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

9/20/2024

Adopted by State Agency

9/23/2024

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Clara D. Mezza

clara.mezza@arkansas.gov

9/23/2024

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Clara D. Mezza

Signature

501-683-3497

clara.mezza@arkansas.gov

Phone Number

E-mail Address

Administrative Analyst

Title

9/23/2024

Date

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

DEPARTMENT _____
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ EMAIL _____
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

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

On what date does the emergency rule expire? _____

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

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

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

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

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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 _____
 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?

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, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or 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

\$ _____

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.

EMERGENCY RULE 128

FAIR AND REASONABLE PHARMACY REIMBURSEMENTS

- I. AUTHORITY**
- II. STATEMENT OF EMERGENCY**
- III. DEFINITIONS**
- IV. APPLICABILITY**
- V. FAIR AND REASONABLE REIMBURSEMENTS**
- VI. VIOLATIONS**
- VII. EFFECTIVE DATE**

I. AUTHORITY

This Rule is issued by the Arkansas Insurance Commissioner ("Commissioner") under Ark. Code Ann. § 23-92-509(a)(2)(I), § 23-92-509(a)(2)(D) and § 23-92-509(b)(2)(A). Specifically, under the permissive rule authority of these code provisions, the Commissioner is authorized to adopt rules without limitation to implement the Arkansas Pharmacy Benefits Manager Licensure Act ("PBMLA") for compensation and pharmacy benefits manager network adequacy.

II. STATEMENT OF EMERGENCY

The Commissioner hereby finds under Ark. Code Ann. § 25-15-204(b)(1) that a public emergency exists to require changes to pharmacy reimbursement standards from health benefit plans in order to ensure reasonably sustainable network adequacy for pharmacy services in this State.

III. DEFINITIONS

Unless otherwise defined in this Section, the definitions in the PBMLA shall apply to the provisions in this Rule.

A. "Fair and reasonable cost to dispense" shall mean the Arkansas Insurance Commissioner's determination of an adequate price or amount for the dispensing of a drug by a pharmacy giving due regard for the cost factors of labor, supplies and other administrative costs of a pharmacy associated with the dispensing of a drug to a subscriber of a health benefit plan.

B. "Subscriber" shall mean an insured, enrollee or certificate holder of a health benefit plan as defined under Ark. Code Ann. § 23-92-503(2).

IV. APPLICABILITY

This Rule applies to all health benefit plans as defined in Ark. Code Ann. § 23-92-503(2) and healthcare payors as defined in Ark. Code Ann. § 23-92-503(3).

V. FAIR AND REASONABLE REIMBURSEMENTS

A. Pursuant to Ark. Code Ann. § 23-92-506(a)(1), the Commissioner may review and approve the compensation program of a pharmacy benefits manager ("PBM") from a health benefit plan to ensure that the reimbursement for pharmacist services paid to a pharmacist or pharmacy is fair and reasonable to provide an adequate pharmacy benefits manager network for a health benefit plan. The provisions of this Rule are specifically issued related to cost processes, and not plan benefit design, to help ensure the subject of network adequacy or reasonably sustainable network adequacy of pharmacy services for health benefit plans.

B. The Commissioner finds that current pharmacy reimbursement minimums under the PBMLA, or payments within a close range to minimums of National Average Drug Acquisition Cost ("NADAC"), or maximum allowable cost ("MAC"), that do not also include a reasonable cost to dispense to pharmacies impairs the sustainability of network adequacy for pharmacy services for health benefit plans.

C. To ensure an adequate network of pharmacy services for a health benefit plan, or to ensure a reasonably sustainable adequate network for such services, a health benefit plan, through its pharmacy benefits plan or program, shall include a fair and reasonable cost to dispense to pharmacies in its administration of drug benefits under its health benefit plan. A fair and reasonable cost to dispense shall be calculated commiserate with the time, labor, supplies, and other administrative costs associated with the dispensing of the drug by the pharmacy. This cost to dispense shall be uniform or equally applied to all pharmacies servicing the health benefit plan. No health insurer, and no pharmacy benefits manager ("PBM") administering drug benefits for health benefit plans shall recoup or recover any increased costs to dispense from a subscriber at the point of sale through increased cost-sharing requirement ratios or percentages ("co-insurance, co-payment, or deductibles") on the health benefits plan member. For the first calendar year for 2025, every health insurer shall file with the Commissioner, no later than by November 30, 2024, a written report describing each healthcare payor's calculation amount, and methodology for such calculation, of the cost to dispense as required by this Rule. This requirement shall apply to plan year 2025 and thereafter, for each succeeding plan year after 2025, a health insurer shall submit such report on or before March 1 to apply for that next plan year. All data and materials submitted for

such reports shall be deemed confidential, proprietary and not subject to the Arkansas Freedom of Information Act.

D. The Commissioner shall be authorized to review, approve or deny such cost to dispense calculation, in consultation with the actuary for the Arkansas Insurance Department ("AID"). The Commissioner shall make his or her decision to approve or deny such cost calculation in writing within twenty (20) working days of receipt of such report from a healthcare payor and notify the submitting healthcare payor of his or her decision in writing within twenty (20) working days from receipt of such report. The Commissioner shall issue a bulletin more specifically addressing the procedures, timing, objection procedures, format and other information requirements required for such submissions as required under this Section of this Rule.

E. The Commissioner requests that the health benefit plans and healthcare payors strive to reduce any additional costs, associated with the costs to dispense as required by this Rule, by applying all unused brand name rebates to such costs, remaining after compliance with Act 333 of 2023 under the Healthcare Insurer Share the Savings Act, codified at Ark. Code Ann. § 23-79-2501 et seq., and the Pharmacy Benefits Manager Share the Savings Act, codified at Ark. Code Ann. § 23-92-704 et seq.

VI. VIOLATIONS

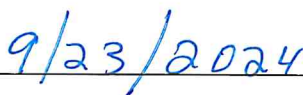
Violations of any provision of this Rule shall be subject to the fines or penalties under Ark. Code Ann. § 23-92-508.

VII. EFFECTIVE DATE

This Rule shall be effective upon approval by the Arkansas Legislative Council and thereafter remain in effect for 120 days unless earlier replaced by a permanent Rule.



ALAN MCCLAIN
INSURANCE COMMISSIONER



DATE