

DRAFT

PROPOSED RULE 113 VISION CARE PLAN COVERAGE

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SECTION 1. AUTHORITY

This Rule is issued pursuant to Ark. Code Ann. § 23-99-1005 which requires the Arkansas Insurance Commissioner ("Commissioner") to develop and promulgate a rule to implement Act 959 of 2015, "An Act to Regulate an Insurer that Offers Vision Care Plans" ("Vision Care Plan Act of 2015").

SECTION 2. 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 under Section One (1) of the Vision Care Plan Act of 2015, now codified in Ark. Code Ann. § 23-99-1001 et seq., or as later amended.

SECTION 3. PROHIBITED PRACTICES

A. Pursuant to Ark. Code Ann. § 23-99-1003(a), a participating provider agreement between an insurer, vision care plan, or vision care discount plan and a vision care provider shall not establish a fee that a vision care provider shall charge for services or materials that are not covered by a vision benefit plan or contract. A vision care insurer, vision care plan or vision care discount plan shall not circumvent or avoid this restriction by providing minimal or de minimus coverage for a service or material, or by designating a service or material as "covered" as defined in Ark. Code Ann. § 23-99-1002(1) and (2).

B. Pursuant to Ark. Code Ann. § 23-99-1003(b), a vision care provider shall not charge a fee for services or materials that is more than the vision care provider's normal rate for the services or materials if the services or materials are noncovered services or noncovered materials. This restriction or limitation of a vision care provider's charges for fees to not exceed normal rates for service or materials under Ark. Code Ann. § 23-99-1003(b) is a reference to the vision care provider's charges or pricing to the insured and not to a vision care provider's normal reimbursement fees or allowed charges for such services or materials in a vision care plan or vision care discount plan participation agreement.

C. Under Ark. Code Ann. § 23-99-1003(e), a participating provider agreement between an insurer, vision care plan, or vision care discount plan and a vision care provider shall not restrict or limit, directly or indirectly, the vision care provider's choice of optical labs or choice of sources and suppliers of services or materials provided by the vision care provider to an individual who is insured by the insurer. A vision care insurer, vision care plan or vision care discount plan may not avoid this restriction by reducing coverage or reimbursement to an optical

lab, referred or chosen by a vision care provider, which causes out of pocket costs to the insured for such service or item to be greater than if the item or service had been covered in-network by the vision care plan.

SECTION 4. APPLICATION OF VISION CARE PLAN ACT OF 2015

Pursuant to Ark. Code Ann. § 23-99-1005(c), the Vision Care Plan Act of 2015 is applicable to all vision benefit plan or contracts issued, renewed, or recredentialed in this state on and after July 22, 2015. The Arkansas Insurance Department ("Department") interprets the Vision Care Plan Act of 2015 to apply to all contracts newly issued after July 22, 2015, or renewed after July 22, 2015, but also to apply to all vision care provider contracts when they are recredentialed after the effective date of the Act, even though a renewal process on the contract has not occurred.

SECTION 5. EFFECTIVE DATE

The effective date of this Rule shall be November 7, 2016.

ALLEN W. KERR
INSURANCE COMMISSIONER

DATE

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 113: Vision Care Plan Coverage

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

Next Fiscal Year

General Revenue N/A

General Revenue

Federal Funds	N/A
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Federal Funds

Cash Funds	N/A
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Cash Funds

Special Revenue	N/A
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Special Revenue

Other (Identify)	N/A
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Other (Identify)

Total _____

Total _____

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

Current 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

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.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

We do not anticipate fiscal impact

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

\$ _____

We do not anticipate fiscal impact.

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.