

ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Legal Division

Department Arkansas Insurance Department

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Statutory Authority for Promulgating Rules Ark. Code Ann. §25-15-206 and Ark. Code Ann. §25-15-204 (b) (1)

Rule Title: Emergency Rule 122: "Prior Authorization Waivers for Post-Acute Transfers"

Intended Effective Date

(Check One)

Date

☒ Emergency (ACA 25-15-204)

Legal Notice Published _____

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

Final Date for Public Comment _____

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

Reviewed by Legislative Council 12/18/2020

Adopted by State Agency 12/18/2020

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

Clara D. Mezza

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12/18/2020

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

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Insurance Administrative Coordinator

Title

12/18/2020

Date

EMERGENCY RULE 122

PRIOR AUTHORIZATION WAIVERS FOR POST-ACUTE TRANSFERS

- 1. PURPOSE**
- 2. STATEMENT OF EMERGENCY**
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SECTION 1. PURPOSE

The purpose of this Rule is to temporarily reduce insurance barriers or limitations causing an increase in hospital occupancy and resources during the COVID-19 pandemic due to prior authorization protocols on post-acute transfers of patients.

SECTION 2. STATEMENT OF EMERGENCY

The Arkansas Insurance Commissioner (“Commissioner”) finds that insurance barriers exist causing unnecessary hospitalizations and hospital resource costs due to health plans applying prior authorization protocols for patients transferring from hospitals to post-acute facilities, skilled nursing facilities, and acute inpatient rehabilitation facilities. The Commissioner finds that a public emergency exists to temporarily eliminate prior authorization requirements that are burdening hospital occupancy and resources as patients wait on authorizations from an insurer, HMO, or Medicare Advantage organization before transitioning to a post-acute care facility from the hospital.

SECTION 3. AUTHORITY

Pursuant to Ark. Code Ann. §23-99-1118, the State Insurance Department may promulgate rules for the implementation of this subchapter governing the “Prior Authorization Transparency Act.” Ark. Code Ann. §25-15-204 (b) (1) states that if an agency finds that imminent peril to the public health, safety, or welfare or compliance with federal laws or regulations requires adoption of a rule upon less than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any

abbreviated notice and hearing that it may choose, to adopt an emergency rule. The rule may be effective for no longer than one hundred twenty (120) days.

SECTION 4. DEFINITIONS

Unless otherwise stated in this Rule, the definitions in Ark. Code Ann. § 23-99-1103 shall apply to the provisions or sections of this Rule.

SECTION 5. PRIOR AUTHORIZATION WAIVERS FOR POST-ACUTE TRANSFERS

No health benefit plan, or Utilization Review entity, shall impose a prior authorization protocol, pre-certification requirement, or step therapy procedure for, or upon, transfers of insured patients from hospitals to a post-acute setting or facility which includes but is not limited to skilled nursing facilities, or acute inpatient rehabilitation facilities during the effective time period of this Rule.

SECTION 6. EFFECTIVE DATE

This Emergency Rule shall be effective for one hundred and twenty (120) days following approval by the Arkansas Legislative Council, when it shall expire.



ALAN McCLAIN
INSURANCE COMMISSIONER

12-18-2020

DATE

SUMMARY

RULE 122

PRIOR AUTHORIZATION WAIVERS FOR POST-ACUTE TRANSFERS

AID issues this emergency rule in order to help reduce insurance barriers which are operating to slow down or hinder hospital transfers of patients, from a hospital to a post-acute setting. Such barriers are adversely impacting hospital occupancy at a time that more occupancy and resources are needed by our hospitals for COVID-related responses. The primary insurer impediments are derived from insurer, HMO, or Medicare Advantage prior authorization or pre-certification requirements applying to such transfers, for transfers to skilled nursing facilities as well as to post-acute inpatient rehabilitation centers or facilities.

The rule is simple as it entirely prohibits the imposition of any pre-cert requirement or step therapy protocol from the insurer to such transfers. The rule applies to all health benefit plans subject to the Arkansas Prior authorization Act. This a very broad Act. The definition of health benefit plan is in Ark. Code Ann. § 23-99-1103(7): (A) "Health benefit plan" means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer in this state. "Healthcare insurer" means an entity that is subject to state insurance regulation, including an insurance company, a health maintenance organization, a hospital and medical service corporation, a risk-based provider organization, and a sponsor of a nonfederal self-funded governmental plan. This would include EBD and the PASSE program.

The authority for this rule is in two (2) parts. One is from the Prior Authorization Transparency Initiative which gives the Department authority to issue rules to implement the Prior Authorization Transparency Act in Ark. Code Ann. §§ 23-99-1101 et seq.; the other authority is the Administrative Procedures Act for issuance of an emergency rule in Ark. Code Ann. §25-15-204 (b) (1).

AID does NOT intend to adopt the currently proposed emergency rule as a permanent rule within 120 days. The proposed Emergency Rule will expire in 120 days.