

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.

ALAN MCCLAIN
INSURANCE COMMISSIONER

DATE

State of Arkansas

As Engrossed: H3/30/23

94th General Assembly

A Bill

Regular Session, 2023

HOUSE BILL 1348

By: Representative L. Johnson

For An Act To Be Entitled

AN ACT TO ENCOURAGE THE DEVELOPMENT OF A STATE AUDIT
PROCESS CONCERNING QUALIFIED PAYMENT AMOUNTS; TO
AUTHORIZE THE STATE INSURANCE DEPARTMENT TO DEVELOP A
STATE AUDIT PROCESS CONCERNING QUALIFIED PAYMENT
AMOUNTS; AND FOR OTHER PURPOSES.

Subtitle

TO ENCOURAGE THE DEVELOPMENT OF A STATE
AUDIT PROCESS CONCERNING QUALIFIED
PAYMENT AMOUNTS; AND TO AUTHORIZE THE
STATE INSURANCE DEPARTMENT TO DEVELOP A
STATE AUDIT PROCESS CONCERNING QUALIFIED
PAYMENT AMOUNTS.

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

SECTION 1. Arkansas Code Title 23, Chapter 66, Subchapter 2, is
amended to add an additional section to read as follows:

23-66-216. Qualified payment amount — State audit process — Rules.

(a) The State Insurance Department shall develop a state audit process
to ensure compliance with the requirements in the No Surprises Act of the
Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, related to the
calculation of a qualified payment amount.

(b) The department shall promulgate rules to implement and administer
this section.

SECTION 2. DO NOT CODIFY. Rules.



1 (a) When adopting the initial rules required under this act, the State
2 Insurance Department shall file the final rules with the Secretary of State
3 for adoption under § 25-15-204(f):

4 (1) On or before January 1, 2024; or

5 (2) If approval under § 10-3-309 has not occurred by January 1,
6 2024, as soon as practicable after approval under § 10-3-309.

7 (b) The department shall file the proposed rules with the Legislative
8 Council under § 10-3-309(c) sufficiently in advance of January 1, 2024, so
9 that the Legislative Council may consider the rules for approval before
10 January 1, 2024.

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12 /s/L. Johnson

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15 **APPROVED: 4/11/23**
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