

August 20, 2014

VIA Hand Delivery
Mrs. Marty Garrity, Director
Bureau of Legislative Research
State Capitol Building, Room 315
Little Rock, Arkansas 72201



RE: Arkansas Health Insurance Marketplace's Amended Bylaws

Dear Director Garrity,

Please find enclosed the Amended Operating Rules and Bylaws of the Arkansas Health Insurance Marketplace (Marketplace) that were adopted by the emergency rule procedure as authorized by ACT 1500 of the 89th General Assembly. The Bylaws are different from the previously adopted Bylaws in that five changes occurred. First, the address of AHIM was changed from AID to the Prospect Building Suite 970. Second, the language related to conflicts of interest was copied from the Operating Rules. Third, language was added to allow Board Members to participate in meetings virtually or by telephone. Fourth, language was added to allow Board Members to suspend procedural rules by majority vote of any quorum present. Finally, language related to the nomination and succession of Board Members was changed. I have also attached the Statement of Necessity for Emergency Promulgation and Fiscal Impact Statement concerning the Bylaws.

Thank you for your attention to this matter.

Respectfully submitted,

Sherrill E. Wise
Chair

Arkansas Health Insurance Marketplace
Board of Directors

Enclosures

STATEMENT OF NECESSITY FOR EMERGENCY PROMULGATION

Name of Political Subdivision: Arkansas Health Insurance Marketplace

Rule Title: Arkansas Health Insurance Marketplace Bylaws

Statutory Authority: Ark. Code Ann. § 23-61-803 (Act 1500 of 2013)

Basis for Emergency Promulgation:

The revisions of the by-laws and operating rules deal exclusively with the internal operation of the Board and are needed to cause the by-laws to conform to the Arkansas Nonprofit Corporation Act of 1993 under which the Board has been chartered. The change particularly authorizes the Board to annually select new officers at the end of September rather than the end of June. Since the Board must operate through its officers in the interim, an emergency is declared to exist.

State of Arkansas
Bylaws - Domestic Nonprofit
Arkansas Health Insurance Marketplace

Article 1. Office and Registered Agent

Section 1.01. Principal Office.

The principal office of the Arkansas Health Insurance Marketplace shall be located at the Arkansas Insurance Department, 1200 West Third Street, Little Rock, AR 72201.

Section 1.02. Registered Office and Agent.

The Arkansas Health Insurance Marketplace (hereinafter referred to as the "Marketplace") shall have and continuously maintain a registered office and registered agent in the State of Arkansas. The registered agent shall be an individual resident of the state.

Article 2. Operating Rules

Section 2.01. Incorporation by Reference/Practices and Procedures.

The Marketplace shall operate according to the Arkansas Health Insurance Marketplace Operating Rules of Practice and Procedure (hereinafter referred to as the "Operating Rules"). The Operating Rules are attached hereto and incorporated by reference.

Article 3. Board of Directors

Section 3.01. Number of Members.

The Board of Directors of the Marketplace (hereinafter referred to as the "Board") shall consist of eleven (11) members, or such different number as may be established from time to time by the General Assembly.

Section 3.02. Board Appointments.

The members shall be appointed as follows:

- a. Three (3) members by the Governor of the State of Arkansas;
- b. Three (3) members by the Speaker of the Arkansas House of Representatives; and
- c. Three (3) members by the President Pro Tempore of the Arkansas Senate.

The Governor shall appoint one (1) member who is a representative of insurance agents or brokers licensed to sell health insurance in Arkansas and two (2) members who are consumer representatives, or such other procedure as may be established from time to time by the General Assembly.

The President Pro Tempore of the Senate shall appoint one (1) member who is a representative of a health insurer and one (1) member who is a representative of small employers, or such other procedure as may be established from time to time by the General Assembly.

The Speaker of the House shall appoint one (1) member who is a representative of a health insurer and one (1) member who is licensed by a health-related profession in Arkansas, or such other procedure as may be established from time to time by the General Assembly.

Section 3.03. Qualifications of Board Members.

The appointing authorities shall ensure that a majority of the members of the Board have relevant experience in:

- a. Health benefits administration;
- b. Healthcare finance;
- c. Health plan purchasing;
- d. Healthcare delivery system administration; or
- e. Public health or health policy issues related to the small group and individual markets and the uninsured, or such other qualifications as may be established from time to time by the General Assembly.

Section 3.04. Terms of Appointed Board Members.

Of the initial appointees to the Board by the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives, the appointing authority shall designate one (1) appointee to serve a term of four (4) years; one (1) appointee to serve a term of six (6) years; and one (1) appointee to serve a term of eight (8) years. All succeeding appointees to the Commission shall be appointed for a term of six (6) years, or such different terms as may be established from time to time by the General Assembly.

Section 3.05. Member of the Board by Virtue of State Office.

The following public officials shall serve as ex officio non-voting members:

- a. The Insurance Commissioner or his or her designee; and
- b. The Director of the Department of Human Services or his or her designee.

Section 3.06. Vacancy and Resignation.

The Board shall address the resignation of a member of the Board and a vacancy as directed under the Operating Rules.

Section 3.07. Compensation and Indemnification.

The compensation and indemnification of a member of the Board shall be established as provided in the Operating Rules.

Section 3.08. Powers.

The Board shall have all powers granted to the Board by the General Assembly and, except as specifically limited by the General Assembly, all the power given to a Domestic Nonprofit Corporation under applicable law. The Board shall also have all the powers vested in it by the Articles of Incorporation and Operating Rules.

Section 3.09. Committees.

The Board shall form committees as established from time to time under the Operating Rules.

Section 3.10. ~~Conflicts of Interest.~~ Standard of Conduct.

1. A member of the Board shall discharge his or her duties:

a. In good faith;

b. With the care an ordinarily prudent person in a like position would exercise under

similar circumstances; and

c. In a manner the member reasonably believes to be in the best interest of the Marketplace.

2. A member of the Board acting in good faith may rely on information provided to him or her in accordance with Ark. Code § 4-33-830.

3. Members of the Board and the Marketplace's staff shall maintain constant vigilance against conflicts of interest and against the appearance of conflicts of interest in accordance with Ark. Code § 4-33-831.

~~—The Board shall determine whether a member of the Board has an interest that conflicts with the interests of the Marketplace under the Operating Rules.~~

Section 3.11. Board Contact Information.

Each member of the Board shall provide the Marketplace updated contact information for receiving notices and other information relevant to Marketplace business.

Article 4. Meetings

Section 4.01. Call, Notice, Quorum, and Voting.

The Chair of the Board or five (5) members of the Board may call a regular or special meeting of the Board. The Board shall give notice of a regular or special meeting. A majority of the voting members of the Board shall constitute a quorum. The Chair shall determine whether there is a quorum at a regular or special meeting. The Board shall use the voting procedures as directed under the Operating Rules. Meetings shall occur at least quarterly. Members may participate in meetings by telephone.

At the last regular meeting of the Board in a fiscal year the Board shall determine the dates of its regular meetings in the next fiscal year.

Special meetings will be held at the call of the Chair or by written request signed by five (5) Board members. A special meeting that does not concern an emergency may be called on two (2) business days notice. A special meeting concerning an emergency may be called on the notice required under the Freedom of Information Act, Arkansas Code § 25-19-101 et seq. The notice shall specify the place, date, and time of the special meeting and provide a concise statement of the business to be conducted at the special meeting.

Section 4.02. Rules of Order.

The Board shall use Robert's Rules of Order Newly Revised and any other rules of order required under the Operating Rules.

The Board may suspend any procedural rules by majority vote of any quorum present.

Article 5. Rule-Making

Section 5.01. Rules, Policies, and Procedures.

The Marketplace may promulgate rules, policies, and procedures, including emergency rules, policies, and procedures, as directed under the Operating Rules, consistent with the Arkansas Code §§ 23-61-801 et seq., or otherwise directed by the General Assembly.

Article 6. Officers

~~Section 6.01. Election, Term, and Duties.~~

~~_____ The Board shall annually elect a Chair, Vice-Chair, Secretary/Treasurer, and other officers to serve terms in office and perform certain duties as directed under the Operating Rules. An officer of the Board may not succeed himself or herself.~~

~~_____ Beginning July 1, 2014, and subject to the affirmation of the Board:~~

~~_____ a. A person serving as Vice-Chair shall succeed to the office of Chair on the next following July 1; and~~

~~_____ b. A person serving as Secretary/Treasurer shall succeed to the office of Vice-Chair on the next following July 1.~~

1. The Board shall select a Chair, Vice-Chair, Secretary/Treasurer, and such other officers as a majority of the Board Choose. The Board shall elect at its last meeting in September of each year a Chair, Vice-Chair, and Secretary/Treasurer. An officer of the Board may not succeed himself or herself. For officers elected in 2014, and succeeding year and subject to the affirmation of the Board:

_____ a. A person serving as Vice-Chair shall succeed to the office of Chair the following year; and

_____ b. A person serving as Secretary/Treasurer shall succeed to the office of Vice-Chair the following year.

2. The Chair shall be a member of the Board and shall:

_____ a. Preside at the meetings of the Board with the authority to vote;

_____ b. Call meetings and special meetings as required; and

_____ c. Perform such other duties as may be prescribed by law or by action of the Board.

3. The Vice-Chair shall be a member of the Board and shall perform the duties and have the powers of the Chair during the absence or disability of the Chair.

4. The Secretary/Treasurer shall be a member of the Board and shall attest the official actions of the Board.

Article 7. Removal

The Board, by resolution, may petition the appropriate circuit court for the removal of a Board member under Arkansas Code §

Article 8. Members

Section 8.01. Members.

The Marketplace shall not have members.

Article 9. Fiscal Year

Section 9.01. Fiscal Year.

The Marketplace's fiscal year shall be July 1 through June 30.

Article 10. Procedure for Amending the Bylaws

Section 10.01. Amendments to Bylaws.

The Bylaws may be amended or new Bylaws adopted upon the affirmative vote by a majority of the members of the Board present at a special or regular meeting at which a quorum of the members of the Board are present.

Section 10.02. Amendment to Operating Rules and Incorporation in the Bylaws.

Subject to all procedural requirements imposed under Arkansas Code § 23-61-801 et seq., as it may be amended from time to time, and its successors, an amendment to the Operating Rules

by the Marketplace adopting a new rule, policy, or procedure or amending or repealing an existing rule, policy, or procedure is incorporated into the Bylaws upon its effective date. A vote by the Board is not required to incorporate the amendment to the Operating Rules into the Bylaws when the amendment is made under applicable law and rules.

Article 11. Dissolution

Section 11.01. Dissolution.

The Marketplace may be dissolved and its assets distributed as provided in the Marketplace's Articles of Incorporation.

**FINANCIAL IMPACT STATEMENT
ARKANSAS HEALTH INSURANCE MARKETPLACE**

PERSON COMPLETING THIS STATEMENT: Sherrill E. Wise, Chair of the Arkansas Health Insurance Marketplace of the Board of Directors

TELEPHONE NO. 501-376-5345

FAX NO. _____

EMAIL: sherrill.wise@dillards.com

To comply with Ark. Code Ann. § 23-61-803, please complete the following Financial Impact Statement and file with a proposed rule, policy, or procedure.

SHORT TITLE OF THE RULE, POLICY, OR PROCEDURE:

Bylaws

1. Does this proposed, amended, or repealed rule, policy, or procedure have a financial impact?
Yes _____ No X
2. Is the rule, policy, or procedure 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, policy, or procedure?
Yes X No _____
3. In consideration of the alternatives to this rule, policy, or procedure, was this rule, policy, or procedure determined by the Arkansas Health Insurance Marketplace (Marketplace) to be the least costly rule, policy, or procedure considered?
Yes X No _____
4. If the Marketplace is proposing a more costly rule, policy, or procedure, please state the following:
 - (a) How the additional benefits of the more costly rule, policy, or procedure justify its additional cost;
 - (b) The reason for adoption of the more costly rule, policy, or procedure;
 - (c) Whether the more costly rule, policy, or procedure 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 Marketplace's statutory authority, and if so, please explain.
5. If the purpose of this rule, policy, or procedure is to implement a federal rule or regulation, please state the following incremental additional costs of implementing the rule, policy, or procedure as opposed to the federal rule or regulation:

Current Fiscal Year

Next 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

General Revenue N/A
Federal Funds N/A
Cash Funds N/A
Special Revenue N/A
Other (Identify) N/A
Total N/A

6. What is the total estimated cost by fiscal year to the Marketplace to implement this rule, policy, or procedure?

Current Fiscal Year

Next Fiscal Year

\$ N/A

\$ N/A

7. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule, policy, or procedure? Identify the entity(ies) subject to the proposed rule, policy, or procedure and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ N/A

\$ N/A

8. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule, policy, or procedure? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ N/A

\$ N/A

9. With respect to the Marketplace's answers to Questions #7 and #8 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 X

If YES, the Marketplace is required 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, policy, or procedure's basis and purpose;
- (2) The problem the Marketplace seeks to address with the proposed rule, policy, or procedure, including a statement of whether a rule, policy, or procedure is required by statute;
- (3) A description of the factual evidence that:
 - (a) Justifies the Marketplace's need for the proposed rule, policy, or procedure;and
 - (b) Describes how the benefits of the rule, policy, or procedure meet the relevant statutory objectives and justify the rule, policy, or procedure's costs;
- (4) A list of less costly alternatives to the proposed rule, policy, or procedure and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule, policy, or procedure;
- (5) A list of alternatives to the proposed rule, policy, or procedure 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, policy, or procedure;
- (6) A statement of whether existing rules, policies, or procedures have created or contributed to the problem the Marketplace seeks to address with the proposed rule, policy, or procedure and, if existing rules, policies, or procedures have created or contributed to the problem, an explanation of why amendment or repeal of the rule, policy, or procedure creating or contributing to the problem is not a sufficient response; and
- (7) The Marketplace's plan for review of the rule, policy, or procedure no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule, policy, or procedure including, without limitation, whether:
 - (a) The rule, policy, or procedure is achieving the statutory objectives;
 - (b) The benefits of the rule, policy, or procedure continue to justify its costs; and
 - (c) The rule, policy, or procedure can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

10. If the Marketplace believes that the development of a Financial Impact Statement would be so speculative as to be cost prohibitive, the Marketplace shall attach a statement of explanation to that effect.