



Michael Preston
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

September 1, 2021

Ms. Jessica C. Whittaker, Administrator
Administrative Rules Review Section
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, Arkansas 72201

VIAL EMAIL TO: whittakerj@blr.arkansas.gov

RE: Arkansas Insurance Department - Act 595 of 2021 Report of Rulemaking

Dear Ms. Whittaker,

The Arkansas Insurance Department (“AID”) has undergone its review newly enacted laws pursuant to Act 595 (Ark. Code Ann. § 25-15-216). A summary of our review is attached in a chart that includes the requested information, and we have identified additional laws beyond those found in your *Report on the Acts of the 2021 Regular Session Requiring New Rulemaking*.

Additionally, there are three laws in your report, two of which AID believes are self-executing and for which rules are not necessary for the operation of the law. One is in litigation. In accordance with Act 595, AID will submit a written request providing notification of the agency’s intent to not adopt the required rule under separate cover.

I am the contact person for future updates, and I will provide an updated report monthly by the first of the month. I would appreciate it if all correspondence could also be copied to Ms. Brandy Wedsted at brandy.wedsted@arkansas.gov and Ms. Clara Mezza at clara.mezza@arkansas.gov.

Please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Brader", is written over a light blue horizontal line.

Jim Brader
General Counsel
Arkansas Insurance Department
jim.brader@arkansas.gov
501-372-2825

ARKANSAS INSURANCE DEPARTMENT
Act 595 Monthly Status Report

I. The following Acts from the 2021 legislative session require rulemaking and were included in the *Report on the Acts of the 2021 Regular Session Requiring New Rulemaking*. The Arkansas Insurance Department (“AID”) will be taking the following rulemaking actions for these Acts:

Act	Rule Name	Rule Number	Summary of Law & Status	Action
Act 665	Pharmacy Audits	118	The purpose of this Rule is to comply with Act 655 of 2021 to issue a required rule to enforce the pharmacy bill of rights as well as to make required rule changes consistent with changes to definitions made this session in Act 655 of 2021, to apply our PBM rule to self-funded plans and also to establish a network adequacy standard consistent with federal law. Status: <i>Internal pre-promulgation approvals obtained; Public comment period expected to begin within 30 days.</i>	Amend Rule
Act 1018	Insurance Business Transfer (IBT)	126	The Insurance Business Transfer rule (“IBT”) satisfies the rulemaking mandate and will govern the application and approval process for one company (“transferring insurer”) to develop and implement a plan, subject to approval by the Insurance Commissioner, to transfer some or all of its rights, obligations, and risks on a group of insurance policies, typically older “legacy” policies, another company (“assuming insurer”). Status: <i>Public comment and public hearing completed, planning on getting on ALC Rules agenda in October of 2021.</i>	Adopt New Rule
Act 1054	PANS/PANDA	127	This rule implements Act 1054 and fulfills the Act’s rulemaking mandate to AID. Requires health plans to provide coverage for off-label use of intravenous immunoglobulin, also known as “IVIG”, to treat individuals diagnosed with pediatric acute-onset neuropsychiatric syndrome and pediatric autoimmune neuropsychiatric disorders associated with streptococcal infection, or both, on or after January 1, 2022. Status: <i>Public Comment period opened 8-29-21, Public hearing scheduled for 9-30-21.</i>	Adopt New Rule
Act 357	Prescription Eye Drops	120	Patients suffering from glaucoma and other degenerative eye diseases use daily prescription eye drops to prevent further harm. Many patients, particularly older patients, either spill some portion of the prescription eye drops or waste some portion of the drops due to failure to properly aim the drop into the eye. Such patients are then at risk of running out of their drops before a health benefit plan will provide coverage for a refill. Without the availability of early coverage, patients would either have to pay full price for an early refill or go without the drops and risk	Adopt New Rule

			further endangering their vision. This rule explains when early refills should be allowed. Status: <i>Public comment and public hearing completed, planning on getting on ALC Rules agenda in October of 2021.</i>	
Act 97	Step Therapy	107	Act 97 requires healthcare insurers to base step therapy protocols on appropriate clinical practice guidelines or published peer-reviewed data developed by independent experts with knowledge of the condition or conditions under consideration. Acts 97 also ensures that patients have access to a fair, transparent, and independent process for requesting a step therapy protocol exception when the patient's physician deems it appropriate. Status: <i>Public comment and public hearing completed, planning on getting on ALC Rules agenda in October of 2021.</i>	Adopt New Rule
Act 672	Credit for Reinsurance	65	Rule 65 also needs to be amended to properly align itself with and support the revised statutory requirements. The proposed amendments to Rule 65 provide guidelines and reporting forms for the new process by which unauthorized reinsurers may qualify to post reduced collateral to satisfy state credit for reinsurance standards. Adoption of the revised rule is necessary for the Arkansas Insurance Department to meet national accreditation standards. Status: <i>Internal pre-promulgation approvals pending.</i>	Amend Rule
Act 343	Perpetual Cemeteries	Rule 2	Allows perpetual care cemeteries to make a withdrawal from the principal of the permanent maintenance fund once every ten years in order to make capital improvements and infrastructure repairs. Status: <i>Public comment period set for 8-29-21 to 9-30-21.</i>	Adopt New Rule

II. The following Acts from the 2021 legislative session require rulemaking and were **not** included in the *Report on the Acts of the 2021 Regular Session Requiring New Rulemaking*. However, AID believes rulemaking is needed for the operation of the laws and will be taking the following rulemaking actions for these Acts:

Act 397	Agent/Adjustor Licensing	31	Requires adjuster applicants to complete a minimum of 20 hours of pre-licensing education before taking their Arkansas adjuster examination. Specifies the number of hours in each subject area an adjuster applicant must complete, and a pre-license education course must offer. Clarifies that electronic signatures may be used for all pre-licensing education forms that must be submitted to the Department. Status: <i>Internal pre-promulgation approvals pending</i>	Amend Rule
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Act 955	Cranio- Facial	111	The proposed Rule implements the new amendments by (1) creating a mechanism to review and evaluate craniofacial services for insurance adjudications; (2) the proposed Rule also permits fees or charges to insurers for evaluations of proposed services to help resource and pay for team efforts to review and approve services; and (3) the proposed Rule also provides needed definitions not in Act 955 of 2021 to help clarify the craniofacial coverage laws. Status: <i>Internal pre-promulgation approvals pending</i>	Amend Rule
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III. The following Acts from the 2021 legislative session require rulemaking and were included in the *Report on the Acts of the 2021 Regular Session Requiring New Rulemaking*. However, upon review AID believes two of these Acts provide sufficient details to permit AID enforcement, are self-executing, and any proposed rules would merely restate the language of the legislation. One of these Acts is currently in litigation. Because of that, AID has submitted a request that these rules be excluded from the requirements of Act 595.

Act 965	Fairness in Cost Sharing	125	The proposed Rule implements Act 965 of 2021 by issuance of a mandated rule to implement the Arkansas Fairness in Cost Sharing Act of 2021.	No Rule Needed
Act 1103	340B Drug Pricing	123	The purpose of this Rule is to simply to comply with Act 1103 of 2021 by issuing a mandated rule to implement Act 1103. The proposed rule simply copies and pastes the statutory code enacted in Act 1103 of 2021. AID is aware of no interpretation of issues or ambiguities at this time needing clarification in a rule. This may change during rulemaking.	In Litigation
Act 1105	Best Interest Billing	124	The proposed Rule implements Act 1105 of 2021 by issuance of a mandated rule to implement the Billing in Best interest of Patients Act of 2021.	No Rule Needed