

# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

May 17, 2017

Ms. Marty Garrity  
Director  
Bureau of Legislative Research  
State Capitol, Rm. 315  
Little Rock, AR 72201

RECEIVED

MAY 17 2017

BUREAU OF  
LEGISLATIVE RESEARCH

Ms. Jill Thayer  
Legal Counsel to the Director  
Bureau of Legislative Research  
State Capitol, Rm. 315  
Little Rock, Arkansas 72201

**Re: Arkansas Insurance Department Emergency Rule 117**

Dear Ms. Garrity:

Please find attached a proposed Emergency Rule 117 which implements Act 775 of 2017 pertaining to the Provider-Led Organized Care Act. The Provider-Led Organized Care Act requires AID to have a rule adopted to implement this program on or before June 1, 2017. Due to the Act's emergency clause and timing requirements, we are unable to promulgate the rule through normal APA and state statutory public notice and comment periods. We intend to have a rule with notice and comment period for a permanent rule in early August. I have attached your economic impact and questionnaire forms related to the emergency rule. AID has worked with ADHS staff in developing this emergency rule. We request to present this rule as soon as possible to the Executive Committee of Legislative Council to obtain their approval to issue this as an emergency rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Booth Rand".

Booth Rand  
Managing Attorney  
AID

Cc: Jessica Sutton, Michael Harry at BLR Rules, Jim Brader at ADHS

## **EMERGENCY RULE 117**

### **PROVIDER-LED ORGANIZATION LICENSURE STANDARDS**

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#### **Section 1. Authority**

This rule is issued pursuant to Ark. Code Ann. § 23-61-117(b) which authorizes the Arkansas Insurance Commissioner (“Commissioner”) to issue rules to regulate the licensure and financial solvency of risk-based provider organizations under Act 775 of 2017 of the 91<sup>st</sup> Arkansas General Assembly also known as the “Medicaid Provider-Led Organized Care Act” (hereafter, the “Organized Care Act”). In addition, Section Seven (7) of the Organized Care Act requires the Commissioner to adopt rules on or before June 1, 2017 to implement various provisions of the Act.

#### **Section 2. Statement of Emergency**

Pursuant to Ark. Code Ann. § 25-15-204(b), the Commissioner finds that imminent peril to the public health, safety, or welfare requires adoption of a rule upon less than thirty (30) days' notice and herein states in writing its reasons for

that finding. The Commissioner finds that there is not adequate time to promulgate this proposed Rule under standard rulemaking timelines to comply with the Act's required date of June 1, 2017 for the adoption of a rule to implement the Act. The Organized Care Act was enacted with an emergency clause effective March 31, 2017. The Act requires the Commissioner to adopt a rule to implement the Act on or before June 1, 2017 and to issue conditional licenses on and after July 1, 2017. The Commissioner desires to provide immediate temporary licensure and application requirements in this Emergency Rule to process and review applications by risk-based provider organization interested in participating in the Organized Care Act program under the timelines of that program. The Commissioner, however, intends to adopt a permanent rule on this matter within one-hundred and twenty (120) days from the effective date of this Emergency Rule which will provide a public comment period and administrative hearing.

### **Section 3. Purpose**

The purpose of this Emergency Rule is to establish licensure and solvency requirements of risk-based provider organizations ("RBPOs") participating in the Organized Care Act. This Emergency Rule provides application requirements of the RBPO participating in the program, addresses standards for imposition of additional amounts of funds above reserve requirements to adjust to risk in Ark. Code Ann. § 20-77-2706 (f)(4)(B), establishes financial reporting requirements of the RBPO, imposes a reasonable fee for the regulation and licensing of the RBPO by rule under § 23-61-117(b)(2), and, finally, prescribes the reporting, forms, and requirements related to the payment of the quarterly tax under Ark. Code Ann. 23-61-117(b)(3).

### **Section 4. Applicability and Scope**

#### **A. Certificate of Authority Limited To Participation in the Organized Care Act Program.**

This Emergency Rule applies to the licensure and solvency standards of RBPOs, as defined in Ark. Code Ann. § 20-77-2703(13) under the Organized Care Act. Nothing in this Rule is intended to sanction, permit or establish a process for a provider sponsored organization to obtain a certificate of authority to engage in risk assumption or risk sharing activities in this State, outside of its participation in the Organized Care Act program.

## **Section 5. Definitions**

As used in this Rule:

- (1) "ADHS" means the Arkansas Department of Human Services;
- (2) "Associated participant" means an organization or individual that is a member or contractor of a risk-based provider organization and provides necessary administrative functions, including without limitation claims processing, data collection, and outcome reporting;
- (3) "Capitated" means an actuarially sound healthcare payment that is based on a payment per person that covers the total risk for providing healthcare services as provided in this subchapter for a person;
- (4)(A) "Care coordination" means the coordination of healthcare services delivered by healthcare provider teams to empower patients in their health care and to improve the efficiency and effectiveness of the healthcare sector.  
(B) "Care coordination" includes without limitation:
  - (i) Health education and coaching;
  - (ii) Promoting linkages with medical home services and the healthcare system in general;
  - (iii) Coordination with other healthcare providers for diagnostics, ambulatory care, and hospital services;
  - (iv) Assistance with social determinants of health, such as access to healthy food and exercise; and
  - (v) Promotion of activities focused on the health of a patient and the community, including without limitation outreach, quality improvement, and patient panel management;
  - (B)(vi) Community-based management of medication therapy;
- (5) "Carrier" means an organization that is licensed or otherwise authorized to provide health insurance or health benefit plans under § 23-85-101 or § 23-76-101;
  - (A) licensed or otherwise authorized to transact health insurance as an insurance company under § 23-62-103;

(B) authorized to provide healthcare plans under §23-76-108 as a health maintenance organization; or

(C) authorized to issue hospital service or medical service plans as a hospital medical service corporation under §23-75-108.

(6) “Commissioner” means the Arkansas Insurance Commissioner;

(7) "Covered Medicaid beneficiary population" means a group of individuals with:

(A) Significant behavioral health needs, including substance abuse treatment and services, and who are eligible for participation in the Medicaid provider-led organized care system as determined by an independent assessment under criteria established by the Department of Human Services; or

(B) Intellectual or developmental disabilities who are eligible for participation in the Medicaid provider-led organized care system as determined by an independent assessment under criteria established by ADHS;

(C) “Covered Medicaid Beneficiary population” does not include individuals enrolled in any long-term services and supports program under 42 U.S.C. § 1396n or 42 U.S.C. § 1315 by reason of a physical functional limitation;

(8) “Department” means the Arkansas Insurance Department;

(9) "Direct service provider" means an organization or individual that delivers healthcare services to enrollable Medicaid beneficiary populations;

(10) “Enrollable Medicaid beneficiary population” means a group of individuals who are either:

(A) Members of a covered Medicaid beneficiary population; or

(B) Members of a voluntary Medicaid beneficiary population.

(11) "Flexible services" means alternative services that are not included in the state plan or waiver of the Arkansas Medicaid Program and that are appropriate and cost-effective services that improve the health or social determinants of a member of an enrollable Medicaid beneficiary population that affect the health of the member of an enrollable Medicaid beneficiary population;

(12) "Global payment" means a population-based payment methodology that is actuarially sound and based on an all-inclusive per-person-per-month calculation for all benefits, administration, care management, and care coordination for enrollable Medicaid beneficiary populations;

(13) "Medicaid" means the programs authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq., as they existed on January 1, 2017, for the provision of healthcare services to members of enrollable Medicaid beneficiary populations;

(14) "NAIC" means the National Association of Insurance Commissioners;

(15) "Participating provider" means an organization or individual that is a member or has an ownership interest in of a risk-based provider organization and delivers healthcare services to enrollable Medicaid beneficiary populations;

(16) "Quality incentive pool" means a funding source established and maintained by ADHS to be used to reward risk-based provider organizations that meet or exceed specific performance and outcome measures;

(17) "Risk assumption" or "risk sharing" means, for the purpose of this regulation, a transaction whereby the chance of loss, including the expenses for the delivery of service, with respect to the health care of a person, is transferred to or shared with another entity, in return for a consideration. Examples include but are not limited to, full or partial capitation agreements, withholds, risk corridors, and indemnity agreements;

(18) "Risk based capital" means the "RBC level" defined under Ark. Code Ann. § 23-63-1501 (8); and

(19) "Risk-based provider organization" means an entity that:

(A)(i) Is licensed by the Insurance Commissioner under this Rule.

(ii) Notwithstanding any other provision of law, a risk-based provider organization is an insurance company upon licensure by the Commissioner.

(iii) The Commissioner shall not license a risk-based provider organization except as provided under Subchapter 27 — Medicaid Provider-Led Organized Care Act;

(B) Is obligated to assume the financial risk for the delivery of specifically defined healthcare services to an enrollable Medicaid beneficiary population; and

(C) Is paid by ADHS on a capitated basis with a global payment made, whether or not a particular member of an enrollable Medicaid beneficiary population receives services during the period covered by the payment;

(20) "Voluntary Medicaid beneficiary populations" means individuals who are in need of behavioral health services or developmental disabilities services, not

otherwise excluded in this subchapter, who are eligible for Medicaid and may elect to enroll in a risk-based provider organization.

**Section 6. Certificate of Authority**

A. Requirement To Be Newly Formed And Organized.

Unless currently authorized or licensed by the Department as a carrier as defined in Ark. Code Ann. § 20-77-2703(4), no RBPO shall transact business in this State under the Organized Care Act Program unless authorized by a subsisting certificate of authority issued to it by the Commissioner. Unless currently authorized or licensed by the Department as a carrier as defined in Ark. Code Ann. § 20-77-203(4), no RBPO shall be granted a certificate of authority unless it is newly formed and organized for the purpose of its participation in the Organized Care Act Program.

B. Entity Type

The business organization form of an RBPO may be any organization type which permits a valid certificate of authority to be issued to it by the Arkansas Secretary of State. The RBPO must obtain and maintain a valid certificate of authority issued by the Secretary of State.

**Section 7. Certificate of Authority Application**

A. Requirements

An RBPO may apply for a certificate of authority on a form prescribed by the Commissioner. Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant. If no form application is available by the Arkansas Insurance Department until the promulgation of a Final Rule, an RBPO may apply for a certificate of authority in writing to the Commissioner, and, in the request for a certificate of authority, provide the following information:

- (1) The name of the risk-bearing entity (RBPO), the contact information of the RBPO, including business address and phone number of the RBPO. Provide the name, address and contact information for the principal contact person of the RBPO for the Arkansas Insurance Department;

(2) A list of the names, addresses and official positions of the person who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of the directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association.

(3) Pay a non-refundable filing fee of two thousand dollars (\$2,000.00) to the Department;

(4) A detailed summary of its proposed business plan with respect to its proposed plan as an RBPO. This business plan shall include, but not be limited to:

a. A description of the services to be provided and the manner in which the RBPO shall provide a network of direct service providers sufficient to ensure that all services to recipients are adequately accessible within time and distance requirements defined by Medicaid;

b. A description or plan of the RBPO to ensure that the requirements are met in Ark. Code Ann. § 20-77-2706(f)(2)(A) through (D) and that the RBPO shall timely process claims under Ark. Code Ann. § 20-77-2706(f)(3);

c. A description of the projected population or numbers of enrollees or beneficiaries to be serviced on an annual basis by the RBPO;

d. Describe the network's form of ownership, including the name and the percentage of ownership interest of all members;

e. A description of the RBPO's capital structure;

f. A quantitative measurement of its capacity to provide contracted services;

g. A detailed description of the procedures to be established to provide due process protections for the enrolled Medicaid beneficiary populations (i.e., reconsiderations, grievance procedures, peer review, case utilization procedures, etc.);

h. A description of the network's geographical service area;

i. An explanation of the techniques to be implemented to ensure continuity of care or benefits for all enrolled Medicaid beneficiaries should the RBPO incur a change in its providers, geographical area or become financially impaired or insolvent. Explain or describe the extent to which enrolled Medicaid beneficiaries are assured continuity of care by Medicaid in the event of change of its providers, geographical area, or due to the circumstance that the RBPO becomes financially



impaired to provide contracted services, substantially equivalent to the requirements in Ark. Code Ann. § 23-76-118.

j. An explanation of the plan by the RBPO to assure or protect payment to contracted or participating providers of the RBPO, including subcontracted providers in the plan, for services provided should the RBPO become financially insolvent. Such measures and protections may include access to additional capital, stop-loss insurance, business interruption insurance, etc.

k. A current audit report, if available, certified by an independent certified public accountant, of the applicant's financial condition, or current financial information on a SAP basis, attested to by an officer of the RBPO applicant. In addition, three (3) years of financial projections, including balance sheets, income statements and statements of cash flow must be provided. The financial projections shall contain projected per member per month enrollment at its fiscal year end, and a concise summary of all assumptions used to generate the projections and supported by a statement of an actuarial opinion.

l. A copy of the RBPO's proposed health coverage plan(s), contracts, arrangements, marketing and advertising material.

m. A list of the providers comprising the RBPO's provider network, including each provider's medical designation, field of practice or specialty, licensure or certification category, and a description of the RBPO's procedures for determining, on an on-going basis, that each provider is duly licensed or certified.

n. A list of all entities on whose behalf the RBPO has agreements or contracts to provide health care services under the Organized Care Act Program, including a list of all subcontractors of the RBPO.

o. The parent company's current audited financial statements if the applicant is owned by a parent company.

p. A statement or description identifying sources of additional capital resources that would be available in the event the applicant needs additional capital funding.

(5) Provide biographical backgrounds of all proposed officers, directors, owners and organizers, and information providing confirmation of their background and experience in the management or delivery of the services to be delivered through the RBPO. Such biographical information shall be submitted on the NAIC form, Biographical Affidavit (available upon request). Any person who has managerial involvement or control of a company that underwent any adverse state or federal

administrative action shall include information about the adverse administrative action.

(6) Provide a copy of the RBPO's organizational documents (e.g. articles of incorporation, by-laws, partnership agreements, etc.) including any sample contract forms, or generic template contract forms between the RBPO and its participating providers.

(7) Provide a written description evidencing the RBPO ownership or management satisfies the characteristics of an RBPO under Ark. Code Ann. § 20-77-2706 which include:

a. The RBPO holds a valid certificate of authority or instrument of formation issued by the Secretary of State;

b. The RBPO has an ownership interest of not less than fifty-one percent (51%) by participating providers;

c. The RBPO includes within its membership:

(1) One or more of the following Arkansas licensed or certified direct service provider of developmental disabilities services;

(i) Developmental Day Treatment Clinic Services ("DDTCS")

(ii) Private (not state owned and operated) Intermediate Care Facilities for Individuals with Intellectual or Developmental Disabilities (ICF/IDD)

(iii) DDS Waiver Services

(iv) Early Intervention Services ("EI")

(v) Child Health Management Services ("CHMS")

(2) One or more of the following Arkansas licensed or certified direct service provider of behavioral health services:

i) Rehabilitation Services for Persons with Mental Illness ("RSPMI") until June 30, 2018

ii) Outpatient Behavioral Health Agency ("OBHA")

iii) Licensed Mental Health Practitioner (“LMHP”) until June 30, 2018

iv.) Independently Licensed Practitioner (“ILP”)

(3) An Arkansas licensed hospital or hospital services organization.

(4) An Arkansas licensed physician practice;

(5) A pharmacist who is licensed by the Arkansas State Board of Pharmacy

d. The RBPO has a surety bond in the amount as required under Section Seven (7) of the Organized Care Act.

(8) Provide a copy of any management or administrative contract(s) entered into, or to be entered into, by the RBPO.

(9) Confirm that the RBPO uses standardized codes, billing processes and formats.

(10) Describe how the applicant has the capability to satisfactorily manage the health care coverage issued. This confirmation is to include a detailed description of the RBPO’s procedures established and implemented to ensure the maintenance of all books and records necessary to meet all reporting requirements. This requirement can be met through a third party management or administration agreement.

(11) Describe the RBPOs global payment amount awarded, or, if not available, the estimated or projected global payment amount or rates. Describe the actual or projected monthly payments or monthly reimbursement amounts under the global payment to the RBPO by Medicaid. Provide a copy of all contracts between the RBPO and Medicaid related to the RBPOs participation in the Organized Care Act program.

(12) Describe the RBPOs rates or charges to participating providers. This information shall include the basis for the calculation of the rate or charge (e.g., use of usual, customary, and reasonable (UCR) rates).

(13) Describe any and all stop-loss arrangements or reinsurance arrangements of the RBPO for participation in this program.

(14) A copy of the basic organizational document of the RBPO, such as the articles of incorporation, articles of association, partnership agreement, trust agreement or other applicable documents, and all amendments thereto; a copy of the bylaws,

rules and regulations or similar document, if any, regulating the conduct of the internal affairs of the applicant.

(15) A copy of any contract made or to be made between any providers and the applicant or persons under Section Seven (7)(A)(4)(M) of this Rule.

(16) Any other information deemed necessary by the commissioner in evaluating the application.

B. Material Changes.

Prior to implementing any material changes in its operations or in the coverage offered by the RBPO, the RBPO must submit to the Commissioner a written description of any material modification to its plan of operation, or a written explanation of any material changes to the information submitted in accordance with this Section. If the Commissioner does not disapprove within sixty (60) days of filing, the modification shall be deemed approved.

**Section 8. Solvency Standards**

All RBPOs shall be responsible for meeting the following solvency standards under this Section at the time of initial licensure, in the evaluation of their application, and continuously thereafter. All RBPOs acting as a carrier under Ark. Code Ann. § 20-77-2703(4) shall be subject to this Section in addition to any other provision in the Arkansas Insurance Code or Rules applicable to its type of organization, unless excluded by this Emergency Rule or the Organized Care Act or by Medicaid pre-emption.

A. Solvency Standards

All RBPOs participating in the Organized Care Act program shall:

(1) meet the reserve or capital requirements under Ark. Code Ann. § 20-77-2706(f)(4) and any additional amounts needed to satisfy Risk-Based Capital Requirements under Ark. Code Ann. § 23-63-1501 et seq. (hereafter, "HMO-RBC"). The reserve requirements in Ark. Code Ann. § 20-77-2706(f)(4) shall refer to the organization's capital or capital and surplus under Statutory Accounting Principles (SAP). The Commissioner may adjust the reserve requirements of the RBPO from initial licensure, on a prospective basis, related to the timing of the RBPO assumption levels of partial to full risk in its business operations. In addition, the Commissioner may consider the extent to which the RBPO has reinsurance or stop loss coverage, or agreements with a licensed insurer or HMO,

to cede risk, as a circumstance to reduce or modify reserve or capital requirements under this Section. The Commissioner shall review and approve all such risk sharing agreements including any major modifications thereof.

(2) comply with SAP reporting and file quarterly and annual financial statements with the Department under SAP in the same manner as is required of a health maintenance organization regulated by the Department under Ark. Code Ann. § 23-76-113;

(3) comply with HMO-RBC requirements and reporting;

(4) comply with Ark. Code Ann. § 23-63-601 et seq., referring to assets and liabilities;

(5) comply with Ark. Code Ann. § 23-68-101 et seq., referring to rehabilitation and liquidation;

(6) comply with Ark. Code Ann. § 23-69-134, referring to home office and records and the penalty for unlawful removal of records;

(7) comply with Ark. Code Ann. § 23-76-122 related to examinations, in the same manner as a health maintenance organization;

(8) comply with Sections Ark. Code Ann. §§ 23-60-101 through 23-60-108 and 23-60-110 referring to the scope of the Arkansas Insurance Code;

(9) comply with Sections Ark. Code Ann. §§ 23-61-101, 23-61-201, 23-61-301 referring to the Insurance Commissioner;

(10) comply with Section Ark. Code Ann. §§ 23-63-102 through 23-63-104, 23-63-201, et seq., general provisions, and 23-63-301 et seq., referring to service of process, a registered agent as process agent, serving legal process, and time to plead;

(11) comply with the annual independent audit under Ark. Code Ann. § 23-63-216(a)(5) and actuarial requirements under Ark. Code Ann. § 23-63-216(e)(1) and (e)(2);

(12) comply with the custody of assets requirements under Ark. Code Ann. § 23-69-134; and

(13) comply with the transfer of ownership requirements or acquisition provisions under Ark. Code Ann. § 23-69-142.

## **Section 9. Market Conduct Related Activities and Network Adequacy**

### **A. RBPO Provider Market Conduct Activities**

The Insurance Commissioner is primarily authorized to regulate the financial solvency and licensing of the RBPO under the Organized Care Act. The Insurance Commissioner shall not administratively adjudicate, review, process complaints, enforce or apply provisions of the Arkansas Insurance Code, Rules, Bulletins or Directives upon an RBPO, or contracted third party administrator, if applicable, related to claims payment disputes, claims payment delays, provider payment rate(s), provider credentialing, provider reimbursement programs, network related procedures or filing requirements, if such arise during the course of Organized Care Act Program, unless the complaint or concern relates to “Any Willing Provider” access (Ark. Code Ann. §§ 23-99-201, et seq., 23-99-801 et seq.), or significantly reflects upon the financial condition of the RBPO. Complaints or inquiries about claims payment delays or requirements shall be referred to ADHS.

### **RBPO Network Adequacy Requirements**

ADHS shall be responsible for certifying, approving and monitoring whether an RBPO meets the required network access or network adequacy for services under the Organized Care Act. The Commissioner however shall review network adequacy of the RBPO at licensure, or upon renewal of licensure, but shall accept certification from ADHS that the RBPO has sufficient network adequacy as required under the Organized Care Act.

## **Section 10. Confidentiality & Workpapers**

The confidentiality provisions in the Arkansas Insurance Code and Rules, including but not limited to Ark. Code Ann. § 23-61-103(d)(5), related to actuarial reports, Ark. Code Ann. § 23-61-103(d), related to active investigations or examinations, Ark. Code Ann. § 23-61-107, related to financial records and Ark. Code Ann. § 23-61-207, related to ancillary information and workpapers, shall apply in the same manner to an RBPO as are applied to a health insurer or health maintenance organization.

## **Section 11. Payment of Premium Taxes**

Pursuant to Ark. Code Ann. § 26-57-603, a RBPO that is licensed under the Organized Care Act and participates in the Medicaid provider-led organized care system offered by the Arkansas Medicaid Program for enrollable Medicaid beneficiary populations as defined in § 20-77-2703 shall pay to the Treasurer of State through the Commissioner a tax imposed for the privilege of transacting business in this state.

(2) The tax shall be computed at a rate of two and one-half percent (2½%) on the total amount of funds received in global payments to a risk-based provider organization participating in the Medicaid provider-led organized care system.

(3) The tax shall be:

(A) Reported at such times and in such form and context as prescribed by the commissioner; and

(B) Paid on a quarterly basis as prescribed by the Commissioner.

#### **Section 10. Effective Date**

This Emergency Rule shall be effective on the date in which it is signed by the Commissioner and approved for issuance as an Emergency Rule by the Executive Subcommittee of the Arkansas Legislative Council.

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ALLEN W. KERR  
INSURANCE COMMISSIONER

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DATE

**ECONOMIC IMPACT STATEMENT  
OF PROPOSED RULES OR REGULATIONS  
EO 05-04: Regulatory Flexibility**

**Department:** Arkansas Insurance Department  
**Contact Person:** Booth Rand  
**Contact Phone:** 501-371-2820

**Division:** Legal  
**Date:** May 17, 2017  
**Contact Email:** booth.rand@arkansas.gov

**Title or Subject:**

Proposed Rule 117 "PROVIDER-LED ORGANIZATION LICENSURE STANDARDS"

**Benefits of the Proposed Rule or Regulation**

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

The proposed Rule implements Act 775 of 2017 of the 91st Arkansas General Assembly also known as the "Medicaid Provider-Led Organized Care Act" (hereafter, the "Organized Care Act")." The Organized Care Act requires AID to have a rule "adopted" before June 1, 2017 and for AID to begin taking license applications on or after July 1, 2017. The proposed Emergency Rule sets out licensing standards or requirements to begin this program.

2. What are the top three benefits of the proposed rule or regulation?  
This Emergency Rule provides  
(1) application requirements of the RBPO participating in the program, (2) addresses standards for imposition of additional amounts of funds above reserve requirements to adjust to risk in Ark. Code Ann. § 20-77-2706 (f)(4)(B), (3) establishes financial reporting requirements of the RBPO, imposes a reasonable fee for the regulation and licensing of the RBPO by rule under § 23-61-117(b)(2), and, finally, (4) prescribes the reporting, forms, and requirements related to the payment of the quarterly tax under Ark. Code Ann. 23-61-117(b)(3)."

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

The affected industry would have no standards for participating in the program and no understanding of licensing requirements.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.



None. The Rule implements an Act passed by the General Assembly, and the Act requires a regulation from the Department.

### **Impact of Proposed Rule or Regulation**

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

The Insurance Department may incur additional actuarial cost expenses in professional services in reviewing the RBPO plans, however, the Department does not have accurate cost expense projections until knowing the number of applying RBPOs..

6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

None.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

None.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

None.

9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.

None.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

The propose Rule does not require “small business owners” to implement provisions in the proposed Rule.

11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?

This proposed rule is not patterned after any state or federal rule or law or model.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

We have received no comments from small business.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Insurance Department  
 DIVISION Legal Division  
 DIVISION DIRECTOR Suzanne Tipton, Deputy Commissioner & General Counsel  
 CONTACT PERSON Booth Rand, Managing Attorney  
 ADDRESS 1200 West Third Street, Little Rock, Arkansas 72201-1904  
 PHONE NO. 501-371-2820 FAX NO. 501-371-2618 MAIL booth.rand@arkansas.gov  
 NAME OF PRESENTER AT COMMITTEE MEETING Booth Rand, Managing Attorney  
 PRESENTER E-MAIL booth.rand@arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis**  
**Administrative Rules Review Section**  
**Arkansas Legislative Council**  
**Bureau of Legislative Research**  
**One Capitol Mall, 5<sup>th</sup> Floor**  
**Little Rock, AR 72201**

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1. What is the short title of this rule? RULE 117: PROVIDER-LED ORGANIZATION LICENSURE STANDARDS

2. What is the subject of the proposed rule? The proposed Rule implements Act 775 of 2017 of the 91st Arkansas General Assembly also known as the "Medicaid Provider-Led Organized Care Act" (hereafter, the "Organized Care Act")."

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
 If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No   
 If yes, what is the effective date of the emergency rule? Upon date approved by the Executive Subcommittee of the Arkansas Legislative Council

When does the emergency rule 120 days from the date the Emergency Rule is approved by

expire?

the Executive Subcommittee of the Arkansas Legislative Council

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Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes

No

5. Is this a new rule? Yes  No

If yes, please provide a brief summary explaining the regulation. Act 775 of 2017 requires the Arkansas Insurance Commissioner to adopt a rule implementing the Organized Care Act before June 1, 2017 and to begin issuing licenses to entities participating in the program on and after July 1, 2017. As stated in the proposed Emergency Rule: "This Emergency Rule provides application requirements of the RBPO participating in the program, addresses standards for imposition of additional amounts of funds above reserve requirements to adjust to risk in Ark. Code Ann. § 20-77-2706 (f)(4)(B), establishes financial reporting requirements of the RBPO, imposes a reasonable fee for the regulation and licensing of the RBPO by rule under § 23-61-117(b)(2), and, finally, prescribes the reporting, forms, and requirements related to the payment of the quarterly tax under Ark. Code Ann. 23-61-117(b)(3)."

Does this repeal an existing rule? Yes  No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. N/A

Is this an amendment to an existing rule? Yes  No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. This rule is issued pursuant to Ark. Code Ann. § 23-61-117(b) which authorizes the Arkansas Insurance Commissioner ("Commissioner") to issue rules to regulate the licensure and financial solvency of risk-based provider organizations under Act 775 of 2017

7. What is the purpose of this proposed rule? Why is it necessary? See our answer to your Question Five (5) above.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://www.insurance.arkansas.gov/prop-rules.htm>

9. Will a public hearing be held on this proposed rule? Yes  No

If yes, please complete the following:

August 1, 2017 or within a week of August 1. We will update this date in

Date: our Notice of Public Hearing..

Time: Will Update Date and Time.

Arkansas Insurance Department, 1200 West Third Street, Little Rock,

Place: Arkansas

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
We will update this when we issue the Notice of Public Hearing for the August permanent Rule hearing.  
This expiration date is typically on the date of the Administrative Hearing unless extended by the  
Commissioner following the public hearing.

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11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
Upon approval of the proposed Emergency Rule by the Executive Subcommittee of ALC.

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12. Do you expect this rule to be controversial?    Yes     No   
If yes, please explain. Unknown, we will update the Bureau with comments or concerns during the final rule or permanent rule hearing phase.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?  
Please provide their position (for or against) if known.  
We do not know of these persons or groups at this time, but will update this information in public  
comment summaries after it is scheduled.

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**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 115: Prior Authorization Transparency Act

- 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**

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

**Next Fiscal Year**

General Revenue     \_\_\_\_\_  
Federal Funds        \_\_\_\_\_  
Cash Funds           \_\_\_\_\_  
Special Revenue     \_\_\_\_\_  
Other (Identify)     \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

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

**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 \_\_\_\_\_  
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**

\$ Unknown

\$ \_\_\_\_\_

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**

\$ None

\$ \_\_\_\_\_

We already review these mandates with current staffing

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.



## SUMMARY

### EMERGENCY RULE 117

- Emergency Rule 117 satisfies Act 775 of 2017, the Medicaid Provider-Led Organized Care Act (“Organized Care Act”) which requires a rule to be “adopted” prior to June 1, 2017 to implement the Organized Care Act program.
- Emergency Rule 117 needed to provide licensing standards to interested industry in order to review license applications on and after July 1, 2017, as required by the Organized Care Act.
- Emergency Rule 117 provides application and licensing requirements of the RBPO participating in the program.
- Emergency Rule 117 establishes standards for imposition of additional amounts of capital funds above reserve requirements to adjust to risk in Ark. Code Ann. § 20-77-2706 (f)(4)(B).
- Emergency Rule 117 establishes financial reporting requirements of the RBPO.
- Emergency Rule 117 imposes a reasonable fee for the regulation and licensing of the RBPO by rule under § 23-61-117(b)(2).
- Emergency Rule 117 prescribes the reporting, forms, and requirements related to the payment of the quarterly tax under Ark. Code Ann. 23-61-117(b)(3).
- Emergency Rule 117 incorporates various provisions in the insurance code to apply to RBPOs for statutory accounting purposes.