

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

As Engrossed: S4/5/13

# A Bill

SENATE BILL 1122

5 By: Senator D. Johnson  
6

## For An Act To Be Entitled

8 *AN ACT TO AMEND THE LAW GOVERNING HEALTH MAINTENANCE*  
9 *ORGANIZATIONS; TO TRANSFER REGULATORY*  
10 *RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH FOR*  
11 *HEALTH MAINTENANCE ORGANIZATIONS TO THE INSURANCE*  
12 *COMMISSIONER; AND FOR OTHER PURPOSES.*

## Subtitle

13  
14  
15 *TO AMEND THE LAW GOVERNING HEALTH*  
16 *MAINTENANCE ORGANIZATIONS; AND TO*  
17 *TRANSFER REGULATORY RESPONSIBILITIES OF*  
18 *THE DEPARTMENT OF HEALTH FOR HEALTH*  
19 *MAINTENANCE ORGANIZATIONS TO THE*  
20 *INSURANCE COMMISSIONER.*

21  
22  
23  
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 *SECTION 1. Arkansas Code § 23-76-105(c), concerning penalties and*  
27 *enforcement provisions applicable to health maintenance organizations, is*  
28 *amended to read as follows:*

29 *(c)(1) If the commissioner ~~or the Director of the Department of Human~~*  
30 *~~Services~~ shall for any reason have cause to believe that any violation of*  
31 *this chapter has occurred or is threatened, the commissioner ~~or the director~~*  
32 *may give notice to the health maintenance organization and to the*  
33 *representatives, or other persons who appear to be involved in the suspected*  
34 *violation, to arrange a conference with the alleged violators or their*  
35 *authorized representatives for the purpose of attempting to ascertain the*  
36 *facts relating to the suspected violation and, in the event it appears that*



1 any violation has occurred or is threatened, to arrive at an adequate and  
2 effective means of correcting or preventing the violations.

3 (2) Proceedings under this subsection shall not be governed by  
4 ~~any~~ formal procedural requirements and may be conducted in ~~such~~ the manner ~~as~~  
5 the commissioner ~~or the director may deem~~ deems appropriate under the  
6 circumstances.

7  
8 SECTION 2. Arkansas Code § 23-76-107(c)(13), concerning requirements  
9 for an application to establish a health maintenance organization, is amended  
10 to read as follows:

11 (13) A description of the procedures and programs to be  
12 implemented to meet the quality of health care requirements in § 23-76-  
13 108(a)(2);

14  
15 SECTION 3. Arkansas Code § 23-76-108 is amended to read as follows:  
16 23-76-108. Issuance of certificate of authority.

17 (a)~~(1)~~ Upon receipt of an application for issuance of a certificate of  
18 authority, the Insurance Commissioner shall ~~immediately transmit copies of~~  
19 ~~the application and accompanying documents to the Director of the Department~~  
20 ~~of Health~~ determine whether the applicant furnishes or proposes to furnish  
21 adequate and accessible health care services for its health care plans  
22 subject to the requirements or rules of the State Insurance Department.

23 ~~(2) The director shall determine whether the applicant for a~~  
24 ~~certificate of authority with respect to health care services to be~~  
25 ~~furnished:~~

26 ~~(A) Has demonstrated the legal qualifications and~~  
27 ~~authority and potential ability to assure that the health care services will~~  
28 ~~be provided in a manner to assure both availability and accessibility of~~  
29 ~~adequate personnel and facilities and in a manner enhancing availability and~~  
30 ~~accessibility and continuity of service;~~

31 ~~(B) Has arrangements, established in accordance with~~  
32 ~~regulations promulgated by the director for an ongoing quality of health care~~  
33 ~~assurance program concerning health care processes and outcomes; and~~

34 ~~(C) Has a procedure established in accordance with~~  
35 ~~regulations of the director to develop, compile, evaluate, and report~~  
36 ~~statistics relating to the cost of its operations, the pattern of utilization~~

1 ~~of its services, the availability and accessibility of its services, and~~  
2 ~~other matters as may be reasonably required by the director.~~

3 ~~(3)(A) Within sixty (60) days of receipt of the application for~~  
4 ~~issuance of a certificate of authority, the director shall certify to the~~  
5 ~~commissioner whether the proposed health maintenance organization meets the~~  
6 ~~requirements of subdivision (a)(2) of this section.~~

7 ~~(B)(i) If the director certifies that the~~  
8 ~~health maintenance organization does not meet the requirements, the director~~  
9 ~~shall specify in what respects it is deficient.~~

10 ~~(ii) However, the director shall not~~  
11 ~~certify that the requirements are not met unless the proposed health~~  
12 ~~maintenance organization has been given an opportunity to comment on the~~  
13 ~~proposed findings of deficiency.~~

14 ~~(C) If requested by the proposed health~~  
15 ~~maintenance organization, the director shall hold a hearing on his or her~~  
16 ~~proposed finding of deficiency.~~

17 (b) The commissioner shall issue a certificate of authority to any  
18 person filing an application pursuant to § 23-76-107 within sixty (60) days  
19 of receipt of the ~~certificate from the director, when~~ application if the  
20 ~~commissioner is satisfied that the following conditions are met:~~

21 (1) The persons responsible for the conduct of the affairs of  
22 the applicant are competent, trustworthy, and possess good reputations;

23 (2) ~~The director certifies in accordance with~~  
24 ~~subsection (a) of this section commissioner determines that the health~~  
25 ~~maintenance organization's proposed plan of operation meets the requirements~~  
26 ~~of subdivision (a)(2) subsection (a) of this section;~~

27 (3) The health care plan ~~constitutes an appropriate mechanism~~  
28 ~~whereby will allow~~ the health maintenance organization ~~will~~ effectively to  
29 provide or arrange for the provision of basic health care services through  
30 insurance or otherwise on a prepaid basis, ~~through insurance or otherwise,~~  
31 ~~except subject to the extent of~~ reasonable requirements for copayments;

32 (4) The health maintenance organization is financially  
33 responsible and may reasonably be expected to meet its obligations to  
34 enrollees and prospective enrollees;

35 (5) The health care plan's arrangements for health care services  
36 and the schedule of charges for use therewith are financially sound and

1 reasonable;

2 (6) Any agreements with insurers, hospitals, medical service  
3 corporations, governmental entities, or any other organizations for insuring  
4 the payment of the cost of health care services or the provision for  
5 automatic applicability of alternative coverage in the event of  
6 discontinuance of the plan are reasonable and adequate;

7 (7) Agreements with providers for the provision of health care  
8 services are reasonable and adequate;

9 (8) The enrollees will be afforded an opportunity to participate  
10 in matters of policy and operation pursuant to § 23-76-110;

11 (9) Nothing in the proposed method of operation, as shown by the  
12 information submitted pursuant to § 23-76-107 or by independent investigation  
13 is contrary to the public interest;

14 ~~(10) Any deficiencies certified by the director have been~~  
15 ~~corrected;~~

16 ~~(11)~~(10) Any deposit of cash or securities, in an amount  
17 determined to be appropriate by the commissioner pursuant to § 23-76-118, is  
18 sufficient to guarantee that the obligations to provide the promised benefits  
19 will be performed; and

20 ~~(12)~~(11) The applicant has paid-in capital in an amount not less  
21 than one hundred thousand dollars (\$100,000) and additional working capital  
22 or surplus funds in an amount deemed by the commissioner to be adequate in  
23 relation to the proposed plan of operation.

24 (c) A certificate of authority shall be denied by the commissioner  
25 only after compliance with the requirements of § 23-76-126.

26

27 SECTION 4. Arkansas Code § 23-76-113(a), concerning the annual report  
28 required of a health maintenance organization, is amended to read as follows:

29 (a) ~~Every~~ A health maintenance organization shall annually, on or  
30 before March 1, file a report verified by at least two (2) principal officers  
31 with the Insurance Commissioner, ~~with a copy to the Director of the~~  
32 ~~Department of Health,~~ covering the preceding calendar year.

33

34 SECTION 5. Arkansas Code § 23-76-113(b)(5)(D), concerning requirements  
35 for a health maintenance organization's annual report to regulators, is  
36 amended to read as follows:

1                   (D) A summary of information compiled pursuant to § 23-76-  
2 108 in ~~such~~ the form ~~as~~ required by the ~~director~~ commissioner; and

3  
4           SECTION 6. Arkansas Code § 23-76-116 is amended to read as follows:  
5           23-76-116. Complaint system.

6           (a)(1) Every health maintenance organization shall establish and  
7 maintain a complaint system that has been approved by the Insurance  
8 Commissioner ~~after consultation with the Director of the Department of Health~~  
9 to provide reasonable procedures for the resolution of written complaints  
10 initiated by enrollees concerning health care services.

11           (2) Each health maintenance organization shall submit to the  
12 commissioner ~~and the director~~ an annual report in a form prescribed by the  
13 commissioner, ~~after consultation with the director~~, that shall include:

14                   (A) A description of the procedures of the complaint  
15 system;

16                   (B) The total number of complaints handled through the  
17 complaint system and a compilation of causes underlying the complaints filed;  
18 and

19                   (C) The number, amount, and disposition of malpractice  
20 claims settled during the year by the health maintenance organization.

21           (b)(1) The health maintenance organization shall maintain records of  
22 written complaints filed with it concerning issues and persons other than  
23 health care services and shall submit to the commissioner a summary report at  
24 such times and in such format as the commissioner may require.

25           (2) Complaints involving other persons shall be referred to the  
26 persons with a copy to the commissioner.

27           (c) The commissioner ~~or the director~~ may examine the complaint system,  
28 subject to the limitation concerning medical records of individuals set forth  
29 in § 23-76-122(c).

30  
31           SECTION 7. Arkansas Code § 23-76-122 is amended to read as follows:  
32           23-76-122. Examinations.

33           (a) The Insurance Commissioner may make an examination of the affairs  
34 of any health maintenance organization as often as he or she deems it  
35 necessary for the protection of the interests of the people of this state but  
36 not less frequently than one (1) time every three (3) years.

1           (b) ~~The Director of the Department of Health~~ commissioner may make an  
2 examination concerning the quality of health care services of any health  
3 maintenance organization as often as he or she deems it necessary for the  
4 protection of the interests of the people of this state but not less  
5 frequently than one (1) time every three (3) years.

6           (c)(1) Every health maintenance organization shall submit its books  
7 and records relating to the health care plan to the examinations and in every  
8 way facilitate them.

9           (2) For the purpose of examinations, the commissioner ~~and the~~  
10 ~~director~~ may administer oaths to and examine the officers and agents of the  
11 health maintenance organization.

12           (3) Medical records of individuals and records of physicians and  
13 hospitals providing services under a contract to the health maintenance  
14 organization shall be subject to the examination.

15           (d) The expenses of examinations under this section shall be assessed  
16 against the organization being examined and remitted to the commissioner ~~or~~  
17 ~~the director for whom the examination is being conducted.~~

18           (e) In lieu of the examination, the commissioner ~~or the director~~ may  
19 accept the report of an examination made by the insurance commissioner of  
20 another state or director of the department of health of another state.

21           (f)(1) Any examination under this section that is to commence within  
22 one (1) year prior to the date a health maintenance organization shall cease  
23 to provide health care services in this state, may be reduced in scope or  
24 waived in its entirety, upon application of the health maintenance  
25 organization and approval of the commissioner.

26           (2) The commissioner shall consider the following in determining  
27 whether a full or partial waiver may be granted:

28                   (A) Claims payment history;

29                   (B) Consumer complaint history ~~with the department;~~

30                   (C) Financial condition; and

31                   (D) Compliance with § 23-76-118.

32           (3) Any health maintenance organization requesting a waiver of  
33 an examination shall continue to comply with § 23-76-118 until such time as  
34 it is no longer providing health care services in this state.

35  
36           SECTION 8. Arkansas Code § 23-76-123(a)(4), concerning grounds for the

1 suspension or revocation of a health maintenance organization's certificate  
2 of authority, is amended to read as follows:

3 ~~(4) The Director of the Department of Health certifies to the~~  
4 ~~commissioner that:~~

5 ~~(A) The health maintenance organization;~~

6 ~~(A) does Does not meet the requirements of § 23-76-~~  
7 ~~108(a)(2); or~~

8 ~~(B) The health maintenance organization is Is unable to~~  
9 ~~fulfill its obligations to furnish health care services as required under its~~  
10 ~~health care plan;~~

11  
12 SECTION 9. Arkansas Code § 23-76-126 is amended to read as follows:  
13 23-76-126. Administrative proceedings.

14 ~~(a) Application for a Certificate of Authority.~~

15 ~~(1) The public hearing referred to in § 23-76-108(a)(3)(G) shall~~  
16 ~~be held within sixty (60) days after receipt by the Insurance Commissioner of~~  
17 ~~the certification from the Director of the Department of Health, and at least~~  
18 ~~twenty (20) days' notice thereof shall be given by the commissioner to the~~  
19 ~~person filing the application.~~

20 ~~(2) At the hearing, the person filing the application, any~~  
21 ~~person to whom notice of hearing was sent, and any other person whose~~  
22 ~~interest may be affected thereby shall have the right to present evidence,~~  
23 ~~examine and cross-examine witnesses, and offer oral and written arguments and~~  
24 ~~in connection therewith shall be entitled to conduct discovery proceedings in~~  
25 ~~the same manner as is presently allowed in the courts of this state.~~

26 ~~(3) All discovery proceedings shall be concluded not later than~~  
27 ~~three (3) days prior to commencement of the public hearing.~~

28 ~~(b)(a)(1) Proceedings Against a Certificate of Authority.~~

29 ~~When~~ If the commissioner Insurance Commissioner has cause to  
30 believe that grounds for the suspension or revocation of a certificate of  
31 authority exist, the commissioner shall:

32 ~~(A) notify Notify~~ the health maintenance organization ~~and~~  
33 ~~the director in writing specifically stating of~~ the grounds for suspension or  
34 ~~revocation of the certificate of authority; and~~

35 ~~(B) fixing a time of at least twenty (20) days thereafter~~  
36 ~~for-Schedule a hearing on the matter at least twenty (20) days after giving~~

1 written notice of the hearing.

2 ~~(2)(A) The director, or his or her designated representative,~~  
3 ~~shall be in attendance at the hearing and shall participate in the~~  
4 ~~proceedings.~~

5 ~~(B) The recommendation and findings of the director, with~~  
6 ~~respect to matters relating to the quality of health care services provided~~  
7 ~~in connection with any decision regarding suspension or revocation of a~~  
8 ~~certificate of authority, shall be conclusive and binding upon the~~  
9 ~~commissioner.~~

10 ~~(G)(2) After the hearing or upon the failure of the health~~  
11 ~~maintenance organization to appear at the hearing, the commissioner shall~~  
12 ~~take appropriate action as is deemed advisable on and mail written findings~~  
13 ~~which shall be mailed to the health maintenance organization with a copy~~  
14 ~~thereof to the director.~~

15 ~~(e)(b)(1) Judicial Review. The action of the commissioner and the~~  
16 ~~recommendation and findings of the director shall be subject to review by may~~  
17 ~~be appealed to the Pulaski County Circuit Court. In disposing of the issue~~  
18 ~~before it, the court may affirm or reverse the order of the commissioner.~~  
19 ~~The review shall be upon the record of the proceedings, hearing, and findings~~  
20 ~~of the commissioner.~~

21 ~~(2) The commissioner's decision shall be affirmed if it is~~  
22 ~~supported by the preponderance of the evidence in the record.~~

23 ~~(d)(c) The provisions of the Arkansas Administrative Procedure Act, §~~  
24 ~~25-15-201 et seq., shall apply applies to proceedings under this section to~~  
25 ~~the extent they are it is not in conflict with subsections (a) and (b) of~~  
26 ~~this section.~~

27  
28 SECTION 10. Arkansas Code § 23-76-127 is amended to read as follows:  
29 23-76-127. Fees — ~~Disposition of revenues.~~

30 ~~(a) Every health maintenance organization subject to this chapter~~  
31 ~~shall pay the Department of Health the following fees:~~

32 ~~(1) For filing, reviewing, and issuance of all documents~~  
33 ~~necessary for the issuance of the original certificate of authority, one~~  
34 ~~thousand dollars (\$1,000);~~

35 ~~(2) For annual renewal of the certificate of authority, five~~  
36 ~~hundred dollars (\$500);~~

1 ~~(3) For filing an annual statement, fifty dollars (\$50.00); and~~  
2 ~~(4) For filing amendments to documents required under § 23-76-~~  
3 ~~107(e)(2), twenty five dollars (\$25.00).~~

4 ~~(b)(1) All fees levied and collected under this section are declared~~  
5 ~~to be special revenues and shall be deposited in the State Treasury, there to~~  
6 ~~be credited to the Public Health Fund.~~

7 ~~(2) Subject to such rules and regulations as may be implemented~~  
8 ~~by the Chief Fiscal Officer of the State, the disbursing officer for the~~  
9 ~~Department of Health is authorized to transfer all unexpended funds relative~~  
10 ~~to the health maintenance organization that pertain to fees collected, as~~  
11 ~~certified by the Chief Fiscal Officer of the State, to be carried forward and~~  
12 ~~made available for expenditures for the same purpose for any following fiscal~~  
13 ~~year.~~

14 ~~(e) Every A health maintenance organization subject to this chapter~~  
15 ~~shall pay to the State Insurance Department Trust Fund as special revenues~~  
16 ~~the following fees:~~

17 (1) For filing and reviewing all documents necessary for  
18 issuance of an original certificate of authority, one thousand dollars  
19 (\$1,000);

20 (2) For issuance of the original certificate of authority, two  
21 hundred dollars (\$200);

22 (3) For annual renewal of the certificate of authority, one  
23 hundred dollars (\$100);

24 (4) For filing an annual statement, fifty dollars (\$50.00); and

25 (5) For filing amendments to documents required under § 23-76-  
26 107, one hundred dollars (\$100).

27  
28 SECTION 11. Arkansas Code § 23-76-130 is amended to read as follows:  
29 23-76-130. Director of the Department of Health's authority to  
30 contract.

31 (a) ~~In carrying out his or her obligations under §§ 23-76-108(a)(2),~~  
32 ~~23-76-122(b), and 23-76-123(a), the Director of the Department of Health may~~  
33 ~~contract with qualified persons to make recommendations concerning the~~  
34 ~~determinations required to be made by him or her The Insurance Commissioner~~  
35 ~~may contract with qualified persons to make recommendations concerning the~~  
36 ~~adequacy, network adequacy, or accessibility of health care services under a~~

1 health care plan furnished or proposed to be furnished by a health  
2 maintenance organization.

3 (b) The commissioner may accept all or part of the recommendations ~~may~~  
4 ~~be accepted in full or in part by the director.~~

5

6 SECTION 12. Arkansas Code § 19-6-301(172)(C), concerning special  
7 revenues of the State Insurance Department, is amended to read as follows:

8 (C) Health maintenance organization fees, § 23-76-127(e);

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10 /s/D. Johnson

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