

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021

# A Bill

HOUSE BILL 1404

4  
5 By: Representative Bentley

## For An Act To Be Entitled

8 AN ACT TO AMEND THE EXEMPTIONS OF CERTAIN ENTITIES  
9 FROM INSURANCE REGULATION; AND FOR OTHER PURPOSES.

### Subtitle

12 TO AMEND THE EXEMPTIONS OF CERTAIN  
14 ENTITIES FROM INSURANCE REGULATION.

16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18  
19 SECTION 1. Arkansas Code § 23-60-104 is amended to read as follows:

20 23-60-104. Exceptions – Burial associations – ~~Health-care~~ Healthcare  
21 sharing ministries – Direct primary care agreements – Noninsurance healthcare  
22 benefits coverage – Definitions.

23 (a) The Arkansas Insurance Code and rules promulgated by the Insurance  
24 Commissioner under the Arkansas Insurance Code do not apply to a:

25 (1) Burial association governed by §§ 23-78-101 – 23-78-119 and  
26 23-78-121 – 23-78-125;

27 (2) Direct primary care agreement; ~~or~~

28 (3) ~~Health-care~~ Healthcare sharing ministry; or

29 (4) Noninsurance healthcare benefits coverage provided by a not-  
30 for-profit membership organization.

31 (b) As used in this section:

32 (1)(A) “Direct primary care agreement” means a written agreement  
33 that:

34 (i) Is between a licensed healthcare provider and a  
35 patient or the patient’s legal representative;

36 (ii)(a) Allows either party to terminate the



1 agreement in writing, without penalty or payment of a termination fee, at any  
2 time or after notice as specified in the agreement.

3 (b) The notice of termination described in  
4 subdivision (b)(1)(A)(ii)(a) of this section shall not exceed sixty (60)  
5 days;

6 (iii) Describes the healthcare services to be  
7 provided in exchange for payment of a periodic fee;

8 (iv) Specifies the periodic fee required and any  
9 additional fees that may be charged;

10 (v) May allow the periodic fee and any additional  
11 fees to be paid by a third party;

12 (vi) Prohibits the healthcare provider from charging  
13 or receiving additional compensation for healthcare services included in the  
14 periodic fee; and

15 (vii) Conspicuously and prominently states that the  
16 agreement is not health insurance and does not meet any individual health  
17 insurance mandate that may be required by federal law.

18 (B) A direct primary care agreement shall provide a  
19 written disclaimer on or accompanying an application distributed by or on  
20 behalf of an entity offering a direct primary care agreement that reads, in  
21 substance:

22 “Notice: A direct primary care agreement is not an insurance policy, and the  
23 select medical services as specified under a direct primary care agreement  
24 may not constitute the minimum essential health benefits under federal  
25 healthcare laws established by Pub. L. No. 111-148, as amended by Pub. L. No.  
26 111-152, and any amendments to, or regulations or guidance issued under,  
27 those statutes existing on January 1, 2017. Medical services provided under a  
28 direct primary care agreement may not be covered by or coordinated with your  
29 health insurance and you may be responsible for any payment for medical  
30 services not covered by health insurance under your insurer’s statement of  
31 benefits policy.”.

32 (C) “Direct primary care agreement” does not mean a health  
33 benefit plan or a health maintenance organization as defined in § 23-76-102;  
34 ~~and~~

35 (2) “~~Health care~~ Healthcare sharing ministry” means a faith-  
36 based, nonprofit organization that:

1 (A) Is tax-exempt under the Internal Revenue Code of 1986;

2 (B) Limits participation to those who are of a similar  
3 faith;

4 (C) Facilitates an arrangement to match participants who  
5 have financial or medical needs to participants with the present ability to  
6 assist those with financial or medical needs according to criteria  
7 established by the ~~health care~~ healthcare sharing ministry;

8 (D) Provides for the financial or medical needs of a  
9 participant through contributions from one (1) participant to another;

10 (E) Establishes contribution amounts for participants with  
11 no guarantee of return, assumption of risk, or promise to pay qualified  
12 medical needs of the participant or of the medical provider performing the  
13 service or services for the participant;

14 (F) Provides a written monthly statement to its  
15 participants that lists:

16 (i) The total dollar amount of qualified needs  
17 submitted to the ~~health care~~ healthcare sharing ministry; and

18 (ii) The amount of contribution established for its  
19 participants;

20 (G) Provides a written disclaimer on or accompanying an  
21 application and guideline material distributed by or on behalf of the ~~health~~  
22 ~~care~~ healthcare sharing ministry that reads, in substance:

23 “Notice: The organization facilitating the sharing of medical expenses is not  
24 an insurance company and neither its guidelines nor plan of operation is an  
25 insurance policy. If anyone chooses to assist you with your medical bills, it  
26 will be totally voluntary because participants are not compelled by law to  
27 contribute toward your medical bills. Participation in the organization or a  
28 subscription to any of its documents should never be considered to be  
29 insurance. Regardless of whether you receive a payment for medical expenses  
30 or if this organization continues to operate, you are always personally  
31 responsible for the payment of your own medical bills.”; and

32 (H) Transfers or distributes contribution amounts from one  
33 (1) participant to match the qualified medical needs of another participant  
34 to whom neither the organization nor the sending participant has an  
35 obligation or commitment to pay for any qualified medical needs with its own  
36 funds; and

1           (3)(A) "Not-for-profit membership organization" means a  
 2 professional association, trade association, or any entity that has dues-  
 3 paying members that:

4                   (i) Is a qualifying charitable nonprofit  
 5 organization that has received tax-exempt status under 26 U.S.C. § 501(c)(3),  
 6 as in effect on January 1, 2021; and

7                   (ii) Exists to serve its members beyond the offer of  
 8 noninsurance healthcare benefits coverage.

9                   (B) Notwithstanding any law to the contrary, noninsurance  
 10 healthcare benefits coverage provided by a not-for-profit membership  
 11 organization is not insurance.

12                   (C) The risk under noninsurance healthcare benefits  
 13 coverage may be reinsured by an entity authorized to conduct reinsurance  
 14 business in this state under § 23-62-205.

15                   (D) A not-for-profit membership organization that provides  
 16 noninsurance healthcare benefits coverage shall file a signed, certified  
 17 actuarial statement confirming plan reserves annually with the Insurance  
 18 Commissioner.

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 20           SECTION 2. Arkansas Code § 23-76-103(c), concerning applicability of  
 21 laws concerning hospital and medical service corporations, is amended to read  
 22 as follows:

23           (c) This chapter does not apply to a:

24                   (1) ~~Health care~~ A healthcare sharing ministry as defined in §  
 25 23-60-104(b); ~~or~~

26                   (2) ~~Direct~~ A direct primary care agreement as defined in § 23-  
 27 60-104(b); or

28                   (3) Noninsurance healthcare benefits coverage provided by a not-  
 29 for-profit membership organization as described in § 23-60-104.

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 31           SECTION 3. EFFECTIVE DATE. This act is effective on and after January  
 32 1, 2022.