

Stricken language would be deleted from and underlined language would be added to present law.
Act 1433 of the Regular Session

State of Arkansas
89th General Assembly
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As Engrossed: S4/5/13
A Bill

SENATE BILL 1122

By: Senator D. Johnson

For An Act To Be Entitled

AN ACT TO AMEND THE LAW GOVERNING HEALTH MAINTENANCE ORGANIZATIONS; TO TRANSFER REGULATORY RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH FOR HEALTH MAINTENANCE ORGANIZATIONS TO THE INSURANCE COMMISSIONER; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW GOVERNING HEALTH MAINTENANCE ORGANIZATIONS; AND TO TRANSFER REGULATORY RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH FOR HEALTH MAINTENANCE ORGANIZATIONS TO THE INSURANCE COMMISSIONER.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reasonable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) Claims payment history;
- (B) Consumer complaint history ~~with the department~~;
- (C) Financial condition; and
- (D) Compliance with § 23-76-118.

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

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

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

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

~~(A) The health maintenance organization:~~

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

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

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

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

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

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

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

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

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

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

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

written notice of the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. Arkansas Code § 23-76-130 is amended to read as follows:

23-76-130. Director of the Department of Health's authority to contract.

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

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

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

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

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

/s/D. Johnson

APPROVED: 04/22/2013