

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H2/8/21

A Bill

HOUSE BILL 1404

5 By: Representative Bentley
6 By: Senator G. Stubblefield
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE EXEMPTIONS OF CERTAIN ENTITIES
10 FROM INSURANCE REGULATION; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO AMEND THE EXEMPTIONS OF CERTAIN
15 ENTITIES FROM INSURANCE REGULATION.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 23-60-104 is amended to read as follows:

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

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

26 (1) Burial association governed by §§ 23-78-101 – 23-78-119 and
27 23-78-121 – 23-78-125;

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

29 (3) ~~Health care~~ Healthcare sharing ministry; or

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

32 (b) As used in this section:

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

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



1 (ii)(a) Allows either party to terminate the
2 agreement in writing, without penalty or payment of a termination fee, at any
3 time or after notice as specified in the agreement.

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

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

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

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

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

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

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

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

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

36 (2) “~~Health care~~ Healthcare sharing ministry” means a faith-

1 based, nonprofit organization that:

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

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

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

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

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

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

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

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

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

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

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

1 funds; and

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

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

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

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

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

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

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

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

25 (1) ~~Health care~~ A healthcare sharing ministry as defined in §
26 23-60-104(b); ~~or~~

27 (2) ~~Direct~~ A direct primary care agreement as defined in § 23-
28 60-104(b); or

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

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32 SECTION 3. EFFECTIVE DATE. This act is effective on and after January
33 1, 2022.

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35 /s/Bentley