

Title 23. Public Utilities and Regulated Industries

Chapter I. State Insurance Department, Department of Commerce

Subchapter B. Life, Health, and Accident

Part 107. Minimum Standards for Minimum Basic Benefit Disability Insurance

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 2. Authority.

This Rule is issued pursuant to the authority vested in the Commissioner by Sections 4 through 12 of Act 238 of 1991, Arkansas Code Annotated §§23-61-108 and 25-15-201."

"Section 17. Effective Date.

This Rule and Regulation shall be effective upon signature of the Commissioner of Insurance."

Subpart 1. Generally

23 CAR § 107-101. Purpose.

The purpose of this part is to implement the requirements of Acts 1991, No. 238, in order to:

- (1) Provide minimum standards for basic benefit disability insurance;
- (2) Regulate the development of basic benefit disability insurance for qualified:
 - (A) Groups;
 - (B) Families; and
 - (C) Individuals; and
- (3) Regulate the marketing and administrative costs of such insurance.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-102. Definitions.

As used in this part:

(1) "Children's preventive healthcare services" means physician-delivered or physician-supervised services for eligible dependents from birth through age six (6), with periodic physical examinations including medical history, physical examination, developmental assessment, anticipatory guidance, and appropriate immunizations and laboratory tests, in keeping with prevailing medical standards;

(2) "Commissioner" shall mean the Insurance Commissioner;

(3) "Insured" shall mean any individual or group insured under a minimum basic benefit policy issued pursuant to the provisions of Acts 1991, No. 238, and this part;

(4) "Insurer" means an insurer, health maintenance organization, hospital, or medical services corporation offering a minimum basic benefit policy pursuant to Acts 1991, No. 238;

(5) "Loss ratio" means the percentage derived by dividing incurred claims (both reported and not reported) by the total premiums earned;

(6) "Medically necessary" means the treatment, services, medicines, or supplies necessary and appropriate for the diagnosis or treatment of a sickness or injury that is provided in accordance with generally accepted professional standards;

(7) "Minimum basic benefit policy" shall mean a policy offered by an insurer to a qualified individual, qualified family, or qualified group pursuant to the provisions of Acts 1991, No. 238, and this part;

(8) "Periodic physical examinations" means the routine tests and procedures for the purpose of detection of abnormalities or malfunctions of bodily systems and parts according to accepted medical practice;

(9) "Permitted coverages" shall mean health or hospitalization coverage under a minimum basic benefit policy issued pursuant to Acts 1991, No. 238, under:

(A) Medicaid;

(B) Medicare;

(C) Limited benefit policies as defined by Minimum Standards for Accident and Health Insurance, 23 CAR pt. 86;

(D) COBRA; or

(E) The provisions of Arkansas Code § 23-86-114, § 23-86-115, or § 23-86-116;

(10) "Primary and preventive care" means that medical care provided to a covered individual which constitutes the first level of entry into the healthcare system and includes:

(A) Routine diagnostic office visits;

(B) Routine health screening not related to reproductive or sex organ systems;

(C) Preventive immunizations; and

(D) Routine periodic physical examinations;

(11) "Qualified family" means individuals all of whom are:

(A) Qualified individuals; and

(B) Related by:

(i) Blood;

(ii) Marriage; or

(iii) Adoption;

(12) "Qualified group" means a group of twenty-five (25) people or less, organized other than pursuant to Section 4 of Acts 1991, No. 238, in which each covered individual, or covered dependent of such covered individual, within the group is a qualified individual, provided a "qualified group" may include less than all employees of an employer;

(13) "Qualified individual" means an individual who is employed in or is a resident of Arkansas and who has been without health insurance coverage, other than permitted coverage, for the twelve-month period immediately preceding the effective date of a minimum basic benefit policy issued pursuant to Acts 1991, No. 238, and who meets reasonable underwriting standards, provided, children newborn to or adopted by an insured after the effective date of a policy issued to the insured pursuant to Acts

1991, No. 238, that covers the insured and members of the insured's family, shall be considered qualified individuals; and

(14) "Qualified trust" means a group organized pursuant to Section 4 of Acts 1991, No. 238, in which each covered individual, or covered dependent of such covered individual, within the group is a qualified individual.

Authority. Arkansas Code § 23-61-108.

Codification Notes. The Consolidated Omnibus Budget Reconciliation Act (COBRA), which was enacted as Pub. L. No. 99-272.

23 CAR § 107-103. Required policy provisions.

All minimum basic benefit policies issued pursuant to Acts 1991, No. 238, and this part and filed with the Insurance Commissioner for approval shall at the minimum contain coverage at the following levels for the benefits prescribed:

(1)(A) Inpatient hospitalization coverage of fifteen (15) days per year.

(B) Inpatient hospitalization shall be defined in the policy no more strictly than those services rendered to an insured who is confined in a hospital as a registered bed patient and which includes room and board in a semiprivate room, special care ward, or, when medically necessary, a private room and all medically necessary examinations, laboratory procedures or tests, and any other tests, procedures, or treatment deemed appropriate by the treating physician, as well as coverage for medicine, supplies, and equipment charges incurred during the inpatient hospitalization;

(2)(A) Two (2) office or clinic visits per year for primary and preventive care, including outpatient surgery or other treatment or therapy rendered on an outpatient basis.

(B) The insured may be required to pay a copayment as specified in subdivision (4) of this section for such treatment;

(3)(A) An annual deductible for inpatient hospitalization and outpatient surgery of five hundred dollars (\$500) per year per covered person.

(B) The maximum annual deductible for family coverage is one thousand dollars (\$1,000);

(4)(A) An insured copayment provision of no more than thirty percent (30%) of the actual covered charge up to five thousand dollars (\$5,000).

(B) No copayment shall be required of an insured for covered charges exceeding five thousand dollars (\$5,000) up to the annual maximum benefit provided in the policy;

(5)(A) The annual maximum benefit provided shall be no less than one hundred thousand dollars (\$100,000) per policy or certificate of enrollment.

(B) The lifetime maximum benefit provided shall be no less than two hundred fifty thousand dollars (\$250,000) per policy or certificate of enrollment;

(6)(A) Provisions for a maximum differential of no more than twenty-five percent (25%) for services rendered by a nonpreferred provider for plans incorporating preferred provider arrangements as a part of a managed cost program.

(B) This subdivision (6) of this section shall apply to all benefits offered pursuant to this part;

(7) A waiting period for coverage of preexisting conditions of no more than six (6) months from the effective date of coverage;

(8) All group policies issued pursuant to this part shall contain those provisions required by Arkansas Code § 23-86-108(7)(A), § 23-86-114, § 23-86-115, and § 23-86-116, except that no minimum basic benefit policy shall be required to comply with Arkansas Code § 23-86-108(7)(A) unless replacing another minimum basic benefit policy approved by the commissioner pursuant to this part and Acts 1991, No. 238; and

(9)(A) Every policy issued pursuant to this part that covers the insured and members of the insured's family shall include coverage for newborn infant children of the insured from the moment of birth, and for adopted minors from the date of the interlocutory decree of adoption, provided the insurer may require that the insured give notice to his or her insurer of any newborn children within ninety (90) days following the birth of such newborn infant and of any adopted child within sixty (60) days of the date the insured has filed a petition to adopt.

(B) The coverage of newborn children or adopted children shall not be less than the same as is provided for other members of the insured's family.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-104. Prohibited policy provisions.

(a) No policy issued pursuant to this part and Acts 1991, No. 238, as a minimum basic benefit policy shall provide for coverage or benefits required to be offered pursuant to the following provisions of the Arkansas Code:

- (1) Section 23-79-129;
- (2) Section 23-79-130;
- (3) Section 23-79-137;
- (4) Section 23-79-139;
- (5) Section 23-79-140;
- (6) Section 23-79-141;
- (7) Section 23-85-131(b);
- (8) Section 23-85-137;
- (9) Section 23-86-108(4);
- (10) Section 23-86-113; and
- (11) Section 23-86-118.

(b)(1) Insurers may file with the State Insurance Department for approval as minimum basic benefit policies, policy forms which contain higher or lower benefit levels than specified by 23 CAR §§ 107-103 and 107-105.

(2) Provided, however, no insurer may file any policy for approval as a minimum basic benefit policy that contains any provision excluded by subsection (a) of this section.

(3) Provided further, insurers may only file policies for approval pursuant to subsection (b) of this section after filing and receiving approval and offering for sale a minimum basic benefit policy form containing those benefit levels as provided in 23 CAR §§ 107-103 and 107-105.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-105. Required options.

Every policy offered for sale as a basic benefit policy shall give the insured the option of purchasing the following coverages, subject to underwriting guidelines:

(1) Children's preventive healthcare coverage for services rendered at the following age intervals by a single physician during the course of one (1) visit:

- (A) Birth;
- (B) Two (2) months;
- (C) Four (4) months;
- (D) Six (6) months;
- (E) Nine (9) months;
- (F) Twelve (12) months;
- (G) Fifteen (15) months;
- (H) Eighteen (18) months;
- (I) Two (2) years;
- (J) Three (3) years;
- (K) Four (4) years;
- (L) Five (5) years; and
- (M) Six (6) years;

(2)(A) Benefits for children's preventive health care shall be reimbursed at levels equal with the levels established for the same services under the Medicaid program in the State of Arkansas.

(B) Furthermore, all copayments and other amounts payable by insureds pursuant to 23 CAR § 107-103 shall be applicable to benefits payable for children's preventive health care;

(3)(A) Prenatal care coverage shall be offered, which includes coverage for:
(i) One (1) prenatal visit per month during the first two (2) trimesters of pregnancy;

(ii) Two (2) office visits per month during the seventh and eighth month of pregnancy; and

(iii) One (1) office visit per week during the ninth month until term.

(B) Coverage shall include all necessary examinations, laboratory and diagnostic procedures, and tests deemed appropriate by the treating physician; and

(4) Obstetrical care shall be offered, which includes:

(A) Physician services;

(B) Delivery room services; and

(C) Other medically necessary hospital services.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-106. Waiting periods — Limitations.

(a) Except as provided in 23 CAR § 107-103(6), there shall be no probationary or waiting period during which no coverage is provided under the policy.

(b) However, 23 CAR § 107-103(7) shall not apply to a basic benefit policy that replaces coverage of another basic benefit policy.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-107. Rates — Filing requirements.

(a) Rates pertaining to basic benefit policies shall be:

(1) Filed with the Insurance Commissioner no less than sixty (60) days prior to intended use; and

(2) Approved by the commissioner prior to implementation.

(b) All rates submitted shall meet the following requirements:

(1) All rates shall be based upon a pool, community rating, or other rating formula acceptable to the commissioner;

(2)(A) No rate shall be approved unless accompanied by a statement from a qualified actuary certifying the reasonableness of the proposed rate.

(B) Such statement shall outline the actuary's qualifications, and the commissioner may disapprove any rate filing accompanied by a statement from an actuary he or she deems to be unqualified.

(C) Such actuary shall possess the qualifications outlined in 23 CAR § 10-103 or such other qualifications as the commissioner shall approve;

(3) All rates submitted for group policies shall be based upon a loss ratio of not less than seventy-five percent (75%);

(4) All rates submitted for individual policies shall be based upon a loss ratio of not less than sixty-five percent (65%);

(5)(A) All rates submitted pursuant to this part shall be accompanied by a statement from the insurer of the portion of the rate or premium applicable to the coverages provided for the basic benefit policy.

(B) All such statements shall be made on forms provided by the commissioner; and

(6) Any insurer wishing to appeal a denial of a rate request should make a written request for hearing pursuant to the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-108. Underwriting guidelines.

(a)(1) No claim shall be reduced or denied on the ground that the disease or physical condition for which a claim is made preexisted the effective date of the policy coverage and was not disclosed by the insured unless:

(A) The insurer has evidence that such disease or physical condition had manifested itself prior to the effective date of coverage for the disease or physical condition; and

(B) Information on such disease or physical condition was requested on the application for insurance coverage.

(2) No claim shall be reduced or denied on such grounds unless the manifestation of the disease is established by proof of medical diagnosis or treatment of such disease or physical condition prior to the effective date of coverage for the disease or physical condition.

(b)(1) An insurer may rescind a minimum basic benefit policy within the first three (3) years after the policy inception only upon:

(A) Receipt of information concerning the insured's state of health; and

(B) A finding thereon that the insured failed to disclose or misrepresented material information contained on the application.

(2) Material information is that information concerning the insured's physical condition or past treatment that would, if disclosed, result in refusal to accept that insured or others treated for the same condition or in substantially the same condition as the insured.

(3) The burden of proof in cases in controversy before the State Insurance Department shall be on the insurer.

(c) An insurer may rescind a minimum basic benefit policy after three (3) years only upon a showing of willful fraud by an insured as to that insured's physical condition or the physical condition of an insured's covered dependent.

(d) Qualified members of groups or trusts holding minimum basic benefit policies shall not be subject to individual underwriting procedures or standards normally applied to individuals holding a minimum basic benefit policy.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-109. Cancellations — Renewals.

All basic benefit policies issued to a qualified group or trust shall contain a "noncancellable", "guaranteed renewable", or "noncancellable and guaranteed renewable" provision that provides that the policy shall not be subject to termination of coverage of the insured or the insured's dependents other than for nonpayment of

premium or material willful fraud on the part of the insured that substantially increases the risk to the insurer.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-110. Disclosure and notice.

(a) Insurers offering for approval a basic benefit policy shall provide, separate from the policy, a disclosure to the insured that contains the following information:

- (1) An outline of the extent of coverage;
- (2) A specific list of the mandated benefits not provided;
- (3) An explanation of any managed care and cost control features, including all necessary telephone numbers and addresses; and
- (4) An explanation of the primary and preventive care features of the policy.

(b) All disclosure statements shall use terminology and language which is easily understood by the average consumer.

(c) The type used on the statements shall be pica size and the disclosure statement shall contain the following statement in 12-point boldfaced type:

THIS IS A BASIC BENEFIT POLICY AND CONTAINS COVERAGE WHICH IS
STRICTLY LIMITED IN NATURE AND DOES NOT CONTAIN BENEFITS WHICH
WOULD BE PROVIDED UNDER A COMPREHENSIVE MAJOR MEDICAL POLICY.
READ YOUR POLICY CAREFULLY.

(d) A place for the insured's signature shall be provided under the statement, and no policy shall be issued unless the:

- (1) Disclosure statement is properly signed by the insured; and
- (2) Original of such retained in the records of the insurer for the duration of coverage.

(e) The insured shall be provided a copy of the statement so retained by the insurer.

(f) All disclosure statements shall be filed along with the policy form for approval by the Insurance Commissioner.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-111. Notice to employees.

Employers not providing a portion of the cost of health insurance for their employees shall post the notice provided in Appendix A of this part for the benefit of their employees at the place of employment or in any other reasonable manner.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-112. Qualified trusts — Formation and regulation.

(a)(1) Two (2) or more qualified individuals, qualified families, or qualified groups may make application for a certificate of approval to the Insurance Commissioner in order to form a qualified trust pursuant to Acts 1991, No. 238, and this part.

(2) Such trust may exist solely for the purpose of obtaining minimum basic benefit policies.

(b) All applicants for a certificate of approval under this section shall make application on the forms provided by the commissioner and shall submit the following:

- (1) A copy of the trust agreement to be signed by all members of the trust;
- (2) A copy of any agreements with third parties to administer the trust;
- (3) A plan of management including the method of collection and billing for premiums, administrator fees, and other expenses of the trust;
- (4) A copy of the proposed master basic benefit policy; and
- (5) A copy of the form of enrollment or certificate to be issued to the trust members evidencing coverage.

(c) All administrators of trusts organized under this part shall comply with the provisions of Arkansas Code §§ 23-92-201 – 23-92-208 in the manner as those third-party administrators covered under such Arkansas Code provisions.

(d)(1) Upon receipt of approval from the commissioner, the trust shall be allowed to conduct its business.

(2) Any trust wishing to make a modification of the information required in 23 CAR § 107-103(1) shall file a request for approval with the commissioner prior to instituting the requested change.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-113. Record keeping — Annual statements.

(a) Each insurer issuing a minimum basic insurance policy in this state shall maintain a separate annual record of information as to its business in minimum basic insurance policies, the form for which shall be provided by the Insurance Commissioner.

(b) Such record shall contain the following information:

(1) Total number of minimum basic benefit policy insureds listed by type of insured as follows:

- (A) Number of qualified individuals;
- (B) Number of qualified groups; and
- (C) Number of qualified trusts;

(2) Number of policy options sold, listed by type of option offered;

(3) Amount of premium written;

(4) Total amount of claims incurred; and

(5) Total amount of claims paid.

(c) Such record shall be attested by the president of the insurer and submitted to the State Insurance Department annually by March 1 for the preceding year ending December 31 as an exhibit to the insurer's annual statement.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-114. Advertising.

(a) Every insurer marketing a minimum basic benefit policy in this state shall provide a copy of any advertisement intended for use whether through written, radio, or television medium to the Insurance Commissioner for review and approval by the commissioner.

(b) Every insurer marketing a basic benefit policy in this state shall comply with the following standards of marketing:

(1) Establishment of marketing procedures to ensure fair and accurate comparison of policies by agents or other producers;

(2) Display by type, stamp, or other appropriate means on the first page of any written marketing material or outline of coverage the following: "NOTICE TO BUYER: This is a basic benefit policy and does not contain benefits required by law to be provided by a major medical disability policy.";

(3) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for basic benefit insurance is a qualified individual, qualified family, or qualified group having only had the permitted coverages for the twelve (12) months preceding the application; and

(4) Every insurer or entity marketing basic benefit policies shall establish auditable procedures for verifying compliance with this section.

(c) No policy of insurance may use the words "basic benefit", "minimum benefit", "minimum basic benefit", "bare bones", or other such words or similar language in any policy, advertisement, brochure, or other materials that would lead the average consumer to assume that such policy has been approved by the commissioner as a minimum basic benefit policy pursuant to Acts 1991, No. 238, unless the policy in question has been approved as a minimum basic benefit policy pursuant to this part and Acts 1991, No. 238.

Authority. Arkansas Code § 23-61-108.

23 CAR § 107-115. Conversion to Medicare supplement.

Every insurer shall offer a qualified insured who reaches the age of sixty-five (65) and who is covered as a named insured or a covered dependent under that insurer's basic benefit policy, conversion to a Medicare supplement policy that complies with Minimum Standards for Medicare Supplement Policies, 23 CAR pt. 89, if such insurer issues Medicare supplement policies.

Authority. Arkansas Code § 23-61-108.

Appendix A. Notice to Employees

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/191/23CARpt.107Appendix.pdf>