

HEARING

IN THE MATTER OF

PROPOSED RULE 109
"ORTHOTIC AND PROSTHETIC REIMBURSEMENT"

HONORABLE LENITA BLASINGAME
CHIEF DEPUTY COMMISSIONER & HEARING OFFICER
ARKANSAS INSURANCE DEPARTMENT

HEARING PROCEEDINGS

JANUARY 14, 2015

at 9:30 A.M.

APPEARANCES

ON BEHALF OF THE ARKANSAS INSURANCE DEPARTMENT:

MR. BOOTH RAND
ARKANSAS INSURANCE DEPARTMENT
1200 WEST THIRD STREET
LITTLE ROCK, ARKANSAS 72201-1904

GRIGSBY REPORTING SERVICES
711 FOXBORO DRIVE
JACKSONVILLE, ARKANSAS 72076
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ORIGINAL

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CAPTION

PROCEEDINGS in the above-styled and numbered cause on the 14th day of January, 2015, before Faith Grigsby, Arkansas Supreme Court Certified Court Reporter #686, at 9:38 a.m., in the Hearing Room of the Arkansas Insurance Department, 1200 West Third Street, Little Rock, Arkansas, pursuant to the agreement hereinafter set forth.

* * * * *

1 PROCEEDINGS

2 JANUARY 14, 2015

3 HEARING OFFICER: Good morning. Today is
4 January 14, 2015, and we're here in the matter
5 of Proposed Rule 109, Orthotic and Prosthetic
6 Reimbursement. Present representing the
7 Department is Mr. Booth Rand and Mr. Dan Honey.

8 Mr. Rand, would you like to proceed.

9 MR. RAND: I would. Thank you, Ms. Hearing
10 Officer.

11 Today we have scheduled for an
12 administrative hearing Proposed Rule 109. I
13 have some exhibits I would like to go through
14 and then tender them into the administrative
15 record.

16 Exhibit Number 1 I propose to introduce is
17 the designation of hearing officer.
18 Commissioner Allen Kerr has designated Lenita
19 Blasingame as hearing officer for today's
20 meeting. That's Exhibit Number 1.

21 Exhibit Number 2 is the Insurance
22 Department's Notice of Public Hearing which we
23 issued on November 25, 2015, establishing the
24 date and time of today's hearing related to the
25 proposed administrative rule.

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Exhibit Number 3 is a copy of the proposed rule as it existed when it was filed on November 25, 2014, with the Bureau of Legislative Research and Legislative Council.

Exhibit Number 4 is a copy of a transmittal of an e-mail to the Arkansas Democrat Gazette, which is attached and then transmitted to the Arkansas Democrat Gazette, a copy of the Notice of Public Hearing and language that was to run in the advertisement, showing what the date and time of the hearing would be to consider Proposed Rule 109. That is Exhibit 4A.

4A also has a copy of the letter to Ms. Dicus at the Democrat Gazette, which asks her to run a full legal ad for three days, explaining to the public why we were going to have a hearing today. The next page of 4A is a copy of the language we wanted to run in the actual Democrat Gazette ad, explaining that the hearing was today at 9:30, January 14, 2015, related to Proposed Rule 109.

And Exhibit B of 4 is a copy of the -- it's a reflection from the Arkansas Democrat Gazette that the advertisement ran on December 1st, December 2nd, December 3rd. And as the Hearing

1 Officer knows, we have to run notice of our
2 rules for three days under the Arkansas
3 Procedures Act, Administrative Procedures Act.
4 A copy of the actual language that was run in
5 the back of the newspaper is shown on the right
6 column of Exhibit 4B and it shows the date of
7 the hearing for Proposed Rule 109 at 9:30. A
8 separate page is a copy of the bill that paid
9 to run Exhibit 4B.

10 Exhibit Number 5 is the e-mail blast out to
11 the industry, which we e-mailed a few weeks
12 ago. We did not e-mail the blast out to
13 members who signed up until a few weeks ago.
14 We'll discuss that is a reason why we want to
15 keep the record open until March, and I'll
16 discuss this later. So we did run a newspaper
17 ad 30 days ago.

18 Exhibit 6 is a copy of the cover letter.
19 As you know, Ms. Hearing Officer, we have to
20 submit a variety of different legislative
21 filings to the Legislative Council when we do
22 rule promulgation. This is the cover letter.

23 And Exhibit 6 has a number of exhibits
24 which are those items that we sent to
25 Legislative Council. One of which is Exhibit

1 6A, which is a copy of the legislative
2 questionnaire. The questionnaire asks
3 questions about the nature of the rule, why
4 it's important, what are the top benefits for
5 the rule, and so on, and we answered those and
6 submitted those to Legislative Council.

7 Exhibit 6B is another item that Legislative
8 Council wants us to answer related to financial
9 impact; what the financial impact would be of
10 the rule if it were adopted, and discuss what
11 sort of cost it incurs on a State level to try
12 to administer the rule. We answered those and
13 submitted those to Legislative Council.

14 Exhibit 6C is another item; it's an
15 economic impact. It's more of a narrative
16 series of questions that discuss the pros and
17 cons of why we're doing the rule, why it's
18 necessary, what are the top three benefits, and
19 I can go through those as I explain the nature
20 of the rule. We answered those to Legislative
21 Council.

22 Exhibit D, this is a new requirement under
23 legislation that was passed, I believe, last
24 session. Any impact over \$100,000 rules you
25 have to file a separate filing with the

1 Legislative Council discussing why, what your
2 purpose is of proposing a rule that does
3 \$100,000 impact. I did not know whether it was
4 \$100,000 impact result of the actual
5 reimbursement issues that are going to be
6 raised by this rule. Just to play it
7 abundantly cautious, I go ahead and fill these
8 out anyway.

9 I do not know the actual dollar amounts
10 that all the insurance companies are going to
11 have to pay as a result of the rule. We talked
12 about the rule and I don't think it's going to
13 cause any significant amount of reimbursement
14 increases. It may or may not be \$100,000 per
15 carrier, I just don't know. I went ahead and
16 filled it out anyway. We can ask the carriers
17 for the exact dollar amounts, if I can get that
18 as we keep the record open.

19 Exhibit 6E, Legislative Council wants me to
20 do a summary of the rule, which we did, and I
21 explained the nature of the rule and what it
22 was attempting to do.

23 Exhibit 7 -- from here on out, these are
24 courtesy copies of the rule we send to a
25 variety of different State officials. We sent

1 a copy to Mr. James Miller, at that time under
2 Governor Beebe, which we sent a copy of the
3 rule and cover letter, which is Exhibit 7.

4 Exhibit 8 is, we give a courtesy copy to
5 the Attorney General's Office, if they have any
6 comments, so that they can give us feedback.
7 Exhibit 9 we sent to the Secretary of State,
8 filed the rule there as well. This is a copy
9 of the cover letter of the filing that we made
10 with the Secretary of State.

11 Exhibit 10 is, we also advise and notify
12 the Economic Development Commission of
13 promulgated rules that we have, so they can
14 give us feedback or objections, if they have
15 any. Exhibit 11, Ms. Hearing Officer, is the
16 original request by Frank Snell and Gary
17 Horton, who are orthotic and prosthetic
18 suppliers, requesting that the rule be
19 promulgated. It sets out in Exhibit 11 the
20 reason why we need to do this rule. And I will
21 submit those into the record and give you an
22 explanation of why we're doing this rule.

23 (WHEREUPON, Exhibits Number 1 through 11
24 were marked for identification and are attached
25 hereto.)

1 HEARING OFFICER: All right.

2 MR. RAND: Proposed Rule 109, the
3 background on this, Ms. Hearing Officer, I
4 believe several sessions ago the prosthetic and
5 orthotic suppliers, and a variety of other
6 people, had a law passed that addressed
7 reimbursement in prosthetic and orthotic
8 supplies and services. The laws enacted, I
9 believe, in 2009, required health insurance
10 companies and group and individual market to
11 pay no less than 80 percent of the CMS
12 allowable rates for prosthetic and orthotic
13 coverage, so it was a reimbursement mandate
14 that sets the floor of 80 percent, relative to
15 whatever CMS allowable rates were, as of 2009.

16 And so the mandate was passed in, I
17 believe, 2009, setting the rates of allowables
18 to 2009 CMS allowable rates. Years pass, it's
19 been six years, the prosthetic and orthotic
20 suppliers have requested that we update the CMS
21 allowable rates to current CMS allowable rates
22 for those services. We are six years behind
23 the 2009 allowable rates.

24 The letter that we received from the
25 prosthetic and orthotic suppliers and services

1 suggests that it's about a 4.1 increase that
2 has occurred since 2009. So they want us to
3 have the plans that are subject to -- that
4 provide coverage for orthotic and prosthetic
5 coverage to raise the reimbursement rates to
6 current rates, because they are six years
7 behind.

8 One of the interesting aspect of this,
9 after the 2009 mandate was passed, I believe,
10 in 2013, Senator Maloch passed an amendment,
11 and the point of the amendment was to change
12 the law to let the Insurance Department decide
13 and manipulate these reimbursement rates so
14 that each session the prosthetic and orthotic
15 industry won't have to go back to the
16 legislature and every session tie the
17 reimbursement rates to whatever year it is that
18 the session is. It makes sense.

19 So Senator Maloch got an amendment passed
20 -- I can recite the law, but essentially it
21 says that the reimbursement rates may be
22 adjusted by a rule regulation of the Insurance
23 Commissioner. So that's why we're here today.
24 And there is expressed authority from the
25 Commissioner to raise reimbursement rates, or

1 actually reducing it, I guess he wants to, but
2 to whatever rates are current. So they are six
3 years behind and instead of writing another
4 bill with the legislature in session, I think
5 common sense is, is that we use the rule to
6 adjust it.

7 Now, the way I drafted this rule makes it
8 interesting in the sense that instead of us
9 having to do a rule every year, it says
10 automatically that the reimbursement rates for
11 prosthetic and orthotic, which have to be at
12 least 80 percent of the CMS allowable, are
13 adjusted each year to whatever the rates are at
14 CMS of that year for plans that are issued or
15 renews.

16 And so each year the rule is going to
17 establish that the rates conform to whatever
18 the CMS allowable rates are in January of that
19 year, so we don't have to come back every two
20 years, or year, and do another rule. I have
21 not gotten any objections to the draft
22 language. We need to make some modifications,
23 and let me talk about that.

24 One is, of course, the Commissioner -- the
25 signature portion shows Commissioner Bradford,

1 who authorized the rule. The other is, is that
2 the effective date is pointed out to be March
3 and we cannot have that effective date.
4 Because of the new Constitutional amendment,
5 Legislative Council is not meeting during
6 session. I think there's a theoretical
7 possibility that you could get it to meet under
8 joint budget, but this isn't really an
9 emergency situation for that, so I would like
10 to move the effective date to June, so that we
11 can give Legislative Council obviously an
12 opportunity to review the rule and actually
13 approve it now under the Constitutional
14 amendment.

15 So the effective date needs to be changed
16 to a date which allows Legislative Council to
17 review and approve the rule according to
18 whatever proposed act Senator Dismang is
19 implementing related to the Constitutional
20 amendment for agency rule review.

21 We need to extend the effective date,
22 change the Insurance Commissioner's name, and
23 there's really no other tweaks.

24 Now, we did provide public notice of 30
25 days in the newspaper. The problem is, very

1 few people read the back of the newspaper for
2 our rules, so the industry signs up for our
3 rules and regulation notices under our
4 procedures. We did not mail that out. We
5 mailed it out a few weeks ago or early last
6 week, and so for whatever reason it wasn't
7 mailed. Usually, we e-mail the blast out to
8 members of the industry who have signed up for
9 the notice, on the day we file with Legislative
10 Council; we did not do that.

11 So anyway, I want to cure that by keeping
12 the record open and sending out another blast
13 e-mail to allow the industry to make whatever
14 comments they want to make, and have the record
15 close on March 19, 2015, to give them some time
16 to make comments. We have not gotten any
17 comments, although I am told from insurance
18 companies that I have surveyed, they have no
19 objection to this rule, but I cannot guarantee
20 that not every insurance company might not want
21 to say something. We did do an e-mail blast.
22 I have not received any comments from it
23 recently. I want to keep the record open.

24 The third thing is, I want to give the
25 Commissioner an opportunity to decide whether

1 he wants to actually adopt this rule; he may
2 not. So we want to keep the record open to
3 receive more comments and give the Commissioner
4 an opportunity to read the transcript, to read
5 what we've got in file to make a decision
6 whether he wants to adopt this or modify it
7 accordingly. That's all I have.

8 HEARING OFFICER: In looking at the sign-in
9 sheet for those who wish to speak, it's very
10 blank. We have no one signed up as being
11 interested in speaking. You have had an
12 opportunity to change your mind if you did wish
13 to speak. Is there anyone who has comments?

14 MR. SMITH: Why are you looking at me that
15 way?

16 HEARING OFFICER: Because you're never
17 quiet.

18 MR. SMITH: I will make a brief comment or
19 two, if that's appropriate.

20 HEARING OFFICER: Certainly.

21 MR. SMITH: Thank you, Madame Commissioner.
22 My name is Roger Smith. For the record, I
23 represent the orthotic and prosthetic industry.
24 The purpose of this, basically, and our request
25 was to make this simpler. To keep up with the

1 idea that automatic adjustment makes it a lot
2 simpler. The benchmark that we put into that
3 legislation a number of years ago using the CMS
4 rates is not a particularly high reimbursement
5 rate, but it was at least a benchmark that's
6 respected and seen by all the industry as the
7 norm, so to speak. And we don't want the
8 orthotic and prosthetic industry to fall behind
9 to the degree that they're not able to recover
10 their costs in treating patients.

11 So we appreciate the Commission's work in
12 promulgating the rule, putting it together, and
13 we'd be happy to cooperate in any way we can to
14 get it accomplished.

15 HEARING OFFICER: Do you know what the
16 percentage change is between the current date
17 we're using and the proposed date we'll be
18 using?

19 MR. SMITH: Percentage change from now
20 until June?

21 HEARING OFFICER: From then until now?

22 MR. SMITH: About four percent, as Booth
23 indicated. That's from the information you
24 provided. And it's not a massive change. And
25 these rates do go both ways. Occasionally, CMS

1 will lower rates. But as long as we are able
2 to keep up. And I guess from a personal
3 standpoint, I've always believed that creep is
4 superior to leap. Meaning that if you're going
5 to make changes, it's better to make those
6 small incremental changes as opposed to large
7 changes. So this accomplishes that, I think.
8 That's it.

9 HEARING OFFICER: Thank you, Mr. Smith.

10 MR. SMITH: Yes, ma'am. Thank you.

11 HEARING OFFICER: Do you have anything
12 else?

13 MR. RAND: No, Ms. Hearing Officer, I do
14 not.

15 HEARING OFFICER: Mr. Honey?

16 MR. HONEY: No, ma'am.

17 HEARING OFFICER: So your proposal is that
18 we change the proposed effective date, make
19 some changes on signature of the Commissioner,
20 and leave the record open until March 19 for
21 additional comments. And in that time period,
22 another e-mail blast will be sent out to
23 encourage comment if anyone's interested.

24 MR. RAND: That's correct. And again, I
25 want to engineer the effective date to occur

1 after Legislative Council meets, after session,
2 which I cannot tell when that is going to be,
3 but I can visit with Isaac. Typically, it's
4 April or May, it just depends on when the
5 session ends. And I'll find that out and we'll
6 adjust the effective -- assuming the
7 Commissioner agrees to adopt the rule, to that
8 date, so that it will be 30 days after
9 anticipated perspective review of Legislative
10 Council.

11 HEARING OFFICER: But at any rate, not the
12 March 1st date.

13 MR. RAND: Correct.

14 HEARING OFFICER: If there is nothing
15 further, this hearing is adjourned.

16 (WHEREUPON, the proceedings were concluded
17 in this matter at 9:55 a.m.)
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CERTIFICATE

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

I, Faith Grigsby, CCR, Certified Stenomask Reporter before whom the foregoing testimony was taken, do hereby certify that the witness was duly sworn by me; that the testimony of said witness was taken by me and was thereafter reduced to typewritten form under my supervision; that the deposition is a true and correct record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the outcome of this action.

I FURTHER CERTIFY, that I have no contract with the parties within this action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

WITNESS MY HAND AND SEAL this 19th day of
January

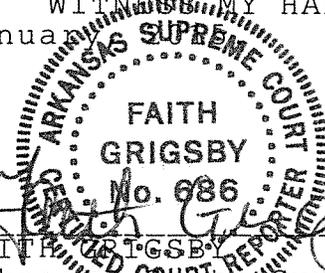

FAITH GRIGSBY
Arkansas Supreme Court
Certified Court Reporter #686

EXHIBIT LIST

DATE: January 14, 2015

SUBJECT: Proposed Rule 109
"Orthotic and Prosthetic Reimbursement"

HEARING OFFICER: Lenita Blasingame
Chief Deputy Commissioner

<u>Exhibit No.</u>	<u>Description</u>
1.	Designation of Hearing Officer
2.	Arkansas Insurance Department's November 24, 2014 NOTICE OF PUBLIC HEARING concerning Proposed Rule 109 "Orthotic and Prosthetic Reimbursement"
3.	Proposed Rule 109 "Orthotic and Prosthetic Reimbursement"
4.	Proof of Publication of Hearing on Proposed Rule in the Arkansas Democrat-Gazette as required by the Arkansas Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201, <i>et seq.</i> a) Email to Arkansas Democrat Gazette 11-25-2014 ; b) Copy of ADG Billing and Notice
5.	January 6, 2015 Evidence of Blast Mail Regarding Proposed Rule 109
6.	Copy of November 25, 2014 correspondence regarding submission of Proposed Rule 109 to the Arkansas Bureau of Legislative Research a) Questionnaire b) Financial Impact c) Economic Impact d) Financial Impact Addendum e) Summary

7. Copy of November 25, 2014 correspondence to James Miller, Regulatory Liaison, Office of the Governor, providing Notice of Public Hearing and Proposed Rule 109
8. Copy of November 25, 2014 correspondence to Brandon Robinson, Assistant Attorney General, Office of the Attorney General, providing Notice of Public Hearing and Proposed Rule 109
9. Copy of November 25, 2014 correspondence to the Arkansas Secretary of State, providing copies of the Notice of Public Hearing and Proposed Rule 109
10. Copy of November 25, 2014 correspondence to Pat Brown, Arkansas Economic Development Commission, providing Notice of Hearing and a copy of Proposed Rule 109
11. Public Comments

Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

DESIGNATION OF HEARING OFFICER

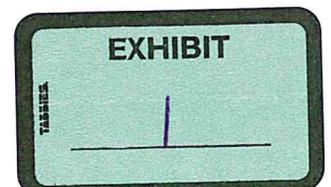
DATE: January 13, 2015
SUBJECT: PROPOSED RULE 109
HEARING OFFICER: Lenita Blasingame
CHIEF DEPUTY COMMISSIONER

Pursuant to Ark. Code Ann. § 23-61-103(e)(1), I hereby delegate Lenita Blasingame, Chief Deputy Commissioner, to serve as the Hearing Officer in the above-referenced matter. Pursuant to this Designation, Ms. Blasingame will have at her disposal all of the powers and duties vested in the office of the Commissioner of Insurance for the State of Arkansas.

A handwritten signature in black ink, appearing to read "AKerr", is written over a horizontal line.

Allen Kerr
INSURANCE COMMISSIONER
STATE OF ARKANSAS

01-14-15
Date



Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

DATE: NOVEMBER 25, 2014

TO: ALL ACCIDENT AND HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATIONS AND HOSPITAL AND MEDICAL SERVICE CORPORATIONS & OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: RULE 109: "ORTHOTIC AND PROSTHETIC REIMBURSEMENT"

NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication by the Arkansas Insurance Department ("Department") Proposed Rule 109, "ORTHOTIC AND PROSTHETIC REIMBURSEMENT." The Arkansas Insurance Commissioner ("Commissioner") is filing for public comment and public hearing, a proposed regulation governing reimbursement in orthotic and prosthetic coverage.

Pursuant to Ark. Code Ann. §§ 23-99-417(a)(1), 23-99-417(e), 23-61-108(a)(1), and other applicable laws or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on January 14, 2015 at 9:30 A.M., in the First Floor Hearing Room, Arkansas Insurance Department ("Department"), 1200 West Third Street, Little Rock, Arkansas.

The purpose of the Public Hearing will be to determine whether the Commissioner should adopt Proposed Rule 109, "ORTHOTIC AND PROSTHETIC REIMBURSEMENT."

All interested persons are encouraged to make comments, statements or opinions to the address below or attend the Public Hearing and present, orally or in writing, statements, arguments or opinions on the proposed Rule. All licensees and other interested persons are responsible for notifying all their personnel, agents, and employees about this Public Hearing.

Persons wishing to testify should notify the Legal Division as soon as possible, and are requested to submit intended statements in writing in advance.

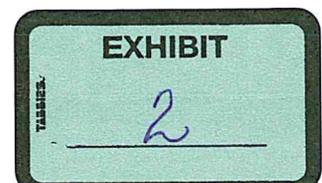
Direct your inquiries to the Legal Division at (501) 371-2820 or insurance.legal@arkansas.gov.

A copy of Proposed Rule 109 can be obtained or viewed on the Legal Division's Internet Web Site at <http://insurance.arkansas.gov/prop-rules.htm>

Sincerely,

A handwritten signature in black ink, appearing to read "Booth Rand", is written over a horizontal line.

Booth Rand
Managing Attorney
Arkansas Insurance Department
(501) 371-2820



FILED
REGISTER DIV.
PH 4:47

PROPOSED RULE 109
ORTHOTIC AND PROSTHETIC REIMBURSEMENT

MAY 20 11
SECRETARY OF STATE
STATE OF ARKANSAS

BY
RECEIVED

NOV 25 2014

BUREAU OF
LEGISLATIVE RESEARCH

Table of Contents

- Section 1. Authority**
- Section 2. Purpose**
- Section 3. Applicability and Scope**
- Section 4. Reimbursement Requirements**
- Section 5. Penalties**
- Section 6. Effective Date**

Section 1. Authority

This Rule is issued pursuant to the authority granted the Arkansas Insurance Commissioner (“Commissioner”) under Ark. Code Ann. § 23-99-417(a)(1) and by Ark. Code Ann. § 23-99-417(e) to promulgate a rule governing payment standards by health benefit plans for orthotic devices, orthotic services, prosthetic devices, and prosthetic services.

Section 2. Purpose

The purpose of this Rule is to require health benefit plans that are subject to Ark. Code Ann. § 23-99-417 to update coverage for eligible charges for prosthetic and orthotic devices and services to no less than eighty percent (80%) of the Medicare allowable rates for such devices and services as of January 1 of each year in which the health benefit plan is issued or renewed. The current statutory requirement in Ark. Code Ann. § 23-99-417(a)(1) ties the coverage requirements for such devices and services to January 1, 2009 CMS Medicare coverage amounts under its Healthcare Common Procedure Coding System (“CPT”). The Commissioner intends in this Rule to establish the requirement that such coverage at least equal eighty-percent (80%) of CMS CPT allowable amounts as established by CMS as of January 1 of each year in which the health benefit plan is issued or renewed, rather than promulgating an amendment to this Rule each year to require the adjustment.

Section 3. Applicability and Scope

This Rule applies to all health benefit plans as defined in Ark. Code Ann. § 23-99-403(4).

Section 4. Reimbursement Requirements

Health benefit plans shall provide coverage for eligible charges for prosthetic and orthotic devices and services of no less than eighty-percent (80%) of CMS CPT allowable amounts for such devices and

EXHIBIT

3

services, as established by CMS, as of January 1 of each year in which the health benefit plan is issued or renewed.

Section 5. Penalties

The Commissioner is permitted to impose penalties for violations of Ark. Code Ann. § 23-99-417, et seq, under Ark. Code Ann. § 23-99-415 for provisions governed under Subchapter Four (4) of the Arkansas Health Care Consumer Act of 1997, as amended.

Section 6. Effective Date

The effective date of this Rule is March 1, 2015.

JAY BRADFORD
INSURANCE COMMISSIONER

DATE

LoRraine Rowland

From: Legal Ads <legalads@arkansasonline.com>
Sent: Tuesday, November 25, 2014 2:09 PM
To: LoRraine Rowland
Subject: Re: Legal ad 109

Received and processed as requested.
thanks
pam

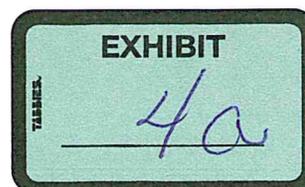
From: [LoRraine Rowland](#)
Sent: Tuesday, November 25, 2014 1:55 PM
To: [Legal Ads \(legalads@arkansasonline.com\)](#)
Cc: [LoRraine Rowland](#)
Subject: Legal ad 109

Please find attached the legal ad for Proposed Rule 109. Please provide confirmation that the notice will run on the requested dates.

Thank you,

LoRraine Rowland
Administrative Analyst/Legal Division
Arkansas Insurance Department
1200 West 3rd Street
Little Rock, AR 72201
501-371-2831 (office)
501-371-2639 (fax)
lorraine.rowland@arkansas.gov

"I have seeds in the ground and I am in a great place"



Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

November 25, 2014

Arkansas Democrat-Gazette
P O Box 2221
Little Rock, AR 72203
Attn: Ms. Pam Dicus, Legal Ad Department
Facsimile: 501-378-3591

RE: Legal Notices: Public Hearing on Proposed Rule # 109

Dear Ms. Dicus:

The Insurance Commissioner is proposing to adopt Rule 109, "Orthotic and Prosthetic Reimbursement." In order to publish it per the Arkansas Administrative Procedure Act, as amended, and per the Arkansas Insurance Code, we need to publish a **FULL RUN** legal ad or notice on the Commissioner's Public Hearing for the Rule set on January 14, 2015 at 9:30 a.m.

In compliance with Ark. Code Ann. § 25-15-204 and § 16-3-102, please find enclosed a legal ad for Notice of Public Hearing which should be published for three (3) consecutive days beginning on December 1, 2014.

Please send the billing invoices to Mrs. Pam Looney, Assistant Commissioner, Accounting Division, Arkansas Insurance Department, 1200 West Third, Little Rock, Arkansas 72201-1904, accompanied by a printed copy of the Legal Ad and proof of publication. Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Booth Rand", written over a horizontal line.

Booth Rand
Managing Attorney/Legal Division
booth.rand@arkansas.gov

LRR

Attachment – Legal Ad for Proposed Rule 106 Adoption

cc: LoRraine Rowland, Administrative Analyst

NOTICE OF PUBLIC HEARING

The Arkansas Insurance Department will host a Public Hearing on January 14, 2015 beginning at 9:30 a.m. in the First Floor Hearing Room, Arkansas Insurance Department, 1200 West Third Street (Third and Cross Streets), Little Rock, Arkansas, to consider adoption of proposed Rule 109, "Orthotic and Prosthetic Reimbursement." Copies of proposed Rule 109 may be obtained by writing or calling the Arkansas Insurance Department, or by visiting our Internet site at http://www.state.ar.us/insurance/legal/legal_p1.html. Or www.accessarkansas.org/insurance for links there. For more information, please contact Ms. LoRraine Rowland, Legal Division, Arkansas Insurance Department at 501-371-2820.

Arkansas Democrat Gazette

STATEMENT OF LEGAL ADVERTISING

ARK INSURANCE DEPARTMENT
1200 W THIRD
LITTLE ROCK AR 72201

REMIT TO:
ARKANSAS DEMOCRAT-GAZETTE, INC.
P.O. BOX 2221
LITTLE ROCK, AR 72203

ATTN: Pam Looney
DATE : 12/03/14 INVOICE #: 2954203
ACCT #: L801001 P.O. #:

BILLING QUESTIONS CALL 378-3812

STATE OF ARKANSAS,)
COUNTY OF PULASKI,) ss.

I, Annette Holcombe do solemnly swear that I am the Legal Billing Clerk of the Arkansas Democrat - Gazette, a daily newspaper printed and published in said County, State of Arkansas; that I was so related to this publication at and during the publication of the annexed legal advertisement in the matter of:

HEARING

pending in the Court, in said County, and at the dates of the several publications of said advertisement stated below, and that during said periods and at said dates, said newspaper was printed and had a bona fide circulation in said County; that said newspaper had been regularly printed and published in said County, and had a bona fide circulation therein for the period of one month before the date of the first publication of said advertisement; and that said advertisement was published in the regular daily issues of said newspaper as stated below.

DATE	DAY	LINAGE	RATE	DATE	DAY	LINAGE	RATE
12/01	Mon	32	1.25				
12/02	Tue	32	1.25				
12/03	Wed	32	1.25				

TOTAL COST ----- 120.00
Billing Ad #: 72919105

NOTICE OF PUBLIC HEARING
The Arkansas Insurance Department will host a Public Hearing on January 14, 2015 beginning at 9:30 a.m. in the First Floor Hearing Room, Arkansas Insurance Department, 1200 West Third Street (Third and Cross Streets), Little Rock, Arkansas, to consider adoption of proposed Rule 109, "Orthotic and Prosthetic Reimbursement." Copies of proposed Rule 109 may be obtained by writing or calling the Arkansas Insurance Department, or by visiting our Internet site at http://www.state.ar.us/insurance/legal/legal_p1.html or www.accessarkansas.org/insurance for links there. For more information, please contact Ms. Lorraine Rowland, Legal Division, Arkansas Insurance Department at 501-371-2820.
72919105

RECEIVED

DEC 04 2014

ACCOUNTING
ARKANSAS INSURANCE DEPARTMENT

OFFICIAL SEAL - # 12381354
BENNIE J. FULLER
NOTARY PUBLIC - ARKANSAS
PULASKI COUNTY
MY COMMISSION EXPIRES: 3-21-2021

Annette M Holcombe
Subscribed and sworn to me this 3
of December, 2014
Bennie J Fuller
Notary Public

EXHIBIT
TABULES
b

Arkansas Democrat Gazette

STATEMENT OF LEGAL ADVERTISING

ARK INSURANCE DEPARTMENT
1200 W THIRD
LITTLE ROCK AR 72201

REMIT TO:
ARKANSAS DEMOCRAT-GAZETTE, INC.
P.O. BOX 2221
LITTLE ROCK, AR 72203

ATTN: Pam Looney
DATE : 12/03/14 INVOICE #: 2954203
ACCT #: L801001 P.O. #:

BILLING QUESTIONS CALL 378-3812

STATE OF ARKANSAS,)
COUNTY OF PULASKI,) ss.

I, Annette Holcombe do solemnly swear that I am the Legal Billing Clerk of the Arkansas Democrat - Gazette, a daily newspaper printed and published in said County, State of Arkansas; that I was so related to this publication at and during the publication of the annexed legal advertisement in the matter of:

HEARING

pending in the Court, in said County, and at the dates of the several publications of said advertisement stated below, and that during said periods and at said dates, said newspaper was printed and had a bona fide circulation in said County; that said newspaper had been regularly printed and published in said County, and had a bona fide circulation therein for the period of one month before the date of the first publication of said advertisement; and that said advertisement was published in the regular daily issues of said newspaper as stated below.

DATE	DAY	LINAGE	RATE	DATE	DAY	LINAGE	RATE
12/01	Mon	32	1.25				
12/02	Tue	32	1.25				
12/03	Wed	32	1.25				

TOTAL COST ----- 120.00
Billing Ad #: 72919105

AD COPY

**PLEASE
REMIT
THIS
COPY
WITH
PAYMENT**

**IN ACCORDANCE WITH
FEDERAL RESERVE
GUIDELINES, CHECKS
YOU SEND US FOR
PAYMENT MAY BE
PROCESSED
ELECTRONICALLY.
THIS MEANS CHECKS
CLEAR FASTER AND
BANK STATEMENTS
ARE VALID PROOF OF
PAYMENT.**

scribed and sworn to me this _____
of _____, 20 _____

Notary Public

LoRraine Rowland

From: AIDMAILOUT
Sent: Tuesday, January 06, 2015 5:01 PM
To: AIDMAILOUT
Cc: LoRraine Rowland
Subject: Proposed Rule 109 "Orthotic and Prosthetic Reimbursement & Notice of Hearing"

Please click on the link below to view the Department's Proposed Rule 109 "Orthotic and Prosthetic Reimbursement and Notice of Hearing"

<http://insurance.arkansas.gov/prop-rules.htm>

Should you have questions regarding this proposed Rule please contact Booth Rand at 501-371-2820 or via email at booth.rand@arkansas.gov

Sincerely,

To remove your e-mail address from our mailing list, please click [here](#) to sign in. Then select "Remove E-Mail Address".



Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

November 25, 2014

HAND DELIVERY

Ms. Donna Davis
Arkansas Legislative Council
Arkansas Bureau of Legislative Research
State Capitol, Suite 315
Little Rock, Arkansas 72201

RE: Proposed Rule 109: "Orthotic and Prosthetic Reimbursement"

Dear Ms. Davis:

Enclosed for your review and for filing with the Subcommittee of the Arkansas Legislative Council, is proposed Rule 109, "Orthotic and Prosthetic Reimbursement."

The Arkansas Insurance Department ("Department") is proposing a Rule governing reimbursement for orthotic and prosthetic coverage in health benefit plans.

The Department has scheduled a public hearing for January 14, 2015, at 9:30 A.M., at the Arkansas Insurance Department, to consider adopting this proposed Rule.

I have enclosed a triplicate set of the proposed Rule, our Notice of Public Hearing, the standard Questionnaire, Financial Impact Statement as well as a summary of the proposed Rule.

Sincerely,


Booth Rand
Managing Attorney/Legal Division
booth.rand@arkansas.gov

cc: LoRraine Rowland, Administrative Analyst

BR/lrr

RECEIVED

NOV 25 2014

BUREAU OF
LEGISLATIVE RESEARCH

EXHIBIT

6

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Insurance Department
DIVISION Legal Division
DIVISION DIRECTOR Bill Lacy, General Counsel
CONTACT PERSON Booth Rand, Managing Attorney
ADDRESS 1200 West Third Street, Little Rock, Arkansas 72201-1904
PHONE NO. 501-371-2820 FAX NO. 501-371-2618 E-MAIL booth.rand@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Booth Rand, Managing Attorney
PRESENTER E-MAIL booth.rand@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

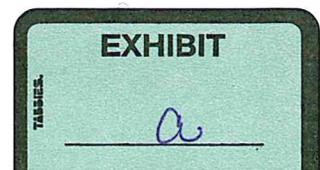
- 1. What is the short title of this rule? Rule 109: Orthotic and Prosthetic Reimbursement

- 2. What is the subject of the proposed rule? Reimbursement rates for orthotic and prosthetic coverage in fully insured health benefit plans

- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? _____

- When does the emergency rule expire? _____



Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes

No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation. See attached Summary. The proposed rule raises reimbursement rates for eligible charges for orthotic and prosthetic coverages to 80% of current CMS allowable rates. The current law ties such rates to 80% of 2009 CMS levels.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. N/A

Is this an amendment to an existing rule?

Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. Section 23-99-417(e)

7. What is the purpose of this proposed rule? Why is it necessary? The purpose of the proposed Rule is to bring up to date reimbursement for coverage for orthotic and prosthetic services to 80% of current CMS allowable levels. Currently, the reimbursement for such services is tied to 2009 levels which are not current today.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <http://www.insurance.arkansas.gov/prop-rules.htm>

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: January 14, 2015

Time: 9:30 A.M.

Arkansas Insurance Department, 1200
West Third Street, Little Rock,

Place: Arkansas

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
After the hearing ends on January 14, 2015 unless the Commissioner decides to keep the record open longer to receive comments.

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

March 1, 2015, however we may change this to later in the spring of 2015 or summer.

12. Do you expect this rule to be controversial? Yes No

Out of abundance of caution I am answering yes due to the fact that it may raise insurer reimbursement to conform to 80% of current and now higher CMS allowable rates from 2009, and insurers typically protest or complain about any cost increases, however we believe any adjustment here to not be significant

If yes, please explain. significant

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?
Please provide their position (for or against) if known.
We do not know of these persons or groups at this time, but will update this information in public comment summaries after the public hearing on January 14, 2015.
-

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Insurance Department
DIVISION Legal Division
PERSON COMPLETING THIS STATEMENT Booth Rand, Managing Attorney
TELEPHONE NO. 501-519-0484 **FAX NO.** 501-371-2618 **EMAIL:** booth.rand@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule 109: Orthotic and Prosthetic Reimbursement

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

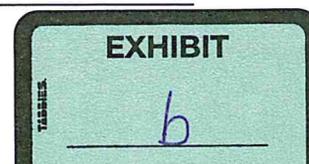
- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue N/A
Federal Funds N/A
Cash Funds N/A
Special Revenue N/A
Other (Identify) N/A

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____



Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue N/A
 Federal Funds N/A
 Cash Funds N/A
 Special Revenue N/A
 Other (Identify) N/A
 Total N/A

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ Unknown

\$ _____

We do not know right now what the exact cost impact to insurers and health benefit plans this reimbursement adjustment will create but we do not believe it significant and will update this information as soon as available.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ None

\$ _____

We already review these mandates with current staffing

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS
EO 05-04: Regulatory Flexibility**

Department: Arkansas Insurance Department
Contact Person: Booth Rand
Contact Phone: 501-371-2820

Division: Legal
Date: November 21, 2014
Contact Email: booth.rand@arkansas.gov

Title or Subject:

Proposed Rule 109 "Orthotic and Prosthetic Reimbursement"

Benefits of the Proposed Rule or Regulation

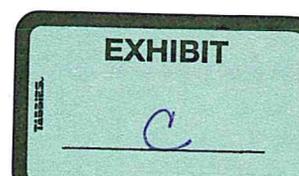
1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

Various orthotic and prosthetic industry members have requested the Department to adjust orthotic and prosthetic coverage reimbursement in fully insured health benefit plans to 80% of current CMS rates. The current law in Ark. Code Ann. § 23-99-417(a)(1) ties the reimbursement rates to 80% of 2009 CMS levels. It therefore needs to be updated or raised to current rates. Under Act 1233 of 2013, the State amended Ark. Code Ann. § 23-99-417 to permit the Insurance Commissioner to promulgate a Rule governing these payment standards for these purposes.

2. What are the top three benefits of the proposed rule or regulation?
 1. Updates or modernizes orthotic and prosthetic coverage reimbursement to 80% of current levels from 80% of 2009 CMS rates.
 2. Provides more reimbursement to orthotic and prosthetic medical service providers and suppliers and therefore helps provision of more services and supplies for consumers needing such services or devices.
 3. Develops an automatic mechanism in the Rule to tie yearly orthotic and prosthetic reimbursement levels to more current CMS rates without having to amend this Rule in the future to make such adjustments.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

Possibly less provision of orthotic and prosthetic services and devices if reimbursement is restricted to rates from five years ago, in 2009 CMS rates.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.



None, although some health insurers might voluntarily raise these reimbursement rates to current levels, we need a consistent legal rule or requirement applying this consistently in the future to all health insurers, without leaving it to the discretion of each carrier.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

None.

6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

None.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

None.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

None.

9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.

None.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

The propose Rule does not require "small business owners" to implement provisions in the proposed Rule.

11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?

We are aware no similar rules or regulations like this adopted by other States or by the federal government.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

None so far as of the date of filing. We will be glad to submit this summary and comments as soon as, or if we receive them.

FINANCIAL IMPACT ADDENDUM

Separate Filing For Rule Costs Exceeding \$100,000.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes. See italicized responses below. We do not at this time know if the reimbursement adjustments from 80% of 2009 CMS allowable rates for orthotic and prosthetic coverages to 80% of current CMS allowable charges will cause a financial impact to insurers in excess of \$100k per year. We assume that it may and are filing this form out of an abundance of caution.

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

The purpose of this Rule is to adjust orthotic and prosthetic reimbursement to 80% of current CMS allowable charges. Our State law in Ark. Code Ann. 23-99-417(a) requires the reimbursement to at least be equal to 80% of 2009 CMS allowable charges for eligible orthotic and prosthetic coverages. Therefore, the statutory prescribed rate is over five (5) years old, and our medical service providers and suppliers in orthotics and prosthetics need an adjust to today's levels to continue to financially provide the services and devices.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

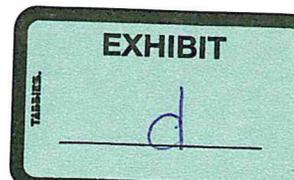
See above answer to (1) which addresses the problem the agency seeks to address, and, (2), "yes," a rule is required by Ark. Code Ann. 23-99-417(e); in fact, the latest legislative amendment to Ark. Code Ann. 23-99-417 added this subsection (e) to permit the very action of rulemaking we are undertaking here.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

We have obtained no factual evidence to justify this rule. We however can assume from the current state law's restriction to rate reimbursement to 2009 CMS levels and from current complaints and concerns brought to us from orthotic and prosthetic providers that an adjustment to current CMS



rates is needed to sustain today's operations by such providers. The benefit of this Rule obviously is to those providers to require up to date reimbursement to 80% of current CMS levels.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

We are not aware of any better, less costly alternatives

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

See answer to #4 above.

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

No AID rules have created or contributed to any problem AID seeks to address in this proposed Rule. We agree to review the Rule annually, including any of its provisions.

SUMMARY
PROPOSED RULE 109

“ORTHOTIC AND PROSTHETIC REIMBURSEMENT”

The proposed Rule adjusts or raises reimbursement levels for eligible orthotic and prosthetic coverages to 80% of yearly CMS allowable rates for such services. The State actually already regulates this provider coverage rate in Ark. Code Ann. § 23-99-417 et seq, in a Section in the Health Care Consumer Subchapter, entitled, “Coverage Required for Orthotic Devices, Orthotic Services, Prosthetic Devices, and Prosthetic Services.

The current law in that section today in Ark. Code Ann. § 23-99-417(a)(1) requires health benefit plans to provide reimbursement for both orthotic and prosthetic services and devices to at least 80% of CMS allowable rates, as of January 1, 2009. Both subdivisions (a)(1) and subsection (e) expressly envision and permit the Arkansas Insurance Commissioner to adjust or modify this reimbursement rate by Rule.

Real simply, the current rates for orthotic and prosthetic services and devices are tied to CMS allowable rates from five years ago. They need to be raised or adjusted to current CMS rates. We are not requiring in this proposed Rule the coverage of more specific, orthotic or prosthetic benefits per se, or requiring plans to cover otherwise ineligible benefits, but simply adjusting reimbursement for otherwise covered services and devices. Additionally, we drafted this proposed Rule to tie the allowable rates to 80% of the yearly CMS rate in effect in the year the health benefit plan was issued or renewed. This is to avoid having to promulgate a rule each year or sporadically in the future to make future adjustments. So, we are proposing to automatically tie the reimbursement rates for the above coverages to 80% of the yearly CMS allowable rates, so we will not have to constantly amend this Rule.

This Rule applies to “health benefit plans” as defined earlier in the Subchapter where the Orthotic mandate exists, specifically, “health benefit plans” defined in Ark. Code Ann. § 23-99-403(4). The proposed effective date of this proposed Rule is set for March 1, 2015 however we may move this date to a later effective date to accommodate having this considered or approved by Legislative Council if this proposed cannot be reviewed during legislative session.

EXHIBIT

e

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

November 25, 2014

VIA STATE MESSENGER

Mr. James Miller
Regulatory Liaison
Office of the Governor
State Capitol Building
Little Rock, AR 72201

RE: Arkansas Insurance Department Rule 109: "Orthotic and Prosthetic Reimbursement"

Dear Mr. Miller:

Enclosed for your review is the Arkansas Insurance Department's proposed Rule 109, "Orthotic and Prosthetic Reimbursement."

The Arkansas Insurance Department ("Department") is proposing a Rule governing reimbursement for orthotic and prosthetic coverage in health benefit plans.

The Department has scheduled a public hearing for January 14, 2015, at 9:30 A.M., at the Arkansas Insurance Department, to consider adopting this proposed Rule.

Please do not hesitate to contact me at 371-2820 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Booth Rand", is written over a horizontal line.

Booth Rand
Managing Attorney/Legal Division
booth.rand@arkansas.gov

cc: LoRaine Rowland, Administrative Analyst



Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

November 25, 2014

Mr. Brandon Robinson, ESQ.
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

RE: *Arkansas Insurance Department Rule 109: "Orthotic and Prosthetic Reimbursement"*

Dear Mr. Robinson:

Enclosed for your review is the Arkansas Insurance Department's proposed Rule 109, "Orthotic and Prosthetic Reimbursement."

The Arkansas Insurance Department ("Department") is proposing a Rule governing reimbursement for orthotic and prosthetic coverage in health benefit plans.

The Department has scheduled a public hearing for January 14, 2015, at 9:30 A.M., at the Arkansas Insurance Department, to consider adopting this proposed Rule.

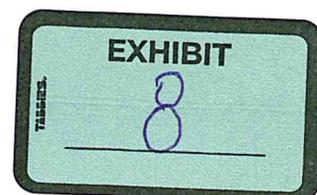
Please do not hesitate to contact me at 371-2820 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Booth Rand".

Booth Rand
Managing Attorney/Legal Division
booth.rand@arkansas.gov

cc: LoRraine Rowland, Administrative Analyst



Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

November 25, 2014

Arkansas Secretary of State
State Capitol Building
Little Rock, AR 72201
Attn. Arkansas Register

Re: Rule 109, "Orthotic and Prosthetic Reimbursement"

Dear Secretary:

Arkansas Act 1478 of 2003 adds to requirements for adoption and re-adoption of public agency rules and regulations. In that regard, the new Act:

- (a) Requires notice of proposed Rule 109, as well as the Public Rule Hearing at the Arkansas Insurance Department, to be published by the Arkansas Secretary Of State on the Internet for thirty (30) days pursuant to Ark. Code Ann. § 25-15-218 of the Arkansas Administrative Procedure Act, as amended; and
- (b) Requires DOI filing of its adopted and proposed rules and notices with the Arkansas Secretary Of State in an electronic format acceptable to the Secretary.

In that regard, the Department has scheduled a public hearing as to proposed adoption of Rule 109. Enclosed are the DOI Notices of Public Hearing and a copy of the proposed rule.

Please arrange to publish the information in a format acceptable to the Secretary for at least 30 days in advance. Can you send us confirmation that we can use in the transcript as a public hearing exhibit?

An electronic filing will be made within the statutorily required 7 days. Thanks for your help.

Sincerely,


Lorraine Rowland
Administrative Analyst/Legal Division
Lorraine.rowland@arkansas.gov
371-2820

Enclosures

BY _____
14 NOV 25 PM 4:46
REGISTER DIV.
FILED
SECRETARY OF STATE
STATE OF ARKANSAS

EXHIBIT

9

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

November 25, 2014

Ms. Pat Brown
Economic Development Commission
One Capitol Mall
Little Rock, AR 72202

RE: Rule 109, "Orthotic and Prosthetic Reimbursement"

Dear Ms. Brown:

Enclosed for your review is the Arkansas Insurance Department's proposed Rule 109, "Orthotic and Prosthetic Reimbursement."

The Arkansas Insurance Department ("Department") is proposing a Rule governing reimbursement for orthotic and prosthetic coverage in health benefit plans.

The Department has scheduled a public hearing for January 14, 2015 at 9:30 A.M., at the Arkansas Insurance Department, to consider adopting this proposed Rule.

Please do not hesitate to contact me at 371-2820 if you have any questions.

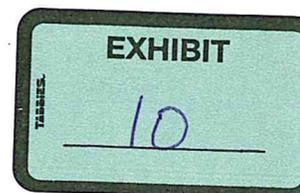
Sincerely yours,

A handwritten signature in cursive script that reads "Lorraine Rowland".

LoRraine Rowland
Administrative Analyst/Legal Division
Lorraine.rowland@arkansas.gov
501-371-2831

Enclosures

LRR/



September 2, 2014

RECEIVED

SEP 04 2014

LIFE AND HEALTH
ARKANSAS INSURANCE DEPARTMENT

Mr. Dan Honey

c/o Arkansas Insurance Commissioners Office

1200 West Third Street

Little Rock, Arkansas 72201-1904

Re: reimbursement for orthotic and prosthetic services

Dear Mr. Honey,

On behalf of the Arkansas State Orthotic and Prosthetic Association thank you for meeting with our Executive Committee last week. We truly appreciate your taking time to discuss our issues and offer constructive comments.

As we discussed in our meeting, Act 950 of the Arkansas General Assembly 2009 sets the rules and regulations for the coverage and payments for orthotic and prosthetic services delivered in Arkansas. Section 2 – 23-99-417 and states that “reimbursement for such services are defined by the Center for Medicare Medicaid Services, Healthcare Common Procedure Coding System as of January 1, 2009, or later if adopted by rule of the Insurance Commissioner.” Later legislation in 2013 (Act1233) further clarified the role of the Commissioner.

We would now like to officially request the Commissioner to review the current reimbursement schedule and grant an increase equal to the current 2014 CMS payment schedule. Since 2009, the following is a history of the increase or decrease in the CMS payment schedule:

EXHIBIT

TABLER

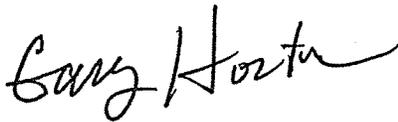
//

2010-	0.0%
2011-	-0.1%
2012-	2.4%
2013-	0.8%
2014-	1.0%

TOTAL-	4.1%
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Please accept this letter from our state association as an official request to increase the reimbursement for all prosthetic and orthotic covered under Act 950, 2009 an additional 4.1%, bringing it to par with the current 2014 payment schedule. As always we appreciate each and every opportunity to work with you to ensure the quality of orthotic and prosthetic services for the people of Arkansas.

Sincerely,



Gary Horton, President



Frank Snell, Vice President

**Hearing Testimony List
In The Matter Of Proposed Rule 109**

**January 15, 2015
9:30 a.m.**

1. Roger Smith
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

