EMERGENCY RULE 121
DECLARATORY ORDERS

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SECTION 1. BACKGROUND & PURPOSE

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency the agency has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

SECTION 2. STATEMENT OF EMERGENCY

The Arkansas Insurance Department ("Department") does not maintain a validly modern, promulgated rule authorizing declaratory orders. The Arkansas Insurance Commissioner ("Commissioner") finds that the Department has pending declaratory actions and may in the future receive additional declaratory petitions and therefore has an urgent need and public emergency to be given emergency authority to issue declaratory orders, pending a permanently promulgated rule.

SECTION 3. AUTHORITY

Ark. Code Ann. §25-15-206 states that each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by it. These declaratory orders shall have the same status as agency orders in cases of adjudication. Ark. Code Ann. §25-15-204 (b) (1) states that if an agency finds that imminent peril to the public health, safety, or welfare or compliance with federal laws or regulations requires adoption of a rule upon less than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any

abbreviated notice and hearing that it may choose, to adopt an emergency rule. The rule may be effective for no longer than one hundred twenty (120) days.

SECTION 4. THE PETITION

The process to obtain a declaratory order is begun by filing with the Insurance Commissioner a petition that provides the following information:

1. The name, address, telephone number and facsimile number of the petitioner;
2. The name, address, telephone number and facsimile number of the attorney of the petitioner;
3. The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory order is sought;
4. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which the petitioner seeks a declaratory order;
5. The signature of the petitioner or petitioner's attorney;
6. The date; and
7. Request for a hearing, if desired.

The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the agency will render a final order denying the petition or issuing a declaratory order.

SECTION 5. EFFECTIVE DATE

This Emergency Rule shall be effective upon the date signed by the Director of this Rule and shall be effective for one hundred and twenty (120) days unless sooner replaced by a permanent Rule.

Alan McClain

ALAN McCLAIN
INSURANCE COMMISSIONER

10/1/2020

DATE