

# Arkansas Insurance Department

Mike Beebe  
Governor



Jay Bradford  
Commissioner

BULLETIN NO. 9-2009

TO: ALL LICENSED INSURANCE COMPANIES, HEALTH MAINTENANCE ORGANIZATIONS (HMOs), FRATERNAL BENEFIT SOCIETIES, FARMERS' MUTUAL AID ASSOCIATIONS OR COMPANIES, HOSPITAL AND MEDICAL SERVICE CORPORATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, PRODUCER AND INSURANCE TRADE ASSOCIATIONS, AND OTHER INTERESTED PARTIES.

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: ACT 1193 OF 2009 AMENDMENTS TO ARKANSAS MENTAL HEALTH PARITY ACT ("MHPA")

DATE: August 1, 2009

Act 1193 of 2009 ("the Act") amends the Arkansas Mental Health Parity Act of 1997. The changes contained in Act 1193 of 2009 reflect the most recent changes to the federal Mental Health Parity Act found in the Mental Health Parity and Addiction Act of 2008 (Pub. Law No. 110-343). The purpose of these changes was to streamline compliance and avoid any conflicts between the state and federal laws. In several areas language used in the Act was taken directly from the federal Act. In some of the instances, federal regulations will be needed to clarify the requirements in both the federal and the state laws. The Department anticipates the need for a rule to fully implement the Act. However until a federal regulation is issued, it would be premature for the Department to put forth its own rule.

It must also be pointed out that there are some differences between the federal law and the Act. The federal law only addresses requirements for health plans with over 50 employees while the state law also includes provisions applicable to small groups (those employers with 50 or fewer employees) and individual health insurance policies. Though individual policies and policies issued to small employers are exempt from the federal law, this Act requires that insurers offer individuals and small employer groups an option to purchase a plan that meets the requirements of the Act.

It has been pointed out that neither the federal MHPA nor the state MHPA properly outlines the manner to calculate the number of employees to determine if the employer group is a small employer. Until this is resolved at the federal level, insurers are instructed to use the method that they have used to comply with the Arkansas Mental Health Parity Act of 1997. The definition for a small employer found in Ark. Code Ann. §23-99-503(8) has not changed.

In Section 6 of the Act, plans are required to have an actuary certify the cost of coverage in determining if the plan can file for an exemption under the Act. Both the federal and state laws require that the actuary be licensed and a member in good standing with the American Academy of Actuaries. Since Arkansas does not license actuaries, insurers may use any actuary that is a member in good standing with the American Academy of Actuaries.

In Section 8 of the Act, insurers are required to make available the criteria used for medical necessity determinations. This information must be available to current and potential covered individuals (who are individuals in their waiting period under a group plan or who submitted an application for individual coverage) as well as contracting providers upon request. Until further clarifications on this process are made in any future rule or regulation, insurers should make this available on their websites or have separate documents that can be sent to the

requesting individual or provider. The Department recognizes that insurers and plan administrators must comply with specific disclosure requirements under existing ERISA provisions. Insurers can rely on these requirements to comply with the disclosure requirements in this Act. However, the ERISA requirements only apply to current participants and not to potential covered individuals or providers. Insurers must make the information available to these potential covered individuals and providers as well.

Likewise, the reason for any denial of reimbursement or payment must be made available to the covered individual. The denial should be in a manner to be understood by the individual. The denial should contain the following information:

- (1) The specific reason or reasons for the denial;
- (2) Reference to the specific policy provisions on which the determination is made;
- (3) A description of any additional material or information necessary for the individual to perfect the claim and an explanation of why such material or information is necessary;
- (4) An explanation of the insurer's review (appeal) procedures and the time limits applicable to such procedures; and
- (5) If the insurer relied upon an internal rule or guideline, the insurer shall reference such rule or guideline and either provide the rule or guideline with the denial or provide it upon request.

This Act and the federal Mental Health Parity and Addiction Act of 2008 do not mandate any coverage for any mental health or substance abuse disorders. Insurers may determine which, if any, conditions and disorders will be covered by the policy or contract. In addition, this Act does not apply to any conditions or disorders not listed in the Diagnostic and Statistical Manual for Mental Disorders or the International Classification of Diseases Manual.

Pursuant to Ark. Code Ann. §§23-79-139 and 23-86-113, health care insurers are required to offer the option of coverage for statutorily specified alcohol and drug dependency treatment and for specified mental illness treatments respectively. The benefits under these offerings do not meet the requirements set forth in the Arkansas Mental Health Parity Act or the Federal Mental Health Parity and Addiction Act. Accordingly, it is the Department's position that these laws, as they apply to large employer groups (those employers with more than 50 employees), are superseded by the state and federal parity acts. However, in regards to small employer groups, insurers are still required to offer the option to purchase the benefits specified by Ark. Code Ann. §§23-79-139 and 23-86-113, as well as the option to purchase the benefits required by the Arkansas Mental Health Parity Act.

In reference to Arkansas Insurance Department Rule 71, entitled "Mental Health Parity," the requirements set forth in that rule were based upon provisions in the law that were deleted by Act 1193 of 2009. Accordingly, the Arkansas Insurance Department will no longer enforce the provisions of Rule 71. As previously stated, it is the Department's intent to replace Rule 71 at a later date.

For any questions or comments on the Act or this Bulletin, please contact the Legal Division at 501-371-2820 or by e-mail at [insurance.legal@arkansas.gov](mailto:insurance.legal@arkansas.gov).

(signed by Jay Bradford)

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JAY BRADFORD, COMMISSIONER  
ARKANSAS INSURANCE DEPARTMENT

(signed July 27, 2009)

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DATE