

HEARING

IN THE MATTER OF  
PROPOSED AMENDED RULE 43  
"UNFAIR CLAIMS  
SETTLEMENT PRACTICES"

HONORABLE SUZANNE TIPTON  
GENERAL COUNSEL, DEPUTY COMMISSIONER  
& HEARING OFFICER  
ARKANSAS INSURANCE DEPARTMENT

---

HEARING PROCEEDINGS  
SEPTEMBER 30, 2015  
at 10:00 A.M.

---

APPEARANCES

ON BEHALF OF THE ARKANSAS INSURANCE DEPARTMENT:

MS. AMANDA GIBSON  
ARKANSAS INSURANCE DEPARTMENT  
1200 WEST THIRD STREET  
LITTLE ROCK, ARKANSAS 72201-1904

---

**GRIGSBY REPORTING SERVICES**  
711 FOXBORO DRIVE  
JACKSONVILLE, ARKANSAS 72076  
(501) 580-5117  
[fgriqsby07@comcast.net](mailto:fgriqsby07@comcast.net)

ORIGINAL

INDEX

STYLE AND NUMBER . . . . . 1

APPEARANCES . . . . . 1

CAPTION . . . . . 3

PROCEEDINGS . . . . . 4

PROCEEDINGS CONCLUDED . . . . . 8

COURT REPORTER'S CERTIFICATE . . . . . 9

EXHIBITS

Exhibit 1 Designation of Hearing Officer (1 Page) . 6

Exhibit 2 Notice of Public Hearing (1 Page) . . . . 6

Exhibit 3 Proposed Amended Rule 43 (13 Pages) . . . 6

Exhibit 4 Pam Dicus Letter (3 Pages) . . . . . 6

Exhibit 5 Advertisement (2 Pages) . . . . . 6

Exhibit 6 E-mail Distribution (2 Pages) . . . . . 6

Exhibit 7 Donna Davis Letter (1 Page) . . . . . 6

Exhibit 8 Questionnaire (4 Pages) . . . . . 6

Exhibit 9 Economic Impact Statement (1 Page) . . . . 6

Exhibit 10 Sara Farris Letter (2 Pages) . . . . . 6

Exhibit 11 Secretary of State Letter (1 Page) . . . . . 6

Exhibit 12 Pat Brown Letter (1 Page) . . . . . 6

Exhibit 13 Justin Tate Letter (2 Pages) . . . . . 6

Exhibit 14 Public Comments (2 Pages) . . . . . 6

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CAPTION

PROCEEDINGS in the above-styled and numbered cause on the 30th day of September, 2015, before Faith Grigsby, Arkansas Supreme Court Certified Court Reporter #686, at 10:00 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 SEPTEMBER 30, 2015

3 HEARING OFFICER: Today is September 30th  
4 and we are here in the matter of Proposed  
5 Amended Rule 43, Unfair Claims Settlement  
6 Practices. My name is Suzanne Tipton, General  
7 Counsel for the Insurance Department.  
8 Commissioner Kerr has appointed me to be the  
9 hearing officer in this matter. Present  
10 representing the Department is Ms. Amanda  
11 Gibson.

12 You may proceed.

13 MS. GIBSON: First, I would like to briefly  
14 describe all of the exhibits, and then I will  
15 move to admit those into the record, and then  
16 I'll give a summary of the proposed amendments.

17 Exhibit Number 1 is the designation of  
18 hearing officer appointing Suzanne Tipton,  
19 General Counsel, hearing officer. Exhibit 2 is  
20 the Arkansas Insurance Department's Notice of  
21 Public Hearing concerning the proposed  
22 amendments to this rule. Exhibit 3 is the  
23 initially filed Proposed Amended Rule 43,  
24 Unfair Claims Settlement Practices.

25 Exhibit 4 is a copy of the letter to the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Arkansas Democrat Gazette requesting newspaper notice. Exhibit 5 is a copy of the proof of publication of this hearing today on Proposed Amended Rule 43, in accordance with the Administrative Procedures Act. Exhibit 6 is a notice of the electronic mail distribution of the Notice of Hearing that went out to interested persons.

Exhibit 7 is a copy of the cover letter that went to the Bureau of Legislative Research. Exhibit 8 is a copy of the Legislative Council questionnaire. Exhibit 9 is a copy of the Economic Impact Statement. Exhibit 10 is a copy of the courtesy notice to the Attorney General's Office. Exhibit 11 is a copy of the cover letter that filed the proposed amendments with the Secretary of State.

Exhibit 12 is a copy of the courtesy notice that went to the Economic Development Commission. Exhibit 13 is a copy of the courtesy notice sent to the Governor's Office. Exhibit 14 is a public comment that we received in writing from State Farm, through their counsel, Mitchell Williams.

1           And at this time, I'd like to move to admit  
2 Exhibits 1 through 14 into the record.

3           HEARING OFFICER: Exhibits 1 through 14  
4 will be admitted into the record.

5           (WHEREUPON, Exhibits Number 1 through 14  
6 were marked for identification and are attached  
7 hereto.)

8           MS. GIBSON: The amendments that were made  
9 to Rule 43 were very minor, and they occur on  
10 Page 6 of the Rule. This is within Section 9,  
11 which starts on Page 5. But on Page 6, in  
12 Paragraph 2, the word "within" is added there,  
13 before the 45 days. And I guess maybe I can  
14 sort of just general describe the amendments.

15           In Exhibit 8, which is a copy of the  
16 Legislative Council Questionnaire, Number 2,  
17 "The proposed Rule is amended for the sole  
18 purpose of clarifying the time in which the  
19 notices required by Section 9 of the Rule are  
20 sent to consumers. The time-limit language is  
21 amended to create consistency throughout the  
22 Rule."

23           So you'll see there on Page 6, in Paragraph  
24 2, the word "within" is added before the words  
25 45 days, and this is just to make it consistent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

with the rest of the Rule where the term within is used.

The only other change is on that same page, down on Paragraph D, the words "at least" are added in the 30 and 60 days time frames. And again, this is just to create consistency throughout the Rule.

HEARING OFFICER: And those are the only changes?

MS. GIBSON: Yes. I would like to point out something else. On Page 2, under Section 4, the effective date was somehow not ever changed in the revision process. We are proposing an effective date of December 1, 2015. That date is in the legislative questionnaire. In Exhibit 8, Page 2, Number 11, is the proposed effective date that we sent to BLR.

HEARING OFFICER: Do you advise leaving the record open to amend that date in the Rule?

MS. GIBSON: Yes.

HEARING OFFICER: Are there any other changes or anything in the Rule that we need to look at?

MS. GIBSON: No, just that effective date.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HEARING OFFICER: Does anybody have any comments on the Rule?

(No audible response given)

MS. GIBSON: The comment that we received from State Farm, which is in Exhibit 14, this was a written comment that says that State Farm is in favor of the language and the consistency that it provides now.

HEARING OFFICER: Do we foresee any issues with changing the effective date in the Rule?

MS. GIBSON: No.

HEARING OFFICER: If there's no further comments, any additions or change suggested, then we will leave the record open to update the effective date. Other than that, the record will be closed and the hearing is adjourned.

(WHEREUPON, the proceedings were concluded in this matter at 10:05 a.m.)

\* \* \* \* \*



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 11th day of October, 2015

  
  
FAITH GRIGSBY  
Arkansas State Supreme Court  
Certified Court Reporter #686



**EXHIBIT LIST**

**DATE:** September 30, 2015

**SUBJECT:** Proposed Amended Rule 43  
“Unfair Claims Settlement Practices”

**HEARING OFFICER:** Russ Galbraith  
Chief Deputy Commissioner

---

**Exhibit No.**

**Description**

1. Designation of Hearing Officer
2. Arkansas Insurance Department’s Notice of Public Hearing concerning Proposed Amended Rule 43 “Unfair Claims Settlement Practices”
3. Initially filed Proposed Amended Rule 43 “Unfair Claims Settlement Practices”
4. Copy of letter to Arkansas Democrat-Gazette requesting newspaper notice
5. Copy of Proof of Publication of Hearing on Proposed Amended Rule 43 in the Arkansas Democrat-Gazette as required by the Arkansas Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201, *et seq.*
6. Copy of electronic mail distribution of Notice of Public Hearing to interested persons
7. Copy of cover letter to the Bureau of Legislative Research
8. Copy Legislative Council Questionnaire
9. Copy Economic Impact Statement
10. Copy of courtesy notice to the Attorney General’s Office
11. Copy of cover letter filing Proposed Amended Rule 43 with the Secretary of State
12. Copy of courtesy notice to the Arkansas Economic Development Commission



13. Copy of courtesy notice sent to the Governor's Office

14. Public Comments



# Arkansas Insurance Department

Mike Beebe  
Governor



Jay Bradford  
Commissioner

## DESIGNATION OF HEARING OFFICER

DATE: September 30, 2015  
SUBJECT: PROPOSED AMENDED RULE 43  
HEARING OFFICER: SUZANNE TIPTON  
GENERAL COUNSEL/DEPUTY COMMISSIONER

Pursuant to Arkansas Code Annotated § 23-61-103(e)(1), I hereby delegate Suzanne Tipton, General Counsel/Deputy Commissioner, to serve as the Hearing Officer in the above-referenced matter. Pursuant to this Designation, Ms. Tipton 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.

  
\_\_\_\_\_  
ALLEN KERR  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

9-30-15  
\_\_\_\_\_  
Date

EXHIBIT

TAB#1000

# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

DATE: AUGUST 24, 2015

TO: AUTHORIZED INSURANCE COMPANIES, HMO'S, HOSPITAL/MEDICAL SERVICE CORPORATIONS, FARMERS' MUTUAL AID ASSOCIATIONS AND INSURER AND AGENT TRADE ASSOCIATIONS

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: RULE 43, "UNFAIR CLAIMS SETTLEMENT PRACTICES"

## NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication by the Arkansas Insurance Department ("Department") Proposed Amended Rule 43, "Unfair Claims Settlement Practices." The Arkansas Insurance Commissioner ("Commissioner") is proposing to make clerical modifications to the time-limit language in Section 9 of the Rule.

Pursuant to Arkansas Code Annotated §§ 23-61-108(a)(1), 23-61-108(b)(1), 23-76-108(a), and 25-15-204, and other applicable laws or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on **September 30, 2015, at 9:00 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 Amended Rule 43, "Unfair Claims Settlement Practices."

All interested persons are encouraged to attend the Public Hearing and may appear 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. A copy of Proposed Rule 43 can be obtained or viewed on the Legal Division's Internet Web Site at <http://www.insurance.arkansas.gov/legal.htm>.

Please direct your inquiries to the Legal Division at (501) 371-2820 or [insurance.legal@arkansas.gov](mailto:insurance.legal@arkansas.gov).

Sincerely,

Amanda J. Andrews  
Associate Counsel



**Rule and Regulation 43  
UNFAIR CLAIMS SETTLEMENT PRACTICES**

**RECEIVED**

AUG 24 2015

BUREAU OF  
LEGISLATIVE RESEARCH

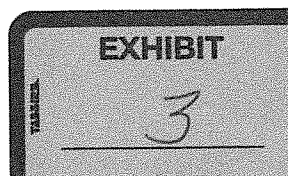
- |         |  |
|---------|--|
| Section |  |
| 1.      | Purpose.   |
| 2.      | Authority.   |
| 3.      | Applicability and scope.   |
| 4.      | Effective Date.  |
| 5.      | Definitions.   |
| 6.      | File and record documentation.   |
| 7.      | Failure to acknowledge pertinent communications.   |
| 8.      | Standards for prompt investigation of claims.  |
| 9.      | Standards for prompt, fair and equitable settlements applicable to insurers.                               |
| 10.     | Standards for prompt, fair and equitable settlements applicable to private passenger automobile insurance. |
| 11.     | Claim Filing Requirements of "Health Carriers."  |
| 12.     | Processing of "Clean Claims."  |
| 13.     | Processing of Claims Requiring Additional Information.   |
| 14.     | Claim Processing Standards For "Health Carriers."  |
| 15.     | Request for Investigation.   |
| 16.     | Minimum standards for pre-certification or pre-authorization reviews as to disability coverage.            |
| 17.     | Severability.  |

**§ 1. Purpose**

The purpose of this rule is to define certain minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claims settlement practices. Ark. Code Ann. §§ 23-66-201(1987), et seq., and 23-76-103(1987), 23-76-119 (1987) and 23-94-204 (Supp. 1987) prohibit insurers, health maintenance organizations and risk retention groups doing business in the State of Arkansas from engaging in unfair claims settlement practices; and provide that, if any insurer or health maintenance organization or risk retention group performs any of the acts or practices proscribed by those sections with such frequency as to indicate a general business practice, then those acts shall constitute an unfair or deceptive act or practice in the business of insurance.

**§ 2. Authority**

This rule is issued pursuant to the authority vested in the Commissioner by Ark. Code Ann. §§ 23-61-108(1987), 23-66-207(1987), 23-76-125(1987), 23-94-107(Supp. 1987), 25-15-202(1987), et seq., and other applicable provisions of Arkansas law.



### **§ 3. Applicability and scope**

This rule applies to all persons, to all insurance policies and insurance contracts and to all contracts, certificates, subscriber agreements, or other evidences of coverage issued by insurers, health maintenance organizations and risk retention groups, as applicable, except policies of Workers' Compensation and Employer's Liability. This rule is not exclusive, and other acts, not herein specified, may also be deemed to be a violation of Ark. Code Ann. §§ 23-66-201(1987), et seq., and 23-76-103(1987), and 23-76-119(1987).

### **§ 4. Effective date**

The effective date of this rule is January 1, 2001. Prior to the effective date of this rule, all provisions of Rule and Regulation 43, which existed prior to February 7, 2000, shall remain in effect.

### **§ 5. Definitions**

The definitions of "person," "evidence of coverage," and of "insurance policy or insurance contract" contained in the Trade Practices Act, Ark. Code Ann. § 23-66-203(1987), and in Ark. Code Ann. § 23-76-102(1987), shall apply to this regulation and, in addition, where used in this regulation:

(a) "Agent" or "Representative" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer, health maintenance organization, or risk retention group with respect to a claim;

(b) "Automobile insurance" includes, but is not limited to, insurance as defined under Ark. Code Ann. 23-89-301(1987);

(c) "Claimant" means an enrollee, a first party claimant, and/or a third party claimant, and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant;

(d) "Complaint" means a written communication primarily expressing a grievance;

(e) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment or services under an insurance policy or contract, or health care plan arising out of the occurrence of the contingency, loss, injury, or illness covered by such policy, or contract, or plan;

(f) "Insurance Department Complaint" means a written communication regarding a complaint transmitted by the Arkansas Insurance Department;



(g) "Insurer" means any person, or risk retention group licensed or registered to issue or who issues any insurance policy or contract in this State;

(h) "Investigation" means all activities of an insurer directly or indirectly related to determination of liabilities or obligations under coverages afforded by a policy, contract, or health care plan;

(i) "Notification of claim" means any notification, whether in writing or by other means acceptable under the terms of an insurance policy, contract, or health care plan to an insurer or its agent by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

(j) "Risk retention group" means a group as defined under Ark. Code Ann. § 23-94-102(10) (Supp. 1987);

(k) "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract; and

(l) "Workers' Compensation" includes, but is not limited to, Longshoremen's and Harbor Workers' Compensation.

(m) "Health Carrier" means a health maintenance organization, hospital medical service corporation or a disability insurance company, that issues Health Insurance Contracts as defined in Subsection 5(s) of this rule. For purposes of this rule, unless otherwise stated, the term "Health Carrier" shall include a self-insured governmental or church plan, as well as third party administrators that administer or adjust disability benefits for a disability insurer, hospital medical service corporation, health maintenance organization, self-insured governmental plan or self-insured church plan. A Health Carrier does not include an automobile insurer paying medical or hospital benefits under Ark. Code Ann. §23-89-202(1) nor shall it include a self-insured employer health benefits plan. A Health Carrier also does not include any person, company, or organization, licensed or registered to issue or who issues any insurance policy or insurance contract in this State as described in Ark. Code Ann. §§23-62-102, 23-62-104, 23-62-105, 23-62-106, and 23-62-107 providing medical or hospital benefits for accidental injury or disability.

(n) "Health Claimant" means a Health Insured, a provider holding a valid assignment from the Health Insured, or a provider contracted with a Health Carrier, who is claiming a benefit under a Health Insurance Contract.

(o) "Health Claim Processing" or "to process a health claim" means to pay the claim, to deny the claim or to notify the Health Claimant in accordance with Subsection 12(b) and Subsection 13(a) of this rule that the Health Carrier needs additional information to process the Health Claim.

(p) "Health Claim Processing Date" or "Health Claim Payment Date" is the date the Health Carrier transmits or mails its claim payment, claim denial or notice of the need for additional information to the Health Claimant.

(q) "Clean Claim" means a claim for payment of health care expenses that is Submitted on a HCFA 1500, on a UB92, in a format required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or on the carrier's standard claim form with all required fields completed in accordance with the Health Carrier's published claim filing requirements. A Clean Claim shall not include a claim (1) for payment of expenses incurred during a period of time for which premiums are delinquent, (2) for benefits under a Medicare supplement policy if the claim is not accompanied by an explanation of Medicare benefits or the Explanation of Medicare Benefits ("EOMB") has not been otherwise received by the Health Carrier, or (3) for which the Health Carrier needs additional information in order to resolve one or more of the issues listed in Subsection 13(b) of this rule.

(r) "Contracted Provider" means a provider that contracts with a Health Carrier to provide services for "Health Insureds" of such carrier.

(s) "Health Insurance Contract" means a disability insurance policy, a hospital medical service corporation contract, a health maintenance organization contract or a plan document issued or provided by a Health Carrier as defined in Subsection 5(m) of this rule. Health Insurance Contract shall not include a disability income insurance policy, a long-term care contract, a hospital indemnity contract, an accident only contract, or any other form of disability insurance policy that provides a benefit as a result of a sickness or accident that does not directly cover expenses related to health care treatment the insured receives.

(t) "Health Insured" means an individual who is a covered person under a "Health Insurance Contract."

(u) "Health Policyholder" means the person who owns the "Health Insurance Contract" and is responsible to pay premiums for the "Health Insurance Contract."

(v) "Provider" means a physician, hospital or other appropriately licensed health care provider.

## **§ 6. File and record documentation**

The claim files of insurers, including Health Carriers, shall be subject to examination by the Commissioner or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

**§ 7. Failure to acknowledge pertinent communications**

The provisions of this section shall not apply to persons that are defined as Health Carriers under Section 5(m) of this Rule.

(a) Every insurer, upon receiving notification of a claim shall, within fifteen (15) working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than in writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer. Pursuant to Ark. Code Ann. § 23-79-126(1987), insurers shall furnish forms for proof of loss within twenty (20) calendar days after a loss has been reported, or thereafter waive proof of loss requirements. Insurers shall not require a claimant to calculate depreciated value of personal property on forms for proof of loss.

(b) Every insurer upon receipt of any inquiry from the Arkansas Insurance Department respecting a claim shall within fifteen (15) working days of such inquiry furnish the Department with a reasonably adequate response to the inquiry.

(c) An appropriate reply shall be made within fifteen (15) working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(d) Every insurer, upon receiving notification of a claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance to claimants so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements.

**§ 8. Standards for prompt investigation of claims**

The provisions of this section shall not apply to persons that are defined as Health Carriers under Section 5(m) of this Rule.

Every insurer shall complete investigation of a claim within forty-five (45) calendar days after notification of claim, unless such investigation cannot reasonably be completed within such time. If an investigation cannot be completed within the forty-five (45) day time period, insurers shall notify claimants that additional time is required and include with such notification the reasons therefore.

**§ 9. Standards for prompt, fair and equitable settlements applicable to insurers**

The provisions of this section shall not apply to persons that are defined as Health Carriers under Section 5(m) of this Rule, nor to surety and fidelity insurance, or to mortgage guaranty, or other forms of insurance offering protection against investment risks.

(a)(1) Within fifteen (15) working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

(2) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant in writing within fifteen (15) working days after receipt of the proofs of loss, stating the reasons more time is needed. If the investigation remains incomplete, the insurer shall, within forty-five (45) calendar days from the date of the initial notification and not more than every forty-five (45) calendar days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.

(b) Where there is a reasonable basis supported by specific information available for review by the Arkansas Insurance Department that the first party claimant has fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of subsection (a)(1). The claimant shall be advised of the acceptance or denial of the claim within a reasonable time following a full investigation after receipt by the insurer of a properly executed proof of loss. The insurer shall comply with the provisions of the Arson Reporting-Immunity Statute, Ark. Code Ann. §§ 12-13-301(1987) -- 12-13-305(1987).

(c) Insurers shall not refuse to settle first party claims on the basis that responsibility for payment should be assumed by others, except as may otherwise be provided by policy provisions.

(d) Insurers shall not continue or prolong negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants at least thirty (30) working days and to third party claimants at least sixty (60) calendar days before the date on which such time limit may expire.

(e) No insurer shall make statements which indicate the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the applicable provision of a statute of limitations, as provided in subsection (d) of this section.

(f) Insurers shall mail or deliver claim checks or drafts to claimants within ten (10) working days after the claims are processed, all claim investigations are completed and said claim files are closed and ready for payment.

(g) No insurer or its agents and representatives shall fail to disclose fully to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or contract under which a claim is presented.

(h) No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(i) No insurer shall deny a claim for a claimant's failure to exhibit the damaged property without proof of demand and of an unfounded refusal by the claimant to do so.

(j) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time and which seek to relieve the company of its obligations if such a time limit is not complied with, unless the failure to comply with such time limit prejudices the insurer's rights.

(k) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(l) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contains language which releases the insurer or its insured from total liability.

(m) No insurer shall delay payment of any claim under specific coverages under a contract in an attempt to settle all or a portion of the claims under other coverages provided by the policy.

**§ 10. Standards for prompt, fair and equitable settlements applicable to private passenger automobile insurance**

The provisions of this section shall not apply to persons that are defined as Health Carriers under Section 5(m) of this Rule.

(a) When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods must apply:

(1) The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured. All applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile must be paid at no cost to the insured other than the policy deductible. The offer and any rejection thereof must be documented in the claim file.

(2) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile, including all applicable taxes, license fees and other fees actually incurred incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by:

(A) The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area; or (B) Use of one (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified dealers or appraisal services located within the local market area when a comparable automobile is not available in the local market area.

(3) When a first party automobile total loss is settled on a basis which deviates from the methods described in subsections (a)(1) and (2) of this section, the deviation must be supported by documentation giving particulars of the automobile's condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

(b) Where liability and damages are reasonably clear, insurers shall not recommend or require that third party claimants make a claim under their own policies solely to avoid paying claims under such insurer's policy or contract.

(c) Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement automobile, to obtain a repair estimate, or to have the automobile repaired at a specific repair shop. Insurers shall not require a claimant to have the automobile repaired at a specific repair shop as a condition of recovery.

(d) Insurers shall include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

(e) When the insurer elects to repair, and, with the insured's written consent, a specific repair shop is selected, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at the estimate cost with no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

(f) If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one (1) or more conveniently located repair shops.

(g) When the amount claimed is reduced because of betterment or depreciation all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

### **§ 11. Claim Filing Requirements of "Health Carriers"**

The provisions of this section shall only apply to person that are defined as Health Carriers under Section 5(m) of this Rule.

(a) Every Health Carrier upon receipt of any written inquiry from the Arkansas Insurance Department respecting a claim shall within fifteen (15) working days of such inquiry furnish the Department with a reasonably adequate response to the inquiry.

(b) If, after receipt of a complaint, the Commissioner determines that a Health Carrier's claim filing requirements are unreasonable or unduly burdensome, the Commissioner shall direct the Health Carrier to discontinue using such claim filing requirements.

(c) A Health Carrier shall provide a copy of its claim filing requirements to:

(1) a contracted provider at the time the Health Carrier and provider enter into their contract and within 15 days prior to a change to the claim filing requirements.

(2) a Health Care Insured or provider upon request, within 15 days;

### **§ 12. Processing of Clean Claims**

The provisions of this section shall only apply to persons that are defined as Health Carriers under Section 5(m) of this Rule.

(a) A Health Carrier shall pay or deny a clean claim within 30 days after receipt by the Health Carrier if the claim was submitted electronically, or within 45 days after receipt if the claim was submitted by other means.

(b) A Health Carrier shall notify the Health Claimant within 30 days after receipt of the claim if the Health Carrier determines that the claim must be processed in accordance with Section 13 of this rule.

(c) A Health Carrier which fails to pay or deny a clean claim in accordance with Subsection (a) of this section or give notice in accordance with Subsection (b) of this section shall pay a penalty to the Health Claimant for the period beginning on the sixty-first day after receipt of the clean claim and ending on the clean claim payment date (the delinquent payment period), calculated as follows: the amount of the clean claim payment times 12% per annum times the number of days in the delinquent payment

period, divided by 365. Such penalty shall be paid without any action by the Health Claimant.

### **§ 13. Processing of Claims Requiring Additional Information**

The provisions of this section shall only apply to persons that are defined as Health Carriers under Section 5(m) of this Rule.

(a) If the resolution of the claim requires the Health Carrier to obtain additional information to resolve one or more of the issues listed in subsection (b) of this section, the Health Carrier shall, within 30 days after receipt of the claim, notify the Health Claimant. The Health Carrier's notice shall give an explanation of the additional information that is required. The Health Carrier may suspend the claim until it receives the requested information, or in the case of a Medicare supplement policy, the claim may be suspended until the Health Carrier receives the EOMB.

(b) When there is a reasonable basis for doing so, a Health Carrier may request one or more of the following items to resolve the claim:

1. information in order to determine if a Health Insurance Contract limitation or exclusion is applicable to the claim;

2. medical information in order to determine the price for a medical procedure without a Current Procedural Terminology (CPT) Code or a Health Care Financing Administration Common Procedure (HCPC) Code;

3. information in order to determine if a Health Insured who received the claimed services is eligible under the terms of the Health Insurance Contract;

4. information in order to determine if the claim is covered by another Health Carrier, workers' compensation, a government supported program, or a liable third party;

5. information in order to determine the obligation of each Health Carrier or government program under coordination of benefits rules;

6. information in order to determine if there has been fraud or a fraudulent or material misrepresentation with respect to the claim; or

7. payment from the policyholder of premiums that were delinquent at the time the claimed services were rendered.

(c) A Health Carrier shall reopen and pay or deny a previously suspended claim within 30 days after the Health Carrier receives all the information it requested.

(d) A Health Carrier which fails to pay or deny a claim in accordance with Subsection C of this section, and that is not already subject to the penalty for the claim



imposed by Subsection 12(c), shall pay a penalty to the Health Claimant for the period beginning on the forty-sixth day after the last item of information requested was received and ending on the claim payment date (the delinquent payment period), calculated as follows: the amount of the claim payment times 12% per annum times the number of days in the delinquent payment period, divided by 365. Such penalty shall be paid without any further action by the Health Claimant.

#### **§ 14. Claim Processing Standards For Health Carriers**

The provisions of this section shall only apply to persons that are defined as Health Carriers under Section 5.(m) of this Rule.

(a) Every Health Carrier doing business in this state shall strive to meet the following claim timeliness standards for processing clean claims and other [Section 13] claims:

Eighty-five (85%) percent of claims processed within 30 days  
Ninety-eight (98%) percent of claims processed within 45 days

(b) If requested by the Commissioner, a Health Carrier shall provide a claims processing report showing the percentage of clean claims and other claims the carrier processed for residents of this state during the previous quarter and year to date. The report will classify claims as follows:

##### Clean Claims

Percent of claims processed within 30 days following receipt of the claim

Percent of claims processed within 45 days following receipt of the claim

Percent of claims processed after 45 days following receipt of the claim

##### Other [Section 13] Claims

(1) Percent of claims processed within 30 days following reopening of the claim.

(2) Percent of claims processed within 45 days following reopening of the claims.

(3) Percent of claims processed after 45 days following receipt of the claim.

(c) If a claims processing report to the Commissioner or other evidence obtained by the Commissioner shows a Health Carrier's clean claim or other [Section 13] Health Claim Processing has fallen below the following regulatory action standards:

Sixty (60%) percent of claims processed within 30 days  
Eighty-five (85%) percent of claims processed within 45 days

1. the Health Carrier shall be required to submit to the Commissioner a remedial action plan setting forth how and when its Health Claim Processing shall be brought above the regulatory action standards. In addition, at the Commissioner's option, the Commissioner may conduct an on site examination of the Health Carrier's Health Claim Processing.

2. Depending upon the Health Carrier's response, the Commissioner, at his option, may require the Health Carrier to provide notice to its Health Claimants and contracted providers of delays in Health Claim Processing and the steps being taken to improve this status.

3. A Health Carrier which has failed to meet the regulatory action standards shall be required to provide the Commissioner a claim processing report on a monthly basis until the Health Carrier meets the 85% and 98% standards for both clean claim and other [Section 13] claim processing for two consecutive quarters.

4. Nothing in this rule shall limit or restrict the Commissioner from pursuing any other remedy or action against the Health Carrier under Ark. Code Ann. § 23-66-201(1987), nor act to limit any other administrative action against a Health Carrier under the Arkansas Insurance Code.

(d) A Health Carrier may be waived from the Health Claim Processing standards under this Section 9 if its Health Claim Processing system is seriously impacted by a natural disaster or if the Health Carrier obtains approval from the Commissioner for a good cause shown. A Health Carrier, in requesting the Commissioner's waiver of the Health Claim Processing standards, must specify the reason(s), give its best estimate when the Health Claim Processing standards will again be met, and commit to provide the Commissioner periodic progress reports. In the case of a natural disaster, the Health Carrier shall notify the Commissioner as soon as possible after the event, specify when the claims system will be restored and commit to submitting periodic progress reports to the Commissioner. The Commissioner shall publish a waiver granted to a Health Carrier on the Arkansas Insurance Department web site.

#### **§ 15. Request for Investigation**

The provisions of this section shall only apply to persons that are defined as Health Carriers under Section 5.(m) of this Rule.

(a) A Health Claimant may file a consumer complaint with the Commissioner relating to a Health Carrier when there is a reasonable basis for such complaint due to the failure of the Health Carrier to process claims according to this rule. However, if the Health Claimant is not the actual insured under the policy, nor the enrollee in the plan, the Health Claimant may file a consumer complaint with the Commissioner where there is a reasonable basis to believe that the Health Carrier has exhibited a practice of not paying that provider's claims according to this rule.

(b) The Commissioner shall investigate such complaint and shall make a report of his findings available to the Health Claimant who filed the complaint.

**§ 16. Minimum standards for pre-certification or pre-authorization reviews as to disability coverage**

The purpose of this section is to define certain minimum standards for insurers utilizing pre-certification or pre-authorization reviews to ensure that such cost-containment procedures of disability insurers and health care plans are reasonable and do not unduly delay, or interfere with or impede the authorized practice of medicine and delivery of reasonable medical care. For purposes of this rule, acts of the claims administrator in performing pre-certification reviews shall be deemed to be acts of the insurer.

From and after one hundred and eighty (180) days from the effective date of this rule, insurers utilizing such reviews shall establish reasonable procedures to:

(a) Ensure that pre-certification reviews are completed in a prompt and timely manner;

(b) Avoid excessive, repetitious and duplicative requests for information to claimants and their health care providers;

(c) Provide for reconsideration or medical reviews following disapproval or denial of pre-certification requests of insureds and claimants; and

(d) Provide for prompt peer medical review following disapproval or denial of pre-certification requests of insureds or claimants as to medically-necessary and/or life-threatening major surgical procedures.

**§ 17. Severability**

Any section or provision of this rule held by a court to be invalid or unconstitutional will not affect the validity of any other section or provision of this rule.

---

ALLEN KERR  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

---

DATE

# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

August 25, 2015

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

*Via electronic mail*

RE: Legal Notices: Public Hearing on Proposed Rule 43

Dear Ms. Dicus:

The Insurance Commissioner is proposing to adopt amended Rule 43 "Unfair Claims Settlement Practices." In order to publish it per the Arkansas Administrative Procedure Act and the Arkansas Insurance Code, the Department needs to publish a **FULL RUN** legal ad or notice on the Commissioner's Public Hearing for the Rule set on September 30, 2015 at 9:00 a.m.

In compliance with Arkansas Code Annotated § 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 August 25, 2015.

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,

*Amanda J. Andrews*

Amanda J. Andrews  
Associate Counsel  
(501) 371-2841  
amanda.andrews@arkansas.gov

encl. Legal Ad for Proposed Amended Rule 43 Adoption



## **NOTICE OF PUBLIC HEARING**

The Arkansas Insurance Department will host a Public Hearing on September 30, 2015 beginning at 9:00 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 amended Rule 43, "Unfair Claims Settlement Practices." Copies of proposed amended Rule 43 may be obtained by writing or calling the Arkansas Insurance Department, or by visiting our Internet site at <http://www.insurance.arkansas.gov/legal.htm>. For more information, please contact LoRaine Rowland, Legal Division, Arkansas Insurance Department, at 501-371-2820.

## Amanda Andrews

---

**From:** Amanda Andrews  
**Sent:** Tuesday, August 25, 2015 9:52 AM  
**To:** 'legalads@arkansasonline.com'  
**Cc:** LoRaine Rowland  
**Subject:** Request for Legal Ad from Arkansas Insurance Department  
**Attachments:** DemGaz-Legal Ad.pdf

Dear Ms. Dicus:

Attached please find a request for a legal ad for Proposed Amended Rule 43 to run beginning today, if possible.

Thank you for your assistance.

Amanda J. Andrews  
Associate Counsel, Legal Division  
Arkansas Insurance Department  
1200 West 3rd Street  
Little Rock, AR 72201  
Office: (501) 371-2841  
Facsimile: (501) 371-2639  
[amanda.andrews@arkansas.gov](mailto:amanda.andrews@arkansas.gov)

# Arkansas Democrat Gazette

## STATEMENT OF LEGAL ADVERTISING

ARKANSAS INSURANCE DEPARTMENT  
1200 W THIRD  
LITTLE ROCK AR 72201

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

ATTN: Amanda Andrews

DATE : 08/29/15 INVOICE #: 3034396  
ACCT #: L5478029 P.O. #:

BILLING QUESTIONS CALL 378-3812

### AD COPY

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

I, Yvette Hines, 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
08/27	Thu	30	1.35				
08/28	Fri	30	1.35				
08/29	Sat	30	1.35				

TOTAL COST ----- 121.50

Billing Ad #: 73333576

OFFICIAL SEAL - No. 12347408  
DEANNA GRIFFIN  
NOTARY PUBLIC - ARKANSAS  
PULASKI COUNTY  
MY COMMISSION EXPIRES 3-30-2016

Subscribed and sworn to me this 29  
day of August, 2015  
Deanna Griffin  
Notary Public

NOTICE OF PUBLIC HEARING  
The Arkansas Insurance Department will host a Public Hearing on September 30, 2015 beginning at 9:00 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 amended Rule 43, "Unfair Claims Settlement Practices." Copies of proposed amended Rule 43 may be obtained by writing or calling the Arkansas Insurance Department, or by visiting our internet site at <http://www.insurance.arkansas.gov/legal.htm>. For more information, please contact Loraine Rowland, Legal Division, Arkansas Insurance Department, at 501-371-2820.  
73333576f

EXHIBIT  
5

# Arkansas Democrat Gazette

## STATEMENT OF LEGAL ADVERTISING

ARKANSAS INSURANCE DEPARTMENT  
1200 W THIRD  
LITTLE ROCK AR 72201

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

ATTN: Amanda Andrews

DATE : 08/29/15 INVOICE #: 3034396  
ACCT #: L5478029 P.O. #:

BILLING QUESTIONS CALL 378-3812

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

I, Yvette Hines, 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
08/27	Thu	30	1.35				
08/28	Fri	30	1.35				
08/29	Sat	30	1.35				

TOTAL COST ----- 121.50  
Billing Ad #: 73333576

### 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.

Subscribed and sworn to me this \_\_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public



## LoRaine Rowland

---

**From:** Arkansas Insurance Department  
<insurance.legal@arkansas.gov@mail35.atl71.mcdlv.net> on behalf of Arkansas  
Insurance Department <insurance.legal@arkansas.gov>  
**Sent:** Tuesday, August 25, 2015 5:30 PM  
**To:** LoRaine Rowland  
**Subject:** Notice of Hearing: Proposed Amended Rule 43

Notice of Hearing: ??Proposed Amended Rule 43

[View this email in your browser](#)

# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

---

## Legal Notice

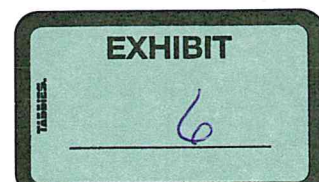
Notice of Hearing  
Proposed Amended Rule 43

Please click on the link below to view the Department's Proposed Amended Rule 43 "UNFAIR CLAIMS SETTLEMENT PRACTICES" and Notice of Hearing information.

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

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

---



You are receiving this email because you opted in at our website or because you provided your email address when applying for a license with AID. If you no longer wish to receive emails from the Arkansas Insurance Department, please click [unsubscribe from this list](#).

[update subscription preferences](#)

---

**1200 West Third Street, Little Rock, AR 72201-1904 · (501) 371-2600 · (501) 371-2618 fax · [www.insurance.arkansas.gov](http://www.insurance.arkansas.gov)  
Information (800) 282-9134 · Consumer Services (800) 852-5494 · Seniors (800) 224-6330 · Criminal Inv. (866) 660-0888**

# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

August 24, 2015

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

Via Hand Delivery

RE: Arkansas Insurance Department Rule 43: "Unfair Claims Settlement Practices"

Dear Mrs. Davis:

Enclosed for your review and for filing with the Subcommittee of the Arkansas Legislative Council, is the Arkansas Insurance Department's proposed Amended Rule 43, "Unfair Claims Settlement Practices." The Department is proposing to amend Rule 43 to make clerical modifications to the time-limit language in Section 9 of the Rule.

The Department has scheduled a public hearing for September 30, 2015, at 9:00 A.M., at our office in the first floor Hearing Room, to consider adopting this proposed amended 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.

Please do not hesitate to contact me at (501) 371-2841 or [amanda.andrews@arkansas.gov](mailto:amanda.andrews@arkansas.gov) if you have any questions.

Sincerely,

*Amanda J. Andrews*

Amanda J. Andrews  
Associate Counsel

cc: LoRraine Rowland, Administrative Analyst  
Jessica Sutton at Bureau of Legislative Services

encl.

RECEIVED  
AUG 24 2015  
BUREAU OF  
LEGISLATIVE RESEARCH



**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 Suzanne Tipton  
CONTACT PERSON Amanda Andrews  
ADDRESS 1200 West Third Street, Little Rock, Arkansas 72201  
PHONE NO. 501-371-2820 FAX NO. 501-371-2639 E-MAIL amanda.andrews@arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Amanda Andrews  
PRESENTER E-MAIL amanda.andrews@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  
Room 315, State Capitol  
Little Rock, AR 72201

\*\*\*\*\*

1. What is the short title of this rule?

Rule 43, "Unfair Claims Settlement Practices"

2. What is the subject of the proposed rule?

The proposed Rule is amended for the sole purpose of clarifying the time in which the notices required by Section 9 of the Rule are sent to consumers. The time-limit language is amended to create consistency throughout the Rule.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes \_\_\_ No X

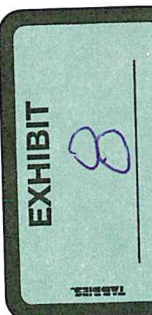
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes \_\_\_ No X

If yes, what is the effective date of the emergency rule? \_\_\_ N/A X

When does the emergency rule expire? \_\_\_ N/A X

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? N/A X Yes \_\_\_ No \_\_\_

5. Is this a new rule? Yes \_\_\_ No X If yes, please provide a brief summary explaining



the regulation.

Does this repeal an existing rule? Yes \_\_\_\_\_ No X 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.

Is this an amendment to an existing rule? Yes X No \_\_\_\_\_ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes.

The proposed Rule is amended for the sole purpose of clarifying the time in which the notices required by Section 9 of the Rule are sent to consumers. The time-limit language is amended to create consistency throughout the Rule.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Arkansas Code Annotated §§ 23-61-108 and 23-66-207

7. What is the purpose of this proposed rule? Why is it necessary?

The proposed amendment to Rule 43 will eliminate confusion as to the time and frequency with which to send the notice of additional time to complete investigation and notice of expiration of statute of limitations.

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).

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

If yes, please complete the following:

Date: September 30, 2015

Time: 9:00 a.m.

Place: Arkansas Insurance Department, First Floor Hearing Room

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

On the date of the hearing, September 30, 2015, unless the Commissioner desires to keep the record open for more comments following the hearing.

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

As currently drafted on December 1, 2015.

12. Do you expect this rule to be controversial? Yes \_\_\_\_\_ No X If yes, please explain.

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.

None are known at this time.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Insurance Department

**DIVISION** Legal Division

**PERSON COMPLETING THIS STATEMENT** Amanda Andrews

**TELEPHONE NO.** 371-2820 **FAX NO.** 371-2820 **EMAIL:** amanda.andrews@arkansas.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Rule 43, "Unfair Claims Settlement Practices"

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No X Unknown. We have not calculated financial impact to health benefit plans subject to the proposed Rule in terms of premium rate or cost impact.
2. Does this proposed, amended, or repealed rule affect small businesses?  
Yes \_\_\_\_\_ No X

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

We do not anticipate any costs to the Department or State in our implementation of this Rule.

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

N/A

**Current Fiscal Year**

**Next Fiscal Year**

\$ \_\_\_\_\_ N/A \_\_\_\_\_

\$ \_\_\_\_\_ N/A \_\_\_\_\_

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

N/A

**Current Fiscal Year**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

---

---

---

# ECONOMIC IMPACT STATEMENT OF PROPOSED RULES OR REGULATIONS

## EO 05-04: Regulatory Flexibility

**Department:** Arkansas Insurance Department

**Contact Person:** Amanda J. Andrews

**Contact Phone:** 501-371-2841

**Division:** Legal

**Date:** August 24, 2015

**Contact Email:** amanda.andrews@arkansas.gov

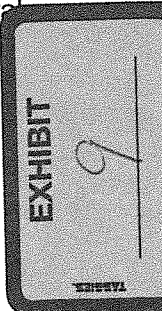
**Title or Subject:** Proposed Amended Rule 43, "Unfair Claims Settlement Practices"

### 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.  
*Proposed Amended Rule 43 is revised for the sole purpose of clarifying the time in which the notices required by Section 9 of the Rule are sent to consumers. The time-limit language is amended to create consistency throughout the Rule.*
2. What are the top three benefits of the proposed rule or regulation?  
*The primary benefit will be to eliminate confusion as to the time and frequency with which to send the notice of additional time to complete investigation and notice of expiration of statute of limitations.*
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?  
*There will be confusion in the industry as to the time and frequency with which to send the notice of additional time to complete investigation and notice of expiration of statute of limitations.*
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.  
*N/A*

### 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.  
*None.*
11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?  
*Approximately thirty-two (32) other states have a similar rule or regulation.*
12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.  
*N/A*





# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

August 24, 2015

Sara Farris  
Office of the Attorney General  
323 Center Street, Suite 200  
Little Rock, AR 72201

*Via Electronic Mail*

RE: Arkansas Insurance Department Rule 43: "Unfair Claims Settlement Practices"


Dear Ms. Farris:

Enclosed for your review is the Arkansas Insurance Department's proposed Amended Rule 43, "Unfair Claims Settlement Practices." The Arkansas Insurance Department ("Department") is proposing to amend Rule 43 to make clerical modifications to the time-limit language in Section 9 of the Rule.

The Department has scheduled a public hearing for September 30, 2015, at 9:00 A.M., at our office in the first floor Hearing Room, to consider adopting this proposed amended Rule.

Please do not hesitate to contact me at (501) 371-2841 or [amanda.andrews@arkansas.gov](mailto:amanda.andrews@arkansas.gov) if you have any questions.

Sincerely,

  
Amanda J. Andrews  
Associate Counsel

cc: LoRaine Rowland, Administrative Analyst

encl.

EXHIBIT

10

## Amanda Andrews

---

**From:** Amanda Andrews  
**Sent:** Monday, August 24, 2015 3:51 PM  
**To:** 'sara.farris@arkansasag.gov'  
**Subject:** Proposed Amended Rule 43  
**Attachments:** doc01859820150824152708.pdf

Sara,

Please see attached correspondence regarding Proposed Amended Rule 43.

Amanda J. Andrews  
Associate Counsel, Legal Division  
Arkansas Insurance Department  
1200 West 3rd Street  
Little Rock, AR 72201  
Office: (501) 371-2841  
Facsimile: (501) 371-2639  
[amanda.andrews@arkansas.gov](mailto:amanda.andrews@arkansas.gov)

# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

August 24, 2015

Arkansas Secretary of State  
Attn. Arkansas Register  
500 Woodlane Street,  
Little Rock, AR 72201

RE: Arkansas Insurance Department Rule 43: "Unfair Claims Settlement Practices"

Dear Secretary Martin:

The Arkansas Insurance Department is proposing to amend 43, "Unfair Claims Settlement Practices," to make clerical modifications to the time-limit language in Section 9 of the Rule. For that reason, the Department has scheduled a public hearing for September 30, 2015, at 9:00 A.M., at our office in the first floor Hearing Room, to consider adopting this proposed amended Rule. Enclosed are the Notice of Public Hearing and a copy of the proposed amended Rule.

Will you please arrange to publish the information in a format acceptable to the Secretary for at least 30 days prior to the hearing? I would appreciate it if you could provide me with a confirmation that I can use as an exhibit in the public hearing.

An electronic filing will be made within the statutorily required 7 days. I thank you for your help. Please do not hesitate to contact me at (501) 371-2841 or [amanda.andrews@arkansas.gov](mailto:amanda.andrews@arkansas.gov) if you have any questions.

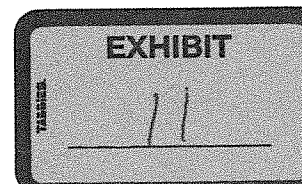
Sincerely,

*Amanda J. Andrews*

Amanda J. Andrews  
Associate Counsel

cc: LoRraine Rowland, Administrative Analyst

encl.



# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

August 24, 2015

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

RE: Arkansas Insurance Department Rule 43: "Unfair Claims Settlement Practices"

Dear Mrs. Brown:

Enclosed for your review is the Arkansas Insurance Department's proposed Amended Rule 43, "Unfair Claims Settlement Practices." The Department is proposing to amend Rule 43 to make clerical modifications to the time-limit language in Section 9 of the Rule.

The Department has scheduled a public hearing for September 30, 2015, at 9:00 A.M., at our office in the first floor Hearing Room, to consider adopting this proposed amended 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.

Please do not hesitate to contact me at (501) 371-2841 or [amanda.andrews@arkansas.gov](mailto:amanda.andrews@arkansas.gov) if you have any questions.

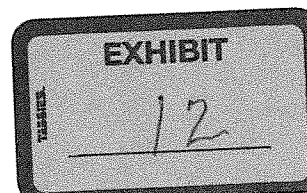
Sincerely,

*Amanda J. Andrews*

Amanda J. Andrews  
Associate Counsel

cc: LoRraine Rowland, Administrative Analyst  
Jessica Sutton at Bureau of Legislative Services

encl.



# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

August 24, 2015

Justin Tate  
Office of the Governor  
State Capitol Building  
Little Rock, AR 72201

*Via Electronic Mail*

RE: Arkansas Insurance Department Rule 43: "Unfair Claims Settlement Practices"


Dear Mr. Tate:

Enclosed for your review is the Arkansas Insurance Department's proposed Amended Rule 43, "Unfair Claims Settlement Practices." The Arkansas Insurance Department ("Department") is proposing to amend Rule 43 to make clerical modifications to the time-limit language in Section 9 of the Rule.

The Department has scheduled a public hearing for September 30, 2015, at 9:00 A.M., at our office in the first floor Hearing Room, to consider adopting this proposed amended Rule.

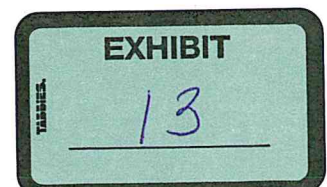
Please do not hesitate to contact me at (501) 371-2841 or [amanda.andrews@arkansas.gov](mailto:amanda.andrews@arkansas.gov) if you have any questions.

Sincerely,

  
Amanda J. Andrews  
Associate Counsel

cc: LoRraine Rowland, Administrative Analyst

encl.



## Amanda Andrews

---

**From:** Amanda Andrews  
**Sent:** Monday, August 24, 2015 3:47 PM  
**To:** Justin Tate (Justin.Tate@governor.arkansas.gov)  
**Subject:** Proposed Amended Rule 43  
**Attachments:** doc01859720150824152639.pdf

Justin,

Please see attached correspondence.

Amanda J. Andrews  
Associate Counsel, Legal Division  
Arkansas Insurance Department  
1200 West 3rd Street  
Little Rock, AR 72201  
Office: (501) 371-2841  
Facsimile: (501) 371-2639  
[amanda.andrews@arkansas.gov](mailto:amanda.andrews@arkansas.gov)

-----Original Message-----

From: [donotreply@arkins.com](mailto:donotreply@arkins.com) [<mailto:donotreply@arkins.com>]  
Sent: Monday, August 24, 2015 3:27 PM  
To: Amanda Andrews  
Subject:

-----  
CS 8000i  
[00:c0:ee:a5:df:74]  
-----

# PUBLIC COMMENTS



# MITCHELL | WILLIAMS

Martha McKenzie Hill  
Direct Dial: 501-688-8877  
Fax: 501-918-7877  
E-mail: mhill@mwilliams.com

425 West Capitol Avenue, Suite 1800  
Little Rock, Arkansas 72201-3525  
Telephone: 501-688-8800  
Fax: 501-688-8807

September 30, 2015

VIA HAND DELIVERY

Legal Division  
Arkansas Insurance Department  
1200 West 3rd Street  
Little Rock, AR 72201

Re: Rule 43, "Unfair Claims Settlement Practices"

To Whom It May Concern:

On behalf of our client State Farm Insurance Companies ("State Farm"), I am pleased to submit comments regarding the proposed changes to Rule 43. State Farm is the largest personal lines insurance company in Arkansas with more than 200 independent State Farm agents selling insurance and financial service products throughout the state. State Farm insures more than 560,000 automobiles in Arkansas. Providing proper claim handling is important to State Farm and an obligation they meet every day.

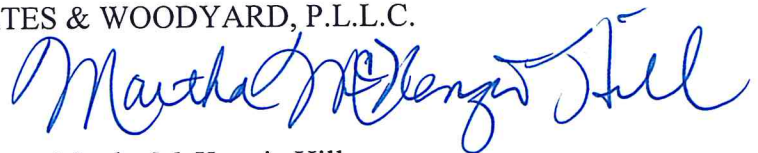
While these proposed changes only encompass a few words, they are important in order to help align Arkansas Rule 43 with the NAIC model upon which this regulation is based. The purpose of this model regulation is to establish minimum standards for the investigation and disposition of property and casualty claims and some form of this regulation has been adopted by at least thirty-two states. Consistent claim handling practices benefit consumers and help ensure proper handling by insurers. Aligning Rule 43 to be more consistent with the NAIC model will allow consumers to be provided with certain notices regarding their claim at an earlier point in time.

For these reasons, State Farm supports the Arkansas Insurance Department's proposed changes to Rule 43. State Farm urges a quick implementation of these rule changes. Thank you for the opportunity to present comments. Should you have any questions about or wish to discuss these comments, please do not hesitate to contact me.

Sincerely,

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, P.L.L.C.

By



Martha McKenzie Hill

cc: Mike Lane  
T. Ark Monroe, III  
Derrick W. Smith

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. | Attorneys at Law

MitchellWilliamsLaw.com





