PUBLIC COMMENTS SUMMARY

PROPOSED RULE 117: PROVIDER-LED ORGANIZATION LICENSURE STANDARDS

AID held a public hearing on August 10, 2017 and received two (2) public comments. The written comments are included in the attached public hearing electronic transcript we are sending to BLR and ALC. The following comments and AID responses were made:

#1. Written Comment from the Arkansas Provider Coalition, August 9, 2017:

"As we indicated when the draft rule was published, we believe more flexibility should be provided in regards to risk-based capital (RBC) for true provider-led entities. This is a Medicaid-only product backed by the state of Arkansas. If any of the PASSEs become insolvent, the members will be enrolled into another PASSE or Medicaid fee for service. Medicaid still will have claims processing capability in place, and the provider network that has existed in Arkansas Medicaid for many years still will be here. This is not akin to a commercial HMO becoming insolvent with enrollees left to fend for themselves. We understand the Department of Human Services is seeking to provide stop-loss at 102%, which should help, but we believe the Insurance Commissioner should take into account other factors unique to this model and the investment by providers themselves when calculating the RBC.

Conditional Licensure: We do not take issue with the rule's other provisions as they relate to full licensure of a risk-based provider organization as authorized by Act 775 of the 91st General Assembly. However, the PASSEs (Provider-Based Arkansas Shared Savings Entities) will not be operating as risk-bearing entities until January 1, 2019. Between October 1, 2017, the PASSE/RBPOs will not even be TPAs or ASOs—they will be providing a single service (care coordination) on a rate paid per client by Medicaid. Your rule adopts the definition of RBPO from the Act which states that an RBPO is paid by ADHS on a capitated basis with a global payment. None of the PASSEs will meet that definition prior to January 1, 2019.

Consistent with the services that will be provided, Section 7 of Act 775 contains a timeline that provides initially for conditional licensure [§7(a)(2)). The licensure application submitted on July 1, 2017 is for conditional licensure [§7(a)(2)(A)]. The conditional license is to expire on December 31, 2017, or a later date as established by the commissioner [(§7(a)(2)(C)]. The surety bond is to guarantee that the PASSE does not abandon efforts to obtain full licensure [(§7(a)(3)(C)]. On or before January 1, 2018, an organization with a conditional license shall demonstrate that it has met the solvency and financial requirement established by the commissioner [§7(a)(4)]. On or before April 1, 2018, an organization with a conditional license shall demonstrate that it is capable of assuming the risk of a global capitation payment and arranging for provision of healthcare services to Medicaid beneficiaries [§7(a)(5)]. Once an organization meets these requirements, it can receive full licensure [§7(b)(2)], although the commissioner has flexibility to extend the dates and still award full licensure [§7(b)(3)]."

AID RESPONSE ON REQUIRING RBC: The Department and its actuaries spent several months reviewing other state regulation of provider managed care organization risk bearing activities and solvency requirements, including those assuming risk in the administration of state-based medicaid programs. We have met with and discussed our position on why we are using risk-based capital requirements (RBC) with most of the prospective RBPOs interested in participating in this program. The Department actuaries and a substantial majority of states financially regulate these organizations under statutory accounting principles as HMOs requiring adherence to RBC solvency requirements, given their assumption of downstream risk to medical providers, and this is significantly the case here given that the RBPOs have to assume full medical assumption of risk for the beneficiaries, and not just behavioral or DD care. The RBPOs in this program are proposed to manage over 100 million dollars in annual premium for each RBPO. RBC requirements provide a tried and true method of ensuring a safe and financially solvent program given the substantial amounts of money involved.

AID RESPONSE ON REQUIRING 6 MILLION AT START UP BEFORE 1-1-2019 full risk: As stated several times to the organizations, AID interprets Act 755, the Organized Care Act, specifically now codified at § 20-77-2706(f)(4) to require an RBPO to have capital of 6 million dollars "upon licensure by the Commissioner," and "at initial licensure." This means to AID that such capital needs to be in place by the RBPO at the initial licensure(s) this summer and fall as AID grants licensure, rather than to be in place at either the end of this year or later on 1-1-2019. Both AID and ADHS support the 6 million dollar initial capital requirement even before full risk as a reflection of a solvency commitment to the program by the particular RBPO.

#2. Written Comment from ForeverCare, August 10, 2017, was in favor of the proposed Rule. (This written comment) is included in your electronic hearing transcript.

AID RESPONSE: N/A