

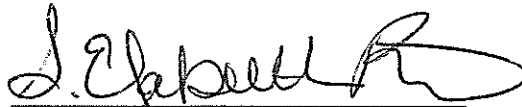
EMERGENCY RULES**DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL SERVICES
AMENDING ADMINISTRATIVE RULES**

NUMBER AND TITLE: COVID-19 Vaccinations for Home-Bound Medicaid Clients

PROPOSED EFFECTIVE DATE: 11/11/2021

STATUTORY AUTHORITY: Arkansas Code Annotated §§20-76-201, 20 77-107, and 25-10-129.

NECESSITY AND FUNCTION: As a result of the continuing consequences of the COVID-19 pandemic the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services approved administration of the COVID-19 vaccination in patient homes. Authorizes home health providers and pharmacy providers to administer COVID-19 vaccinations in a home setting: (a) for those receiving Home Health Services, and (b) for those who do not receive Home Health Services who are unable to receive the vaccine due to difficulty leaving the home. This emergency rule allows DHS to provide vaccinations to those who otherwise face barriers and challenges to obtaining the COVID-19 vaccination, and who might not otherwise get vaccinated with this service. The emergency rule shall be effective upon approval, and permanent rule will be promulgated effective March 1, 2022, with a sunset expiration date at the end of the Federal Public Health Emergency declaration.



Elizabeth Pitman, Director
Division of Medical Services

Date: November 2, 2021

Contact Person: Mac Golden
P. O. Box 1437, Slot S295
Little Rock, AR 72203-1437
(501) 320-6383
Mac.E.Golden@dhs.arkansas.gov

STATEMENT OF EMERGENCY

The Department of Human Services (DHS) announces an emergency rule under Arkansas Code § 25-15-204(c). The rule renders maximum assistance to the citizens of Arkansas by allowing provider flexibility in administering COVID-19 vaccinations to home-bound Medicaid recipients.

Background: As a result of the continuing consequences of the COVID-19 pandemic the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services approved administration of the COVID-19 vaccination in patient homes. Arkansas Medicaid will authorize home health service providers and pharmacy providers to administer COVID-19 vaccinations in the home or similar setting. Home Health providers will be able to administer the vaccination to current Home Health clients, as well as to those who are not currently in the Home Health Program. This emergency rule allows DHS to provide vaccinations to those who otherwise face barriers and challenges to obtaining the COVID-19 vaccination, and who might not otherwise get vaccinated with this service.

Statement of Emergency: Accordingly, based upon the above, DHS finds there exists imminent peril to the public health, safety, and welfare of the state and for compliance with federal laws, requiring immediate adoption of the emergency rule. The rule ensures that a vulnerable population of Arkansas will have greater access to COVID-19 vaccinations. The emergency rule shall be effective upon approval, and permanent rule will be promulgated effective March 1, 2022, with a sunset expiration date at the end of the Federal Public Health Emergency declaration.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Elizabeth Pitman
CONTACT PERSON Mac Golden
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437
PHONE NO. 501-320-6383 FAX NO. 501-404-4619 E-MAIL Mac.E.Golden@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Elizabeth Pitman
PRESENTER E-MAIL Elizabeth.Pitman@dhs.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:

Jessica C. Sutton
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? COVID-19 Vaccinations for Home-Bound Medicaid Clients

2. What is the subject of the proposed rule? See Attached.

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? November 11, 2021

When does the emergency rule expire? March 11, 2022

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. _____

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. _____

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."**

See Attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

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

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).

<https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: TBD

Time: TBD

Place: TBD

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

TBD

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

November 11, 2021 (Emergency promulgation); March 1, 2022 (regular promulgation)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See Attached.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See Attached.

14. 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. Arkansas Medical Society, Arkansas Pharmacists Association, Arkansas Nursing Association

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT Jason Callan

TELEPHONE 501-320-6540 **FAX** 501-682-8155 **EMAIL:** Jason.callan@dhs.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 COVID-19 Vaccination for Home-Bound Medicaid Clients

- 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?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	\$ _____	General Revenue	\$ _____
Federal Funds	\$ _____	Federal Funds	\$ _____
Cash Funds	\$ _____	Cash Funds	\$ _____
Special Revenue	\$ _____	Special Revenue	\$ _____

Other (Identify) \$ _____
 Total \$ _____

Other (Identify) \$ _____
 Total \$ _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue \$421,607
 Federal Funds \$1,063,971
 Cash Funds \$
 Special Revenue \$
 Other (Identify) \$
 Total \$1,485,578

General Revenue \$632,411
 Federal Funds \$1,595,956
 Cash Funds \$
 Special Revenue \$
 Other (Identify) \$
 Total \$2,228,367

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

\$ _____

\$ _____

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

\$ 421,607

\$ 632,411

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;

The Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) approved administration of the COVID-19 vaccination in a patient's home. The Department of Human Services, Division of Medical Services (DHS/DMS) will cover administration of the COVID-19 vaccination to Arkansas Medicaid clients who are home-bound.

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

The purpose is to provide home bound recipients with an opportunity to receive the COVID-19 vaccine.

- (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;

The Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) approved administration of the COVID-19 vaccination in a patient's home. The Department of Human Services, Division of Medical Services (DHS/DMS) will cover administration of the COVID-19 vaccination to Arkansas Medicaid clients who are home-bound.

- (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; *None*
- (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; *N/A*
- (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

The Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) approved administration of the COVID-19 vaccination in a patient's home. The Department of Human Services, Division of Medical Services (DHS/DMS) will cover administration of the COVID-19 vaccination to Arkansas Medicaid clients who are home-bound.

- (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.

DMS will review this rule based on the current state of the Public Health Emergency.

DMS COVID-19 RESPONSE MANUAL

TOC Needed – New Section

270.000 COVID-19 Vaccination Administration for Home-Bound Medicaid Clients

Division of Medical Services (DMS) is covering administration of COVID-19 vaccination shots for home-bound Medicaid clients through the end of the Federal Public Health Emergency. This section will affect Home Health and Pharmacy provider types, and the policies herein are in addition to current policies.

Authorized Providers

The following Arkansas Medicaid providers will be authorized to administer COVID-19 vaccinations in a Medicaid client's home or similar location:

- Home Health Providers (Provider Type 14); and
- Pharmacy Providers (Provider Type 07/PV)

Eligibility and Place of Service

The following eligibility and place of service requirements apply to this service for Home Health providers:

- For Medicaid clients who currently receive Home Health services:
 - If the Medicaid client is currently receiving Home Health services for prior medical services, the Home Health provider may bill the vaccination administration in addition to the Home Health visit.
 - A Home Health provider may not charge for a Home Health visit if the vaccine administration is the sole medical service provided.
 - Visits for Covid Vaccine administration will not count against the fifty-visit Home Health visit limit.
- For Medicaid clients who do not currently receive Home Health services:
 - Admission to the Home Health Services program is not required for visits that are solely to administer the COVID-19 vaccination.
 - Examples of Medicaid clients eligible for this service can include those who face barriers or challenges to obtaining a COVID-19 vaccination and who might not get vaccinated without this service being provided in their home by Medicaid Home Health providers. The Centers for Medicare & Medicaid Services (CMS) created an [infographic](#) to help Medicare providers understand the scope of this service, which Medicaid providers may find helpful.
 - The basis for eligibility must be documented by the Home Health provider.

Required Recordkeeping

All providers should maintain accurate records for auditing purposes.

For this program, Home Health or Pharmacy Providers are required to maintain at least the following documentation in their records.

- Eligibility: Home Health or Pharmacy providers must document the Medicaid client's eligibility for the Home Health service, including without limitation:
 - The client's clinical status; and

- The barriers faced by the client to get the vaccine outside the home.
- Clinical Information: Home Health or Pharmacy providers must:
 - Have and maintain a record of the physician order, vaccine administration, and how the vaccine was tolerated; and
 - Communicate vaccinations to the appropriate entity that will record vaccinations in the vaccine registry.

Billing Guidelines and Payment of Claims

- Single Medicaid Client: The claim for a single Medicaid client’s home (or similar location) vaccine administration is limited to one (1) time per home or location per date of service (DOS). The timeframes between vaccination shots must be adhered to.
- Multiple Medicaid Clients: If the vaccination is being administered in a group-living location where fewer than ten (10) Medicaid clients reside, up to five (5) vaccine administration claims are allowed in that home or communal space location per DOS.
- Home Health and Pharmacy providers may file eligible claims for the vaccination doses included in this Official Notice for three-hundred and sixty-five (365) days from the DOS.

Covered Vaccinations, Procedure Codes, and Rates

The section applies to the first, second, and third doses of the Pfizer and Moderna vaccines and the single-shot Johnson & Johnson vaccine and booster(s).

The reimbursement rate for vaccine administration fee is based on the DOS that the COVID-19 vaccine medicine is provided.

The effective date for **home administration** of COVID-19 vaccinations (all shots) and the procedure code that must be used is:

Procedure Code	Description	Effective Date	Rate
M0201	Covid-19 vaccine administration inside a patient's home	November 11, 2021	\$35.50

This procedure code must be reported **in addition to** the correct procedure code for the product and dose-specific Covid Vaccine medication administration procedure code.

Guidance for Home Health Vaccine Administration

The [Centers for Disease Control and Prevention \(CDC\)](#) and CMS issued guidelines to assist Home Health providers in administering in-home COVID-19 vaccinations:

- [Vaccinating Homebound Persons with COVID-19 Vaccine | CDC](#)
- [COVID-19 Vaccine FAQs for Healthcare Professionals | CDC](#)
- [Medicare COVID-19 Vaccine Shot Payment | CMS](#)

Official Notice for this allowed Service

Providers should see Official Notice ON-014-21 for information.

PROPOSED

DMS COVID-19 RESPONSE MANUAL

TOC Needed – New Section

270.000 COVID-19 Vaccination Administration for Home-Bound Medicaid Clients

Division of Medical Services (DMS) is covering administration of COVID-19 vaccination shots for home-bound Medicaid clients through the end of the Federal Public Health Emergency. This section will affect Home Health and Pharmacy provider types, and the policies herein are in addition to current policies.

Authorized Providers

The following Arkansas Medicaid providers will be authorized to administer COVID-19 vaccinations in a Medicaid client's home or similar location:

- Home Health Providers (Provider Type 14); and
- Pharmacy Providers (Provider Type 07/PV)

Eligibility and Place of Service

The following eligibility and place of service requirements apply to this service for Home Health providers:

- For Medicaid clients who currently receive Home Health services:
 - If the Medicaid client is currently receiving Home Health services for prior medical services, the Home Health provider may bill the vaccination administration in addition to the Home Health visit.
 - A Home Health provider may not charge for a Home Health visit if the vaccine administration is the sole medical service provided.
 - Visits for Covid Vaccine administration will not count against the fifty-visit Home Health visit limit.
- For Medicaid clients who do not currently receive Home Health services:
 - Admission to the Home Health Services program is not required for visits that are solely to administer the COVID-19 vaccination.
 - Examples of Medicaid clients eligible for this service can include those who face barriers or challenges to obtaining a COVID-19 vaccination and who might not get vaccinated without this service being provided in their home by Medicaid Home Health providers. The Centers for Medicare & Medicaid Services (CMS) created an **infographic** to help Medicare providers understand the scope of this service, which Medicaid providers may find helpful.
 - This basis for eligibility must be documented by the Home Health provider.

Required Recordkeeping

All providers should maintain accurate records for auditing purposes.

For this program, Home Health or Pharmacy Providers are required to maintain at least the following documentation in their records.

- Eligibility: Home Health or Pharmacy providers must document the Medicaid client's eligibility for the Home Health service, including without limitation:
 - The client's clinical status; and

- The barriers faced by the client to get the vaccine outside the home.
- Clinical Information: Home Health or Pharmacy providers must:
 - Have and maintain a record of the physician order, vaccine administration, and how the vaccine was tolerated; and
 - Communicate vaccinations to the appropriate entity that will record vaccinations in the vaccine registry.

Billing Guidelines and Payment of Claims

- Single Medicaid Client: The claim for a single Medicaid client's home (or similar location) vaccine administration is limited to one (1) time per home or location per date of service (DOS). The timeframes between vaccination shots must be adhered to.
- Multiple Medicaid Clients: If the vaccination is being administered in a group-living location where fewer than ten (10) Medicaid clients reside, up to five (5) vaccine administration claims are allowed in that home or communal space location per DOS.
- Home Health and Pharmacy providers may file eligible claims for the vaccination doses included in this Official Notice for three-hundred and sixty-five (365) days from the DOS.

Covered Vaccinations, Procedure Codes, and Rates

The section applies to the first, second, and third doses of the Pfizer and Moderna vaccines and the single-shot Johnson & Johnson vaccine and booster(s).

The reimbursement rate for vaccine administration fee is based on the DOS that the COVID-19 vaccine medicine is provided.

The effective date for **home administration** of COVID-19 vaccinations (all shots) and the procedure code that must be used is:

<u>Procedure Code</u>	<u>Description</u>	<u>Effective Date</u>	<u>Rate</u>
<u>M0201</u>	<u>Covid-19 vaccine administration inside a patient's home</u>	<u>November 11, 2021</u>	<u>\$35.50</u>

This procedure code must be reported **in addition to** the correct procedure code for the product and dose-specific Covid Vaccine medication administration procedure code.

Guidance for Home Health Vaccine Administration

The **Centers for Disease Control and Prevention (CDC)** and CMS issued guidelines to assist Home Health providers in administering in-home COVID-19 vaccinations:

- [Vaccinating Homebound Persons with COVID-19 Vaccine | CDC](#)
- [COVID-19 Vaccine FAQs for Healthcare Professionals | CDC](#)
- [Medicare COVID-19 Vaccine Shot Payment | CMS](#)

Official Notice for this allowed Service

| [Providers should see Official Notice ON-014-21 for information.](#)

MARKKUP



STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Estella Smith, Assistant Director
for Research Services

MEMORANDUM

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Jessica Whittaker, Administrator, Administrative Rules Review Section, Legal Services Division

FROM: Lacey Johnson, Legislative Attorney, Administrative Rules Review Section, Legal Services Division

DATE: November 2, 2021

SUBJECT: Legal Authorization for the Department of Human Services, Division of Medical Services’ Emergency Promulgation of a Rule Regarding COVID-19 Vaccinations for Home-Bound Medicaid Clients

The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). See Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

The federal government has approved in-home administration of COVID-19 vaccines for certain “patients that have difficulties leaving their homes or are hard-to-reach.” See CMS, *Medicare Payment for COVID-19 Vaccination Administration in the Home* (Aug. 2021), <https://www.cms.gov/files/document/vaccine-home.pdf>; CDC, *Vaccinating Homebound Persons with COVID-19 Vaccine* (Aug. 10. 2021), <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/homebound-persons.html>.