

DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS

SUBJECT: Medical Services Policy Manual Sections E-600 and E-630 Achieving a Better Life Experience (ABLE) Program

DESCRIPTION:

Statement of Necessity

Acts 2019, No. 59, prohibits an agency from recovering ABLE account proceeds upon the death of a designated beneficiary. Medical Services Policy Manual, Section E-600 Achieving a Better Life Experience (ABLE) Program, is being updated to incorporate changes of Act 59. Medical Services Policy Manual, Section E-630 Contributions, is being updated to move the information on the exclusion limit to the Appendix R because it is for reference.

Rule Summary

In the Medical Services Policy Manual, Section E-600 Achieving a Better Life Experience (ABLE) Program, the statement that funds in ABLE accounts are subject to estate recovery to reimburse the State for Medicaid benefits has been removed. In turn, a statement that an ABLE account is not subject to estate recovery upon the death of designated beneficiary has been added. The ABLE account can be transferred to the estate of the designated beneficiary or an account for another individual.

In addition, Medical Services Policy Manual, Section E-630 Contributions, is being updated to remove the statement of the annual exclusion limit for contributions and refers to Appendix R for the annual exclusion limit.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 5, 2019. The Department received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-76-201(1), the Department of Human Services (“Department”) shall administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it. The Department shall also make rules and take actions as are necessary or desirable to carry out the provisions of Title 20, Chapter 76, Public Assistance Generally, of the Arkansas Code. *See* Ark. Code Ann. § 20-76-201(12). Additionally, Ark. Code Ann. § 20-77-107(a)(1) specifically authorizes the Department to “establish and maintain an indigent medical care program.” The Department and its various divisions are further authorized to promulgate rules, as necessary to conform to federal statutes, rules, and regulations as may now or in the future affect programs

administered or funded by or through the Department or its various divisions, as necessary to receive any federal funds that may now or in the future be available to the Department or its various divisions. *See* Ark. Code Ann. § 25-10-129(b).

Per the agency, these rule changes are being made pursuant to Act 59 of 2019, sponsored by Representative Julie Mayberry, which amended the Achieving a Better Life Experience Program Act, authorized the transfer of ABLE account assets following the death of a designated beneficiary, and prohibited the state from seeking payment from the ABLE account.

Statement of Necessity and Rule Summary
Medical Services Policy Manual Sections E-600 and E-630
Achieving a Better Life Experience (ABLE) Program

Statement of Necessity

Acts 2019, No. 59, prohibits an agency from recovering ABLE account proceeds upon the death of a designated beneficiary. Medical Services Policy Manual, Section E-600 Achieving a Better Life Experience (ABLE) Program is being updated to incorporate the changes of Act 59. Medical Services Policy Manual, Section E-630 Contributions is being updated to move the information on the exclusion limit to the Appendix R because it is for reference.

Rule Summary

In the Medical Services Policy Manual, Section E-600 Achieving a Better Life Experience (ABLE) Program, the statement that funds in ABLE accounts are subject to estate recovery to reimburse the State for Medicaid benefits has been removed. In turn, a statement that an ABLE account is not subject to estate recovery upon the death of designated beneficiary has been added. The ABLE account can be transferred to the estate of the designated beneficiary or an account for another individual.

In addition, Medical Services Policy Manual, Section E-630 Contributions is being updated to remove the statement of the annual exclusion limit for contributions and refers to Appendix R for the annual exclusion limit.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of County Operations
DIVISION DIRECTOR Mary Franklin
CONTACT PERSON Isaac Linam
ADDRESS PO Box 1437, Slot S295, Little Rock, AR 72203-1437
PHONE NO. 501-320-6570 **FAX NO.** 501-404-4619 **E-MAIL** Isaac.Linam@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Mary Franklin
PRESENTER E-MAIL Mary.Franklin@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? Medical Services Policy Manual Sections E-600 and E-630 Achieving a Better Life Experience (ABLE) Program
2. What is the subject of the proposed rule? The proposed rule change updates that the ABLE Account will not be subject to estate recovery pursuant of Act 59 of the 92nd General Assembly. Also, section E-630 Contributions is being updated to remove the statement of the annual exclusion limit for contributions and refers to Appendix R for the annual exclusion limit.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No x
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 x
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
- 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 rule.

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/resources/legal-notice>

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

Date: _____

Time: _____

Place: _____

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

October 5, 2019

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

December 1, 2019

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.

Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of County Operations
PERSON COMPLETING THIS STATEMENT Brian Jones
TELEPHONE NO. 501-537-2064 **FAX NO.** 501-682-3889 **EMAIL:** brian.jones@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 Medical Services Policy Manual Sections G-600 and G-630 Achieving a Better Life Experience (ABLE) Program

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No x

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 x 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 x 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?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____ 0

General Revenue _____ 0

Federal Funds _____ 0

Federal Funds _____ 0

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____ 0

Total _____ 0

- 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

\$ _____ 0

\$ _____ 0

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