

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: ARKids First-B-2-19, Certified Nurse Midwife-1-18, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)-1-19, Dental-1-18, Nurse Practitioner-3-18, Pharmacy 1-19, and Physician-3-18

DESCRIPTION: The rule revisions are being made to comply with Acts 651, 652, and 959 of 2019 and to add informational language concerning the availability of tobacco cessation counseling as follows:

- ARKids First-B: Section 222.750 is revised to include a new section containing health education.
- Certified Nurse-Midwife: Pursuant to Act 959, section 272.452 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol does not require prior authorization. Revisions also include new billing information for Tobacco Cessation counseling services.
- Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment: Sections 215.290 and 252.100 are revised to include counseling visits concerning tobacco cessation.
- Dental: Pursuant to Act 959, section 214.100 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol does not require prior authorization. Pursuant to Acts 651 and 959, revisions also reflect increased product coverage and the full scope of available coverage and new billing information for Tobacco Cessation counseling services.
- Nurse Practitioner: Pursuant to Act 959, section 252.454 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol does not require prior authorization. Revisions also include new billing information for Tobacco Cessation counseling services.
- Pharmacy:
 - Pursuant to Act 652, sections 201.100 and 211.000 are revised to reflect the new protocol for reimbursement and coverage of vaccines and immunizations for beneficiaries age seven (7) years of age to age eighteen (18) years of age.
 - Pursuant to Act 959, section 241.000 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol does not require prior authorization. Pursuant to Acts 651 and 959, revisions also reflect increased product coverage and the full scope of available coverage.
- Physician/Independent Lab/CRNA/Radiation Therapy Center:
 - Pursuant to Act 959, section 257.000 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol does not require prior authorization. Pursuant to Acts 651 and 959, revisions also reflect increased product coverage and the full

scope of available coverage and new billing information for Tobacco Cessation counseling services.

- Pursuant to Act 959, section 292.900 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol does not require prior authorization. Revisions also include the exempt procedure codes from PCP referral for Tobacco Cessation.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on November 25, 2019. The agency indicated that it received no public comments.

Per the agency, this rule does not require CMS approval.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: The proposed revisions allow children under 18 to receive tobacco cessation counseling if a parent or guardian smokes. Is this required by statute or was it a policy decision? **RESPONSE:** This was a policy decision.

QUESTION #2: In light of Ark. Code Ann. § 17-92-101(17)(A)(i)(c) and (e), why do the proposed rules require prescription orders for vaccines and immunizations given to adults 19 years of age and older? I am specifically referring to the Pharmacy provider manual, section 211.000 (the last sentence in the paragraph directly following the discussion of over-the-counter items). **RESPONSE:** Thank you for catching that. DHS is removing the referenced phrase from the manual.

The proposed effective date is February 1, 2020.

FINANCIAL IMPACT: The agency stated that this rule will have no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the authority to administer and maintain Arkansas Medicaid. *See* Ark. Code Ann. § 20-77-107. These rules implement Acts 651, 652, and 959 of 2019. Act 651, sponsored by Representative Les Eaves, authorizes physicians and pharmacists to initiate therapy and administer or dispense nicotine replacement therapy products. Act 652, sponsored by Representative Jimmy Gazaway, allows children between the ages of seven and eighteen, with parental consent, to be vaccinated or immunized pursuant to a general written protocol rather than patient-specific orders. Act 959, sponsored by Representative Andrew Collins, requires Arkansas Medicaid to cover FDA-approved tobacco cessation medications and allows physicians and pharmacists to provide these products to eligible Medicaid beneficiaries without prior authorization.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Janet Mann
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 Janet Mann
PRESENTER E-MAIL janet.mann@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? ARKids First-B-2-19, Certified Nurse Midwife-1-18, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)-1-19, Dental-1-18, Nurse Practitioner-3-18, Pharmacy 1-19, and Physician-3-18
2. What is the subject of the proposed rule? DMS provider manuals are being revised to comply with Act 651, Act 652, and Act 959. Also, adding Tobacco Cessation Counseling information.
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 25-109-129

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://medicaid.mmis.arkansas.gov/general/comment/comment.aspx>

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.)

November 25, 2019

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

February 1, 2020

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

NOTICE OF RULE MAKING

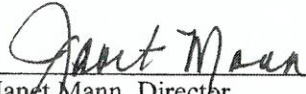
The Director of the Division of Medical Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-76-201, 20-77-107, and 25-10-129.

Effective February 1, 2020, Division of Medical Services (DMS) provider manuals are being revised to comply with Acts 2019 Nos. 651, 652, and 959. The purpose of these Acts is to increase services and medications to Medicaid eligible beneficiaries. Act 651 authorizes physicians and pharmacists to initiate therapy and administer or dispense both drugs that include naloxone and nicotine replacement therapy products. Act 652 amends the definition of "practice of pharmacy" to allow vaccines and immunizations to be given to a person from seven (7) years of age to eighteen (18) years of age under a general written protocol. Act 959 increases coverage without the requirement of prior authorization for medications approved by the US Federal Drug Administration (FDA) for tobacco cessation in the Arkansas Medicaid Program and for other purposes. Tobacco cessation utilizes a community-based strategy which includes efforts to challenge conventional thinking, advocate for policies, and change the social norms around tobacco use for Arkansas's youth and adults through the facilitation of a statewide coalition. Adding information about the tobacco cessation program to Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), ARKids First-B, Nurse Practitioner, Certified Nurse Midwife, and Dental provider manuals should help save lives, diminish suffering, cut health-related and economic costs, and conserve public and private dollars.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the Medicaid website at <https://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than November 25, 2019. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6266.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. **4501888131 EL**



Janet Mann, Director
Division of Medical Services

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Medical Services
PERSON COMPLETING THIS STATEMENT Brian Jones
TELEPHONE NO. 501-537-2064 **FAX NO.** 501-404-4619 **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 ARKids First-B-2-19, CNM-1-18, EPSDT-1-19, Dental-1-18, Nurse Practitioner-3-18, Pharmacy-1-19, and Physician-3-18

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.

Statement of Necessity and Rule Summary

ARKids First-B; Certified Nurse-Midwife; Early and Periodic Screening, Diagnosis and Treatment (EPSDT); Dental; Nurse Practitioner; Pharmacy, and Physician/Independent Lab/CRNA/Radiation Therapy Center

Statement of Necessity

Effective February 1, 2020, Division of Medical Services (DMS) provider manuals are being revised to comply with Acts 2019 Nos. 651, 652, and 959. The purpose of these Acts is to increase services and medications to Medicaid eligible beneficiaries. Act 651 authorizes physicians and pharmacists to initiate therapy and administer or dispense both drugs that include naloxone and nicotine replacement therapy products. Act 652 amends the definition of "practice of pharmacy" to allow vaccines and immunizations to be given to a person from seven (7) years of age to eighteen (18) years of age under a general written protocol. Act 959 increases coverage without the requirement of prior authorization for medications approved by the US Federal Drug Administration (FDA) for tobacco cessation in the Arkansas Medicaid Program and for other purposes. Tobacco cessation utilizes a community-based strategy which includes efforts to challenge conventional thinking, advocate for policies, and change the social norms around tobacco use for Arkansas's youth and adults through the facilitation of a statewide coalition. Adding information about the tobacco cessation program to Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), ARKids First-B, Nurse Practitioner, Certified Nurse Midwife, and Dental provider manuals should help save lives, diminish suffering, cut health-related and economic costs, and conserve public and private dollars.

Rule Summary

The proposed effective date for the rule revisions is February 1, 2020. The rule revisions are being made to comply with Acts 2019, Nos. 651, 652, and 959, and to add informational language concerning the availability of tobacco cessation counseling as follows:

- ARKids First-B – Section 222.750 is revised to include a new section containing health education.
- Certified Nurse-Midwife – Pursuant to Act 959, section 272.452 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol do not require prior authorization. Revisions also include new billing information for Tobacco Cessation counseling services.
- Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment:
 - Section 215.290 is revised to include counseling visits concerning tobacco cessation.
 - Section 252.100 is revised to include counseling visits concerning tobacco cessation.
- Dental - Pursuant to Act 959, section 214.100 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol do not require prior authorization. Pursuant to Acts 651 and 959, revisions also reflect increased product coverage and the full scope of available coverage and new billing information for Tobacco Cessation counseling services.

- Nurse Practitioner - Pursuant to Act 959, section 252.454 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol do not require prior authorization. Revisions also include new billing information for Tobacco Cessation counseling services.
- Pharmacy:
 - Pursuant to Act 652, sections 201.100 and 211.000 are revised to reflect the new protocol for reimbursement and coverage of vaccines and immunizations for beneficiaries age seven (7) years of age to age eighteen (18) years of age.
 - Pursuant to Act 959, section 241.000 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol do not require prior authorization. Pursuant to Acts 651 and 959, revisions also reflect increased product coverage and the full scope of available coverage.
- Physician/Independent Lab/CRNA/Radiation Therapy Center:
 - Pursuant to Act 959, section 257.000 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol do not require prior authorization. Pursuant to Acts 651 and 959, revisions also reflect increased product coverage and the full scope of available coverage and new billing information for Tobacco Cessation counseling services.
 - Pursuant to Act 959, section 292.900 is revised to reflect that coverage of tobacco cessation products either prescribed or initiated through statewide pharmacist protocol do not require prior authorization. Revisions also include the exempt procedure codes from PCP referral for Tobacco Cessation.

Stricken language would be deleted from and underlined language would be added to present law.
Act 959 of the Regular Session

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

As Engrossed: H3/4/19

A Bill

HOUSE BILL 1555

4
5 By: Representatives A. Collins, *Cloud*, A. Davis, *Eaves*, D. Ferguson, *Gazaway*, *Hawks*, L. Johnson,
6 *Lundstrum*, *Magie*
7 By: Senators *Irvin*, *Bond*, M. Johnson

For An Act To Be Entitled

10 AN ACT TO INCREASE COVERAGE FOR MEDICATIONS APPROVED
11 BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION FOR
12 TOBACCO CESSATION IN THE ARKANSAS MEDICAID PROGRAM;
13 AND FOR OTHER PURPOSES.

Subtitle

17 TO INCREASE COVERAGE FOR MEDICATIONS
18 APPROVED BY THE UNITED STATES FOOD AND
19 DRUG ADMINISTRATION FOR TOBACCO CESSATION
20 IN THE ARKANSAS MEDICAID PROGRAM.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

26 (a) The General Assembly finds that:

27 (1) Arkansas has the third-highest rate of adult smokers in the
28 United States;

29 (2) Arkansas has the third-highest rate of new lung cancer
30 diagnoses in the United States;

31 (3) One-third (1/3) of all cancer-related deaths are tied to the
32 use of tobacco; and

33 (4) The Arkansas Healthcare Transparency Initiative, the
34 statewide all-payer claims database, projects that the annual cost of tobacco
35 use to the Arkansas Medicaid Program to be approximately seven hundred
36 ninety-five million dollars (\$795,000,000).



03-04-2019 09:47:39 JMB118

1 (b) It is the intent of this section to lower the rate of adult
2 smokers in Arkansas and to reduce costs of treatment related to tobacco use-
3 related illness by increasing coverage in the Arkansas Medicaid Program for
4 medications approved by the United States Food and Drug Administration for
5 tobacco cessation.

6

7 SECTION 2. Arkansas Code Title 20, Chapter 77, Subchapter 1, is
8 amended to add an additional section to read as follows:

9 20-77-135. Medications approved by the United States Food and Drug
10 Administration for tobacco cessation coverage.

11 (a) The Department of Human Services shall ensure that the Arkansas
12 Medicaid Program covers for medications approved by the United States Food
13 and Drug Administration for tobacco cessation, including without limitation:

- 14 (1) Nicotine replacement therapy patches;
15 (2) Nicotine replacement therapy gum;
16 (3) Nicotine replacement therapy lozenges;
17 (4) Nicotine replacement therapy nasal spray;
18 (5) Nicotine replacement therapy inhalers;
19 (6) Bupropion; and
20 (7) Varenicline.

21 (b) Prior authorization shall not be required for coverage of
22 medications described in subsection (a) of this section.

23

24

/s/A. Collins

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APPROVED: 4/12/19

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