

**DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS**

**SUBJECT:** Medical Services Policy Manual Sections A-210, B-500, D-372 and D-373

**DESCRIPTION:** The changes follow:

A-210 – If eligible, retroactive coverage for the Adult Expansion Group may start 30 days prior to the date of application.

B-500 – If eligible, retroactive coverage for Emergency Medicaid may start 30 days prior to the date of application. Removed example (e.g. the date of admission through the date of discharge from the hospital).

D-372 – If eligible, retroactive coverage for incarcerated individuals who are eligible in the adult expansion group may start 30 days prior to the date of application.

D-373 – Changed Health Care Independence Program to Adult Expansion Group. Removed guidance that incarcerated individuals cases should be closed due to incarceration status. Incarcerated individuals will now remain open in with no Medicaid coverage, until coverage is requested for dates of overnight medical treatment. Retroactive coverage for the Adult Expansion Group is date specific.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on February 9, 2018. The Department provided the following comment from Tom Masseau, Executive Director of Disability Rights Arkansas, and its response:

Disability Rights Arkansas, Inc. (DRA) is the federally authorized and funded nonprofit organization serving as the Protection & Advocacy System for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansas with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments on the proposed change to retroactive Medicaid eligibility from ninety (90) days prior to date of application to thirty (30) days prior. DRA is not in favor of this change.

A reduction in the retroactive eligibility period accomplishes nothing but increasing the financial burden on those who are already struggling with expensive and unforeseen medical emergencies. Additionally, it increases the financial burden on healthcare providers and the state by increasing the amount of uncompensated medical care costs in the state. Healthcare costs are already a significant driver of debt and bankruptcy, both in this state and nationwide, and it makes little sense to roll back protections meant to protect disadvantaged Arkansans.

There are ways to mitigate the potential damage caused by this change, such as an effective presumptive eligibility system. In 2016, when Arkansas last sought approval to eliminate retroactive eligibility, one aspect of the conditional approval was the implementation of a presumptive eligibility system. Presumptive eligibility would allow

the state to enable qualified entities to make an immediate temporary eligibility decision, which would greatly streamline the determination process. Currently, presumptive eligibility is only used for pregnant women in Arkansas.

Another problem with the reduction of retroactive eligibility is that it is yet another change to the Medicaid system in Arkansas. Since the creation of Arkansas Works in 2014, there have been significant changes to the program every year. The elimination of retroactive eligibility is only one of several pending waiver amendments for the upcoming year. The confusion caused by keeping this program in permanent flux is bad not only for consumers, but for the providers, and will lead to breaks in coverage and increased administrative costs.

While DRA understands that the state is concerned with making the best use of their Medicaid dollars, we feel that there are better ways to accomplish this goal than shortening the retroactive eligibility period. DRA appreciates the opportunity to provide these comments, and we hope that the State will carefully consider our position and recommendations.

**The Department's Response:**

Thank you for your comment regarding the proposed Medicaid policy revisions concerning retroactive coverage for the Arkansas Works eligibility group. Act 1 of the 90<sup>th</sup> General Assembly, Second Extraordinary Session of 2016 amended and added language to Title 23 of the Arkansas Code requiring that Arkansas request this waiver of retroactive coverage for the Arkansas Works population.

The changes will require CMS approval, which is pending as of February 14, 2018. The proposed effective date is May 1, 2018.

**FINANCIAL IMPACT:** The changes will result in a savings of \$6,945,192 in the current fiscal year (\$6,528,480 in federal funds and \$416,712 in general revenue) and a savings of \$20,835,576 in the next fiscal year (\$19,481,264 in federal funds and \$1,354,312 in general revenue).

**LEGAL AUTHORIZATION:** The Department of Human Services is authorized to “make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith.” Arkansas Code Annotated § 20-76-201 (12). Arkansas Code §20-77-107 specifically authorizes the department to “establish and maintain an indigent medical care program.”

The Arkansas Works Program, created by Act 1 of the Second Extraordinary Session of 2016, empowered the Department to seek a waiver to eliminate retroactive eligibility for an eligible individual. *See* Ark. Code Ann. §23-61-1004 (a)(1)(E) (Supp. 2017). The Department is authorized to promulgate and administer rules to implement the Arkansas Works Program. *See* Ark. Code Ann. §23-61-1004 (c) (Supp. 2017).



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

DEPARTMENT/AGENCY Arkansas Department of Human  
DIVISION County Operations  
DIVISION DIRECTOR Mary Franklin  
CONTACT PERSON Larry Crutchfield  
ADDRESS PO Box 1437, Slot S332, Little Rock AR 72203  
PHONE NO. 501-682-8257 FAX NO. 501-682-1597 E-MAIL [larry.crutchfield@dhs.arkansas.gov](mailto:larry.crutchfield@dhs.arkansas.gov)  
NAME OF PRESENTER AT COMMITTEE MEETING Dave Mills  
PRESENTER E-MAIL [dave.mills@dhs.arkansas.gov](mailto:dave.mills@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:

**Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201**

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1. What is the short title of this rule? Medical Services Policy Manual Sections A-210, B-500, D-372 and D-373

2. What is the subject of the proposed rule? The proposed rule change revises Medical Services policy to comply with the Arkansas Works Waiver.

3. Is this rule required to comply with a federal statute, rule, or regulation?  
If yes, please provide the federal rule, regulation, and/or statute citation. Yes  No   
Arkansas Works Section 1115  
Demonstration #11-W-00287/6.

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? \_\_\_\_\_

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 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."**

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
7. What is the purpose of this proposed rule? Why is it necessary?  
The proposed rule change revises Medical Services policy to comply with the Arkansas Works Waiver.
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).

<http://humanservices.arkansas.gov/Pages/LegalNotices.aspx>

<https://www.medicaid.state.ar.us/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.)

February 9, 2018

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

April 1, 2018

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 and the Arkansas State Library 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. \_\_\_\_\_



**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services

**DIVISION** Division of Medical Services

**PERSON COMPLETING THIS STATEMENT** David McMahon

david.mcmahon

**TELEPHONE** 501-396-6421 **FAX** 501-682-8367 **EMAIL:** @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 A-210; B-500; D-372 and D-373

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?

**Current Fiscal Year**

General Revenue (\$ 416,712)  
Federal Funds (\$6,528,480)  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

**Next Fiscal Year**

General Revenue (\$ 1,354,312)  
Federal Funds (\$19,481,264)  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total (\$6,945,192)

Total (\$20,835,576)

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

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**

\$ (416,712)

\$ (1,354,312)

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.



Summary of Changes  
Arkansas Works Program  
Retroactive Coverage  
Sections A-210, B-500, D-372 and D-373

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