

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: ARKids-4-18, Domiciliary Care-1-18, Section I-5-18, Section III-4-18, and State Plan Amendment #2019-001

DESCRIPTION:*Statement of Necessity*

A Domiciliary Care claims report dated 12/5/18 indicated that Medicaid does not have any active providers currently enrolled. Because this optional program is not routinely used through Medicaid, the Division of Medical Services (DMS) has determined that it should be removed from the Arkansas Medicaid State Plan and all corresponding rules, regulations and policy rescinded as of 12/1/19.

Rule Summary

The rules revisions will be as follows:

- Removes the optional Domiciliary Care service from the Arkansas Medicaid State Plan
- Removes the optional Domiciliary Care service from Sections I and III of all Arkansas Medicaid Manuals (these sections appear in every Arkansas Medicaid manual)
- Removes the optional Domiciliary Care service from the ARKids Manual
- Repeals the Domiciliary Care Manual in its entirety
- Updates program names

Revisions Made Since Initial Filing

As a result of conversations with CMS, the Department removed from the State Plan Amendment pages that concerned co-payments for Medicaid services for the working disabled. A separate promulgation of those pages will be pursued at a later date.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 16, 2019. The Department received no public comments.

Per the agency, CMS approval is required for the State Plan Amendment. That approval has been requested and is currently pending.

The proposed effective date is December 1, 2019.

FINANCIAL IMPACT: The agency states that the amended and repealed rules have no financial impact.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).

Statement of Necessity and Rule Summary
ARKids-4-18, Domiciliary Care-1-18, Section I-5-18, Section III-4-18, and
State Plan Amendment #2019-001

Why is this change necessary? Please provide the circumstances that necessitate the change.

A Domiciliary Care claims report dated 12/5/18 indicated that Medicaid does not have any active providers currently enrolled. Because this optional program is not routinely used through Medicaid, the Division of Medical Services (DMS) has determined that it should be removed from the Arkansas Medicaid State Plan and all corresponding rules, regulations and policy rescinded as of 12/1/19.

What is the change? Please provide a summary of the change.

The proposed effective date for these rules is 12/1/19. The rules revisions will be as follows:

- Remove the optional Domiciliary Care service from the Arkansas Medicaid State Plan
- Remove the optional Domiciliary Care service from Sections I and III of all Arkansas Medicaid manuals (these sections appear in every Arkansas Medicaid manual)
- Remove the optional Domiciliary Care service from the ARKids Manual
- Repeal the Domiciliary Care Manual in its entirety
- Updating program names

This draft is a working document. All information contained herein is subject to change and may differ substantially from the final document. The information contained in this document should not be considered the position or views of the agency or the Governor.

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-4-18, Domiciliary Care-1-18, Section I-5-18, Section III-4-18, and State Plan Amendment #2019-001
2. What is the subject of the proposed rule? Remove optional Domiciliary Care service policy from Arkansas Medicaid manuals and remove it from the Medicaid State Plan
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.

See attached.

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 Statute §§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://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.)

September 16, 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 Medical Services
PERSON COMPLETING THIS STATEMENT David McMahon
TELEPHONE NO. 501-396-6421 **FAX NO.** 501-404-4619 **EMAIL:** david.mcmahon@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-4-18, Domiciliary Care-1-18, Section I-5-18, Section III-4-18, and State Plan Amendment #2019-001

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?

<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) _____

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 x

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.