

**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 Janet Mann  
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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, 5<sup>th</sup> Floor  
Little Rock, AR 72201**

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1. What is the short title of this rule? SPA#2019-0009, Transportation 1-19, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payments

2. What is the subject of the proposed rule? SPA#2019-0009, Transportation 1-19, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payments

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? \_\_\_\_\_

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. See Attached.

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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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, 20-77-107, 20-77-2801 et seq., 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.)

July 31, 2020

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

October 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. Position Unknown.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT**     Department of Human Services

**DIVISION**        Division of Medical Services

**PERSON COMPLETING THIS STATEMENT**   Lynn Burton

**TELEPHONE** (501) 682-1857    **FAX** (501) 682-8155    **EMAIL:** Lynn.burton@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**   SPA#2019-0009, Transportation 1-19, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payments

- 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 \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

**Next Fiscal Year**

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

Total \_\_\_\_\_

Total \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue	_____
Federal Funds	<u>\$2,030,942</u>
Cash Funds	_____
Special Revenue	_____
Other	<u>\$821,905</u>
(Assessment Fee)	_____
Total	<u>\$2,852,847</u>

General Revenue	_____
Federal Funds	<u>\$8,167,132</u>
Cash Funds	_____
Special Revenue	_____
Other	<u>\$3,244,258</u>
(Assessment Fee)	_____
Total	<u>\$11,411,390</u>

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**

\$ 821,905

\$ 3,244,258

**The State Share will be funded by an assessment fee imposed on each medical transportation provider except those exempted under Arkansas Code Ann. § 20-77-2806.**

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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**

\$ 821,905

\$ 3,244,258

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 rule establishes the Emergency Medical Transportation Access Payment.**

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

**Act 969 of the 2017 regular session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transports in Arkansas.**

**Statement of Necessity and Rule Summary**  
**SPA#2019-0009, Transportation 1-19, Administrative Procedures for the**  
**Emergency Medical Transportation Assessment Fee and Access Payment**

**Statement of Necessity**

This rule is necessary to comply with Acts 2017, No. 969, which is codified at Ark. Code Ann. § 20-77-2801 et seq. The rule seeks to improve the quality and timeliness of medical transports in Arkansas by establishing an ambulance assessment program.

In Act 969, the General Assembly found that:

- “[e]mergency medical services constitute an invaluable part of the healthcare delivery system of Arkansas,”
- “will be a key element in any healthcare reform initiative,”
- “are a key component of any economic development program as emergency medical services are essential to recruiting and retaining industry,” and
- “are a critical element of the emergency preparedness system within Arkansas”.

In addition, the General Assembly found that “[w]hile containing the cost of funding within the Arkansas Medicaid Program and providing healthcare services for the poor and uninsured individuals of this state are vital interests, the challenges associated with appropriate reimbursement for emergency medical services under the Arkansas Medicaid Program are recognized.”

Act 969 went on to provide that “it is the intent of the General Assembly to assure appropriate reimbursement by establishing an assessment on emergency medical services to preserve vital emergency medical services for all residents of Arkansas.”

This rule is being promulgated to effectuate these legislative findings and intent.

**Rule Summary**

The Division of Medical Services (DMS) of the Department of Human Services is proposing the following revisions:

Effective for dates of service on and after April 1, 2020, the State Plan Amendment will include the following:

- Qualifying medical transportation providers within the State of Arkansas except for volunteer ambulance services, ambulance services owned by the state, county or political subdivision, nonemergency ambulance services, air ambulance services, specialty hospital-based ambulance services and ambulance services subject to the state’s assessment on the ambulance revenue of hospitals shall be eligible to receive emergency medical transportation access payments;
- The specific payment methodology to be used in establishing the emergency medical transportation access payment for medical transportation providers. The payments shall be calculated on an annual basis and paid on a quarterly basis. The annual budget impact associated with this rule change is \$11,411,390.00. The assessment will generate the funding for the state share of the budget.

Effective October 1, 2020:

- The Transportation Provider Manual will be revised to include a new section within Reimbursement that outlines the process for transportation providers to receive the emergency medical transportation access payments.
- A new rule, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payment, is being promulgated, and a link to this rule will be added to the Transportation Provider Manual on the website of DMS. The procedures include:
  - Definitions
  - Initial Year Determination
  - Provider Revenues and Assessment Rate
  - Fee Assessment
  - Fee Billing and Collection
  - Administration of Fees
  - Sanctions
  - Recoupment Provisions
  - Emergency Medical Transportation Access Payments

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -  
OTHER TYPES OF CARE

Revised:

~~July 1, 2018~~ April 1, 2020

23. Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary.

a. Transportation (Continued)

(2) Air Ambulance (continued)

Pediatric Hospitals

1. Helicopter Ambulance: Effective for dates of service occurring August 15, 2001 and after, helicopter ambulance services provided by in-state pediatric hospitals will be reimbursed based on reasonable costs with interim payments and year-end cost settlement. Interim payments are made at the lesser of the amount billed or the Title XIX (Medicaid) charge allowed. Arkansas Medicaid will use the lesser of the reasonable costs or customary charges as determined from the hospital's submitted cost report to establish cost settlements. The cost settlements will be calculated using the methods and standards used by the Medicare Program. Methods and standards refer to the allocation of costs on the cost report and do not include any current or future Medicare reimbursement limits for this particular service.

(3) Emergency Medical Transportation Access Payment

1. Effective for dates of service on or after April 1, 2020, qualifying medical transportation providers within the State of Arkansas except for volunteer ambulance services, ambulance services owned by the state or county and political subdivisions, non-emergency ambulance services, air ambulance services, specialty hospital based ambulance services and ambulance services subject to the state's assessment on the revenue of hospitals; shall be eligible to receive emergency medical transportation access payments. All emergency medical transportation providers that meet this definition will be referred to as Qualified Emergency Medical Transportation (QEMT) providers for purpose of this section.

2. Payment Methodology

A. The emergency medical transportation access payment to each QEMT shall be calculated on an annual basis and paid out quarterly. The access payment shall be comprehensive and will be eighty percent (80%) of the difference between Medicaid payments otherwise made to QEMTs for the provision of emergency medical transportation services and the average amount that would have been paid at the equivalent community rate (hereinafter, average commercial rate or ACR).:-

(1) The Division shall align the paid Medicaid claims for each QEMT with the Medicare fees (Medicare Fee Schedule – Urban) for each healthcare common procedure coding system (HCPCS) or current procedure terminology (CPT) code and calculate the Medicare payment for those claims.

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -  
OTHER TYPES OF CARE

Revised: April 1, 2020

23. Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary.

a. Transportation (Continued)

(3) Emergency Medical Transportation Access Payment (continued)

(2) The Division shall calculate a separate Medicare equivalent of the ACR for each QEMT that qualifies for the access payment by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims.

(B) The specific payment methodology to be used in establishing the emergency medical transportation access payment for QEMTs is as follows:

- (1) The Division shall send emergency medical transportation access payment data collection forms to QEMTs.
- (2) For each QEMT who submits the required data, the Division shall identify the emergency medical transportation services for which the provider is eligible to be reimbursed.
- (3) For each QEMT who submits the required data, the Division shall calculate the reimbursement paid to the QEMT for the provision of emergency medical ambulance transportation services identified under Section (1) on Attachment 4.19-B Page 8.
- (4) For each QEMT, the Division shall calculate the QEMT's average commercial rate for all services identified under Subparagraph (2) of this Section.
- (5) For each QEMT, the Division shall subtract an amount equal to the reimbursement calculation for each of emergency medical transportation service from the amount calculated for each of the emergency medical transportation services. [B (4)-B (3)]



METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -  
OTHER TYPES OF CARE

Revised: April 1, 2020

23. Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary.

a. Transportation (Continued)

(3) Emergency Medical Transportation Access Payment (continued)

(6) For each QEMT, the Division shall calculate the sum of each of the amounts calculated for emergency medical transportation services in Subparagraph (B (5)).

(7) For each QEMT, the Division shall calculate the QEMT's upper payment limit (UPL) by subtracting the QEMT's total Medicaid payment differential from the sum calculated in Subparagraph (B)(6). [B (B)-B (3)]

(8) The Division shall submit UPL demonstrations in accordance with the State Medicaid Director Letter issued on March 18, 2013 (SMD #13-003).

3. The Division shall reimburse QEMTs the access payment of eighty percent (80%) of their UPL gap.

4. These access payments are considered supplemental payments and do not replace any currently authorized Medicaid payments for emergency medical transportation services.

(34) Early Intervention Day Treatment (EIDT) and Adult Developmental Day Treatment (ADDT) Transportation

Effective for claims with dates of service on or after July 1, 2018, EIDT and ADDT transportation providers will be reimbursed on a per mile basis at the lesser of the billed charges or the maximum Title XIX (Medicaid) charge allowed. Transportation will be covered from the point of pick-up to the EIDT and ADDT facility and from the EIDT and ADDT facility to the point of delivery. If more than one eligible Medicaid recipient is transported at the same time to the same location, Medicaid may be billed only for one recipient. If more than one Medicaid recipient is transported at the same time to different locations, the provider may bill only for the recipient traveling the farthest distance. The route must be planned to ensure that beneficiaries spend the least amount of time being transported. The maximum per mile is based on reasonable cost.

The ~~EDIT~~-EIDT and ADDT transportation providers will submit annual statements of mileage, revenues and expenses, i.e. salaries, repairs, supplies, rent, indirect overhead costs, etc. The State Agency will review the cost and mileage information at least biennially and adjust the reimbursement rate if necessary. Therefore, an inflation factor will not be automatically applied.

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -  
OTHER TYPES OF CARE

Revised: ~~December 1, 2001~~ April 1, 2020

23. Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary.

a. Transportation (Continued)

(45) Non-Emergency (Continued)

(b) Non-Public Transportation

Effective for dates of service on or after December 1, 2001, Non-Public Transportation Services reimbursement is based on the lesser charges or the Title XIX maximum allowable. The Title XIX maximum is based on the Internal Revenue Service (IRS) reimbursement for private mileage in a business setting, plus an additional allowance for the cost of the driver. The standard mileage private reimbursement is compliant to the 1997 Standard Federal Tax Report, paragraph #8540.011. The calculation of the additional allowance for the cost of the driver is based on the minimum wage per hour, plus 28% of salaries (minimum wage) for fringe benefits, plus a fixed allowance of \$2.11 for the ~~provider~~provider's overhead and billings, divided by 30 (average number of miles per trip). The average number of miles was determined by utilizing data from SFY 1996 and dividing the number of miles per trip by the number of trips made.

The State Agency will negotiate with the affected provider group representatives should recipients access become an issue.

(56) Volunteer Transportation: Amount of payment is agreed on by County Human Services Office and the Carrier. Medicaid reimburses the County Human Services Office for the agreed amount.

The rate of reimbursement equals the amount of travel reimbursement per mile for a state employee. Medicaid reimbursement will not be made for services provided free of charge.

(67) Domiciliary Care: Fixed price set by Assistant Director, Division of Medical Services, based on reasonable cost. The provider submits a statement of expenses, i.e. salaries, repairs, supplies, rent, etc. for their past fiscal year. These costs are reviewed by the ~~State~~State's auditors for reasonableness. These costs are reviewed annually and adjusted if necessary, therefore, an inflation factor is not applied.

The cost of meals and lodging are provided only when necessary in connection with transportation of a recipient to and from medical care.

## SECTION II - TRANSPORTATION

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# **ADMINISTRATIVE PROCEDURES FOR THE EMERGENCY MEDICAL TRANSPORTATION ASSESSMENT FEE AND ACCESS PAYMENT**

## **DEFINITIONS**

- (1) "Accounts Receivable" means the Accounts Receivable Unit of the Office of Finance of the Department of Human Services;
- (2) "Air ambulance services" means services authorized and licensed by the Department of Health to provide care and air transportation of patients;
- (3) "Ambulance services" means services authorized and licensed by the department to provide care and transportation of patients upon the streets and highways of Arkansas;
- (4) "Division" means the Division of Medical Services of the Department of Human Services;
- (5) "Medical transportation" means emergency medical services provided through ambulance services and air ambulance services. The term does not include nonemergency ambulance services;
- (6) "Medical transportation provider" means a licensed provider of medical transportation;
- (7) "Net operating revenue" means the gross revenues earned for providing medical transportation in Arkansas, excluding amounts refunded to or recouped, offset, or otherwise deducted by a patient or payer for medical transportation;
- (8) (A) "Nonemergency ambulance services" means the transport in a motor vehicle to or from medical facilities, including without limitation medical transportation providers, nursing homes, physicians' offices, and other healthcare facilities, of persons who are ill or injured and who are transported in a reclining position.
- (B) "Nonemergency ambulance services" does not include transportation provided by licensed medical transportation providers that own and operate the ambulance for their own admitted patients;
- (9) "Specialty medical transportation provider-based ambulance services" means ambulance services provided by an acute care general medical transportation provider that limits healthcare services primarily to children and qualifies as exempt from the Medicare prospective payment system regulation;
- (10) "State plan amendment" means a change or update to the state Medicaid plan;
- (11) "Upper payment limit" means the lesser of the customary charges of the medical transportation provider for medical transportation or the prevailing charges in the locality of the medical transportation provider for comparable services under comparable circumstances, calculated according to methodology in an approved state plan amendment for the Arkansas Medicaid Program; and
- (12) (A) "Upper payment limit gap" means the difference between the upper payment limit of the medical transportation provider and the Medicaid payments not financed using medical transportation assessment made to all medical transportation providers.

(B) "Upper payment limit gap" is calculated separately for ambulance services and air ambulance services.

## **INITIAL YEAR DETERMINATION**

Upon approval of the State Plan Amendment (SPA) by the Centers for Medicare & Medicaid Services (CMS), the model submitted to CMS as part of the SPA will be used to determine the Fee Assessments and access payments made under this program for the last quarter of State Fiscal Year 2020 and State Fiscal Year 2021. For State Fiscal Years after 2021, the methodology outlined in the following procedures will be used.

## **PROVIDER REVENUES & ASSESSMENT RATE**

An assessment is imposed on each medical transportation provider, except those exempted under Ark Code Ann. § 20-77-2806, for each state fiscal year in an amount calculated as a percentage of the aggregate net operating revenues of the medical transportation providers.

The assessment rate shall be determined annually based upon the percentage of net operating revenue needed to generate 80% of the upper payment limit gap plus the annual fee to be paid to the Arkansas Medicaid Program under § 20-77-2805, but in no case at a rate that would cause the assessment proceeds to exceed the indirect guarantee threshold set forth in 42 C.F.R. § 433.68(f)(3)(i).

For state fiscal year 2022 and following years, the medical transportation provider's net patient revenue from the most recently ended calendar year will be used.

The assessment rate described in this section shall be determined after consultation with the Arkansas Ambulance Association or its successor association.

## **FEE ASSESSMENT**

Annually, no later than January 31, the Division will send to all licensed medical transportation providers the net operating revenue assessment return. Medical transportation providers shall complete the returns for the previous year and deliver them to the Division or its contractor no later than March 31 of that year. Providers that fail to return the net operating revenue assessment form will have their assessment calculated based on the state per capita average assessment for that year. The Division will send a notice of assessment to each medical transportation provider informing the medical transportation provider of the assessment rate and the estimated assessment amount owed by the medical transportation provider for the applicable fiscal year.

With the exception of the initial notice of assessment, annual notices of assessment will be sent at least forty-five (45) calendar days before the due date for the first quarterly assessment payment of each fiscal year. The first notice of assessment will be sent within forty-five (45) calendar days after the Division has received notification from the Centers for Medicare and Medicaid Services that the payments required under Ark. Code Ann. § 20-77-2809 and, if necessary, the waiver granted under 42 C.F.R. § 433.68 have been approved. The medical transportation provider will have thirty (30) calendar days from the date of its receipt of a notice of assessment to review and verify the assessment rate and the estimated assessment amount.

If a medical transportation provider operates, conducts, or maintains more than one (1) medical transportation provider in the state, the medical transportation provider will pay the assessment for each medical transportation provider separately. However, if the medical transportation

provider operates more than one (1) medical transportation provider under one (1) Medicaid provider number, the medical transportation provider may pay the assessment for all such medical transportation providers in the aggregate.

For a medical transportation provider subject to the assessment imposed under Ark. Code Ann. § 20-77-2803 that ceases to conduct medical transportation provider operations or maintain its state license or did not conduct medical transportation provider operations throughout a state fiscal year, the assessment for the state fiscal year in which the cessation occurs will be adjusted by multiplying the annual assessment computed under Ark. Code Ann. § 20-77-2803 by a fraction, the numerator of which is the number of days during the year that the medical transportation provider operated and the denominator of which is three hundred sixty-five (365). The fraction will be expressed as a percentage rounded to two places (Example – 65.23%).

Immediately upon ceasing to operate, the medical transportation provider will pay the adjusted assessment for that state fiscal year to the extent not previously paid.

The medical transportation provider also shall receive payments under Ark. Code Ann. § 20-77-2809 for the state fiscal year in which the cessation occurs, which will be adjusted by the same fraction as its annual assessment.

A medical transportation provider subject to an assessment under the Ark. Code Ann. § 20-77-2801 et seq. that has not been previously licensed as a medical transportation provider in Arkansas and that commences medical transportation provider operations during a state fiscal year will pay the required assessment computed under Ark. Code Ann. § 20-77-2803 and will be eligible for medical transportation provider access payments under Ark Code Ann. § 20-77-2809. The assessment will be calculated based on the effective date of licensure. The assessment for the state fiscal year in which the change occurs will be adjusted by multiplying the annual assessment computed under Ark. Code Ann. § 20-77-2803 by a fraction, the numerator of which is the number of days during the year that the medical transportation provider is subject to the assessment and the denominator of which is three hundred sixty-five (365). The fraction will be expressed as a percentage rounded to two places (Example – 65.23%). The medical transportation provider also shall receive payments under Ark. Code Ann. § 20-77-2809 for the state fiscal year in which the medical transportation provider is licensed, which will be adjusted by the same fraction as its annual assessment. Access payments and assessment fees will not be reimbursed or collected until enrollment of the new provider has been approved by the Medicaid Provider Enrollment Section.

For new medical transportation providers, the Division will calculate revenue to be assessed based on the population of the county for which the medical transportation provider is licensed. The per capita amount will be assigned and calculated based on the average net operating revenue per capita for all other medical transportation providers in the State that are currently being assessed. Average revenue per capita will be used in this way through the end of the second fiscal year.

A medical transportation provider that is exempted from payment of the assessment under Ark. Code Ann. §20-77-2806 at the beginning of a state fiscal year but during the state fiscal year experiences a change in status so that it becomes subject to the assessment will pay the required assessment computed under Ark. Code Ann. § 20-77-2803 and will be eligible for medical transportation provider access payments under Ark. Code Ann. § 20-77-2809. The assessment will be calculated based on the effective date of status change as determined by the Medicaid Provider Enrollment Section. The assessment for the state fiscal year in which the change occurs will be adjusted by multiplying the annual assessment computed under Ark. Code Ann. § 20-77-2803 by a fraction, the numerator of which is the number of days during the year

that the medical transportation provider is subject to the assessment and the denominator of which is three hundred sixty-five (365). The fraction will be expressed as a percentage rounded to two places (Example – 65.23%). The medical transportation provider also shall receive payments under Ark. Code Ann. § 20-77-2809 for the state fiscal year in which the medical transportation provider status change occurs as determined by the Medicaid Provider Enrollment Section, which will be adjusted by the same fraction as its annual assessment. Access payments and assessment fees will not be reimbursed or collected until enrollment due to the status change has been approved by the Medicaid Provider Enrollment Section.

A medical transportation provider that is subject to payment of the assessment computed under Ark. Code Ann. § 20-77-2803 at the beginning of a state fiscal year but during the state fiscal year experiences a change in status so that it is no longer subject to payment under Ark. Code Ann. § 20-77-2806 shall be relieved of its obligation to pay the medical transportation provider assessment and shall become ineligible for medical transportation provider access payments under Ark. Code Ann. §20-77-2809. The assessment for the state fiscal year in which the change occurs will be adjusted by multiplying the annual assessment computed under Ark. Code Ann. § 20-77-2803 by a fraction, the numerator of which is the number of days during the year that the medical transportation provider was subject to the assessment and the denominator of which is three hundred sixty-five (365). The fraction will be expressed as a percentage rounded to two places (Example – 65.23%). Immediately upon changing status, the medical transportation provider will pay the adjusted assessment for that state fiscal year to the extent not previously paid. The medical transportation provider also shall receive payments under Ark. Code Ann. § 20-77-2809 for the state fiscal year in which the status change occurs. The amount payable will be adjusted by the same fraction as its annual assessment.

## **FEE BILLING AND COLLECTION**

The annual assessment imposed under Ark Code Ann. § 20-77-2803 is due and payable quarterly. However, an installment payment of an assessment imposed by Ark. Code Ann. § 20-77-2803 will not be due and payable until:

(A) The Division issues the written notice required by Ark. Code Ann. § 20-77-2808(a) stating that the payment methodologies to medical transportation providers required under Ark. Code Ann. § 20-77-2809 have been approved by the Centers for Medicare and Medicaid Services and the waiver under 42 C.F.R. § 433.68 for the assessment imposed by Ark. Code Ann. § 20-77-2803, if necessary, has been granted by the Centers for Medicare and Medicaid Services;

(B) The Division receives all needed information, or the thirty-day verification period required by § 20-77-2808(b) has expired, whichever is later; and

(C) The Division has made all quarterly installments of medical transportation provider access payments that were otherwise due under Ark. Code Ann. § 20-77-2809 consistent with the effective date of the approved state plan amendment and waiver.

After the initial installment has been paid under this section, each subsequent quarterly installment payment of an assessment imposed by Ark. Code Ann. § 20-77-2803 will be due and payable within ten (10) business days after the medical transportation provider has received its medical transportation provider access payments due under Ark. Code Ann. § 20-77-2809 for the applicable quarter by Accounts Receivable.

Failure of any medical transportation provider to provide required reports or pay fees on a timely basis may result in the withholding of Medicaid reimbursement, letters of caution, sanctions, or penalty assessment. Penalty assessments are detailed in the Sanctions Section identified below. The penalty assessment and outstanding medical transportation provider assessment fee shall accrue interest at the maximum rate permitted by law from the date the assessment fee is due until payment of the assessment fee and the penalty assessment.

Accounts Receivable will initiate the collection process on the 1st of the month following the due date for payments not received or postmarked by close of business on the 10th day following the notice of assessment due. An outstanding accounts report will be forwarded to the Division for determination of further action.

## **ADMINISTRATION OF FEES**

Fees assessed and collected, and sanctions and interest imposed and collected, will be deposited in a designated account known as the Medical Transportation Assessment Account within the Arkansas Medicaid Program Trust Fund as established under Ark. Code Ann. §20-77-2805.

## **SANCTIONS**

The Division will sanction medical transportation providers that fail to comply with Ark Code Ann. §20-77-2801 et seq., these rules, or both. If a medical transportation provider fails to timely pay the full amount of a quarterly assessment, the Division shall add to the assessment:

(A) A penalty assessment equal to five percent (5%) of the quarterly amount not paid on or before the due date; and

(B) An additional five percent (5%) penalty assessment on any unpaid quarterly and unpaid penalty assessment amounts remaining on the last day of each quarter after the due date until the assessed amount and the penalties are paid in full.

Payments will be credited first to unpaid quarterly amounts, rather than to penalty or interest amounts, beginning with the most delinquent installment.

Any fee or penalty assessment imposed under these rules, as authorized by the Ark. Code Ann. § 20-77-2801 et seq., shall accrue interest at the maximum rate permitted by law from the date the fee or penalty assessment is imposed until the medical transportation provider pays the fee or penalty assessment.

For the purposes of these rules, "postmarked" will mean dated for delivery to the Division and submitted to the appropriate carrier by whatever means designated by the Division, including electronic or other means.

## **Recoupment Provisions**

The Division may withhold from a medical transportation provider's vendor payment any



amount owed the Medicaid program as a result of an imposed penalty assessment for non-compliance as detailed above, or any assessment fee not paid by the due date. For purposes of this paragraph, a penalty assessment is considered imposed once the Division notifies the medical transportation provider of the penalty assessment and the medical transportation provider has an opportunity to appeal the penalty assessment.

### **Emergency medical transportation access payments.**

To preserve and improve access to medical transportation services, for medical transportation services rendered on or after April 1, 2020, the Division shall make emergency medical transportation access payments as set forth in this section. These access payments are considered supplemental payments and do not replace any currently authorized Medicaid payments for medical transportation services.

Eligibility: Medical transportation providers eligible to receive emergency medical transportation access payments are those medical transportation providers:

- (A) Subject to the assessment imposed under Ark. Code Ann. § 20-77-2803; and
- (B) That apply to receive the emergency medical transportation access payments as provided herein.

Application:

- (A) Not less than one-hundred eighty (180) days prior to the beginning of each state fiscal year, the Division will send to all qualified licensed medical transportation providers an application for emergency medical transportation access payments. The application will:
  - a. Allow the medical transportation provider to submit all information needed to calculate that medical transportation provider's average commercial rate;
  - b. Provide that the application must be received by the Division on a date certain which will be no less than one hundred twenty (120) days prior to the beginning of the state fiscal year;
  - c. Explain that, unless exempt from payment by law, the medical transportation provider will be required to pay the medical transportation provider assessment even if it fails to apply for the emergency medical transportation access payments; if it fails to supply the Revenue Survey the assessment will be calculated based on the state average assessment for that year; and
  - d. Explain that the medical transportation provider will not be eligible to receive emergency medical transportation access payments in the next fiscal year if the application is not timely filed but will still be assessed based on the average assessment.

- (B) A medical transportation provider that has previously received emergency medical transportation access payments is required to make an application for such payments and provide the Revenue Survey every year.

#### Calculation of Average Commercial Rate:

- (A) The emergency medical transportation access payment shall be determined in a manner to bring the payments for these services up to the average commercial rate level as described herein. The average commercial rate level is defined as the average amount payable by the commercial payers for the same service.
- (B) The Division shall align the paid Medicaid claims with the Medicare fees for each healthcare common procedure coding system (HCPCS) or current procedure terminology (CPT) code for the ambulance provider and calculate the Medicare payment for those claims.
- (C) The Division shall calculate an overall Medicare to commercial conversion factor for each qualifying medical transportation provider that submits an emergency medical transportation access payment application by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims.
- (D) The commercial to Medicare ratio for each provider will be re-determined every year.

#### Payment Methodology:

- (A) The emergency medical transportation access payment to each eligible medical transportation provider shall not exceed the sum of the difference between the Medicaid payments otherwise made to these providers for the provision of emergency medical transportation services and the average amount that would have been paid at the equivalent community rate, expressed as the average commercial rate.
- (B) The emergency medical transportation access payment shall be determined in a manner to bring payments for these services up to the community rate level.
- (C) The specific payment methodology to be used in establishing the emergency medical transportation access payment due to each eligible medical transportation provider is as follows:
  - a. The Division will identify the emergency medical transportation services in the payment period for which the eligible medical transportation provider is eligible to be reimbursed.
  - b. The Division will calculate the reimbursement paid to the medical transportation provider for the provision of emergency medical transportation services in the payment period.
  - c. The Division will calculate the medical transportation provider's average commercial rate for the provider's services.
  - d. The Division shall calculate the medical transportation provider's upper payment limit gap by subtracting actual Medicaid services in the payment

period from the amount that would have been paid using the medical transportation provider's average commercial rate.

- e. The Division shall reimburse all eligible providers the same proportion of their upper payment limit gap, up to the lesser of:
  - i. the total computable generated from the available balance in the Medical Transportation Assessment Account; or
  - ii. 80 percent (80%) of the eligible medical transportation provider's upper payment limit gap.

(D) Emergency medical transportation access payments shall be made quarterly.

PROPOSED

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

As Engrossed: S3/21/17

# A Bill

SENATE BILL 649

5 By: Senator Teague  
6

## For An Act To Be Entitled

8 AN ACT TO ESTABLISH AN AMBULANCE ASSESSMENT PROGRAM  
9 TO IMPROVE THE QUALITY AND TIMELINESS OF MEDICAL  
10 TRANSPORTS IN ARKANSAS; AND FOR OTHER PURPOSES.  
11

### Subtitle

12  
13  
14 TO ESTABLISH AN AMBULANCE ASSESSMENT  
15 PROGRAM TO IMPROVE THE QUALITY AND  
16 TIMELINESS OF MEDICAL TRANSPORTS IN  
17 ARKANSAS.  
18

19  
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 *SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to add an*  
23 *additional subchapter to read as follows:*

24 *Subchapter 27 – Assessment Fee and Program on Medical Transportation*  
25 *Providers*  
26

27 *20-77-2701. Legislative findings and intent.*

28 *(a) The General Assembly finds that:*

29 *(1) Emergency medical services constitute an invaluable part of*  
30 *the healthcare delivery system of Arkansas;*

31 *(2) Emergency medical services will be a key element in any*  
32 *healthcare reform initiative;*

33 *(3) Emergency medical services are a key component of any*  
34 *economic development program as emergency medical services are essential to*  
35 *recruiting and retaining industry;*

36 *(4) Emergency medical services are a critical element of the*



1 emergency preparedness system within Arkansas; and

2 (5) While containing the cost of funding within the Arkansas  
3 Medicaid Program and providing healthcare services for the poor and uninsured  
4 individuals of this state are vital interests, the challenges associated with  
5 appropriate reimbursement for emergency medical services under the Arkansas  
6 Medicaid Program are recognized.

7 (b) It is the intent of the General Assembly to assure appropriate  
8 reimbursement by establishing an assessment on emergency medical services to  
9 preserve vital emergency medical services for all residents of Arkansas.

10  
11 20-77-2702. Definitions.

12 As used in this subchapter:

13 (1) "Air ambulance services" means services authorized and  
14 licensed by the Department of Health to provide care and air transportation  
15 of patients;

16 (2) "Ambulance services" means services authorized and licensed  
17 by the department to provide care and transportation of patients upon the  
18 streets and highways of Arkansas;

19 (3) "Emergency medical services" means:

20 (A) The transportation and medical care provided an ill or  
21 injured person before arrival at a medical facility by a licensed emergency  
22 medical services personnel or other healthcare provider;

23 (B) Continuation of the initial emergency care within a  
24 medical facility subject to the approval of the medical staff and governing  
25 board of that facility; and

26 (C) Integrated medical care in emergency and nonurgent  
27 settings with the oversight of a physician;

28 (4)(A) "Medical transportation" means emergency medical services  
29 provided through ambulance services and air ambulance services.

30 (B) "Medical transportation" does not include nonemergency  
31 ambulance services;

32 (5) "Medical transportation provider" means a licensed provider  
33 of medical transportation;

34 (6) "Net operating revenue" means the gross revenues earned for  
35 providing medical transportation in Arkansas, excluding amounts refunded to  
36 or recouped, offset, or otherwise deducted by a patient or payer for medical

1 transportation;

2 (7)(A) "Nonemergency ambulance services" means the transport in  
3 a motor vehicle to or from medical facilities, including without limitation  
4 hospitals, nursing homes, physicians' offices, and other healthcare  
5 facilities of persons who are ill or injured and who are transported in a  
6 reclining position.

7 (B) "Nonemergency ambulance services" does not include  
8 transportation provided by licensed hospitals that own and operate the  
9 ambulance for their own admitted patients;

10 (8) "Specialty hospital based ambulance services" means  
11 ambulance services provided by an acute care general hospital that limits  
12 healthcare services primarily to children and qualifies as exempt from the  
13 Medicare prospective payment system regulation;

14 (9) "Upper payment limit" means the lesser of the customary  
15 charges of the medical transportation provider or the prevailing charges in  
16 the locality of the medical transportation provider for comparable services  
17 under comparable circumstances, calculated according to methodology in an  
18 approved state plan amendment for the Arkansas Medicaid Program; and

19 (10)(A) "Upper payment limit gap" means the difference between  
20 the upper payment limit of the medical transportation provider and the  
21 Medicaid payments not financed using medical transportation assessment made  
22 to all medical transportation providers.

23 (B) "Upper payment limit gap" is calculated separately for  
24 ambulance services and air ambulance services.

25  
26 20-77-2703. Medical transportation provider assessment.

27 (a)(1) Except as provided in this subchapter, an assessment is imposed  
28 on each medical transportation provider for each state fiscal year in an  
29 amount calculated as a percentage of the net operating revenues of the  
30 medical transportation provider.

31 (2) The assessment rate shall be determined annually based upon  
32 the percentage of net operating revenue needed to generate an amount up to  
33 the nonfederal portion of the upper payment limit gap plus the annual fee to  
34 be paid to the Arkansas Medicaid Program under § 20-77-2705(f)(1)(C), but in  
35 no case at a rate that would cause the assessment proceeds to exceed the  
36 indirect guarantee threshold set forth in 42 C.F.R. § 433.68(f)(3)(i).

1           (3) The assessment rate described in subsection (a) of this  
2 section shall be determined after consultation with the Arkansas Ambulance  
3 Association or its successor association.

4           (b) This subchapter does not authorize a unit of county or local  
5 government to license for revenue or impose a tax or assessment:

6                   (1) Upon medical transportation providers; or

7                   (2) Measured by the income or earnings of a medical  
8 transportation provider.

9  
10           20-77-2704. Program administration.

11           (a) The Director of the Division of Medical Services of the Department  
12 of Human Services shall administer the assessment program created in this  
13 subchapter.

14           (b)(1) The Division of Medical Services of the Department of Human  
15 Services shall adopt rules to implement this subchapter.

16                   (2) Unless otherwise provided in this subchapter, the rules  
17 adopted under subdivision (b)(1) of this section shall not grant any  
18 exceptions to or exemptions from the medical transportation provider  
19 assessment imposed under § 20-77-2703.

20           (3) The rules adopted under subdivision (b)(1) of this section  
21 shall include any necessary forms for:

22                           (A) Calculating of upper payment limits;

23                           (B) Reporting of net operating revenue;

24                           (C) Imposing and collecting of the medical transportation  
25 provider assessment imposed under § 20-77-2703; and

26                           (D) Enforcing this subchapter, including without  
27 limitation letters of caution or sanctions.

28           (4) The rules adopted under subdivision (b)(1) of this section  
29 shall specify which time periods are used as the basis for the calculation of  
30 the assessment in each state fiscal year.

31           (c) To the extent practicable, the division shall administer and  
32 enforce this subchapter and collect the assessments, interest, and penalty  
33 assessments imposed under this subchapter using procedures generally employed  
34 in the administration of the division's other powers, duties, and functions.

35  
36           20-77-2705. Medical Transportation Assessment Account.

1 (a)(1) There is created within the Arkansas Medicaid Program Trust  
2 Fund a designated account known as the "Medical Transportation Assessment  
3 Account".

4 (2) The medical transportation provider assessments imposed  
5 under § 20-77-2703 shall be deposited into the Medical Transportation  
6 Assessment Account.

7 (b) Moneys in the Medical Transportation Assessment Account shall  
8 consist of:

9 (1) All moneys collected or received by the Division of Medical  
10 Services of the Department of Human Services from medical transportation  
11 provider assessments imposed under § 20-77-2703;

12 (2) Any interest or penalties levied in conjunction with the  
13 administration of this subchapter; and

14 (3) Any appropriations, transfers, donations, gifts, or moneys  
15 from other sources, as applicable.

16 (c) The Medical Transportation Assessment Account shall be separate  
17 and distinct from the General Revenue Fund Account of the State Apportionment  
18 Fund and shall be supplementary to the Arkansas Medicaid Program Trust Fund.

19 (d) Moneys in the Medical Transportation Assessment Account shall not  
20 be used to replace other general revenues appropriated and funded by the  
21 General Assembly or other revenues used to support Medicaid.

22 (e) The Medical Transportation Assessment Account shall be exempt from  
23 budgetary cuts, reductions, or eliminations caused by a deficiency of general  
24 revenues.

25 (f)(1) Except as necessary to reimburse any funds borrowed to  
26 supplement funds in the Medical Transportation Assessment Account, the moneys  
27 in the Medical Transportation Assessment Account shall be used only as  
28 follows:

29 (A) To make emergency medical transportation access  
30 payments under § 20-77-2709;

31 (B) To reimburse moneys collected by the division from  
32 medical transportation providers through error or mistake or under this  
33 subchapter; or

34 (C) To pay an annual fee to the division in the amount of  
35 three and three-fourths percent (3.75%) of the assessments collected from  
36 medical transportation providers under § 20-77-2703 each state fiscal year.



1 (2)(A) The Medical Transportation Assessment Account shall  
2 retain account balances remaining each fiscal year.

3 (B) At the end of each fiscal year, any positive balance  
4 remaining in the Medical Transportation Assessment Account shall be factored  
5 into the calculation of the new assessment rate by reducing the amount of  
6 medical transportation provider assessment funds that must be generated  
7 during the subsequent fiscal year.

8 (3) A medical transportation provider shall not be guaranteed  
9 that its emergency medical transportation access payments will equal or  
10 exceed the amount of its medical transportation provider assessment.

11  
12 20-77-2706. Exemptions.

13 (a) The following medical transportation providers are exempt from the  
14 assessment imposed under § 20-77-2703 unless the exemption is adjudged to be  
15 unconstitutional or otherwise determined to be invalid:

16 (1) Volunteer ambulance services;

17 (2) Ambulance services owned by the state, county, or political  
18 subdivision;

19 (3) Nonemergency ambulance services;

20 (4) Air ambulance services; and

21 (5) Specialty hospital based ambulance services.

22 (b) If an exemption under subsection (a) of this section is adjudged  
23 to be unconstitutional or otherwise determined to be invalid, the applicable  
24 medical transportation provider shall pay the assessment imposed under § 20-  
25 77-2703.

26  
27 20-77-2707. Quarterly notice and collection.

28 (a)(1) The annual medical transportation provider assessment imposed  
29 under § 20-77-2703 shall be due and payable on a quarterly basis.

30 (2) However, an installment payment of an assessment imposed by  
31 § 20-77-2703 shall not be due and payable until:

32 (A) The Division of Medical Services of the Department of  
33 Human Services issues the written notice required by § 20-77-2708(a) stating  
34 that the payment methodologies to medical transportation providers required  
35 under § 20-77-2709 have been approved by the Centers for Medicare and  
36 Medicaid Services and the waiver under 42 C.F.R. § 433.68 for the assessment

1 imposed by § 20-77-2703, if necessary, has been granted by the Centers for  
2 Medicare and Medicaid Services;

3 (B) The thirty-day verification period required by § 20-  
4 77-2708(b) has expired; and

5 (C) The division has made all quarterly installments of  
6 emergency medical transportation access payments that were otherwise due  
7 under § 20-77-2709 consistent with the effective date of the approved state  
8 plan amendment and waiver.

9 (3) After the initial installment has been paid under this  
10 section, each subsequent quarterly installment payment of an assessment  
11 imposed by § 20-77-2703 shall be due and payable within ten (10) business  
12 days after the medical transportation provider has received its emergency  
13 medical transportation access payments due under § 20-77-2709 for the  
14 applicable quarter.

15 (b)(1) If a medical transportation provider fails to timely pay the  
16 full amount of a quarterly assessment, the division shall add to the  
17 assessment:

18 (A) A penalty assessment equal to five percent (5%) of the  
19 quarterly amount not paid on or before the due date; and

20 (B) On the last day of each quarter after the due date  
21 until the assessed amount and the penalty imposed under subdivision (b)(1)(A)  
22 of this section are paid in full, an additional five percent (5%) penalty  
23 assessment on any unpaid quarterly and unpaid penalty assessment amounts.

24 (2) Payments shall be credited first to unpaid quarterly  
25 amounts, rather than to penalty or interest amounts, beginning with the most  
26 delinquent installment.

27 (3) If the division is unable to recoup from Medicaid payments  
28 the full amount of any unpaid assessment or penalty assessment, or both, the  
29 division may file suit in a court of competent jurisdiction to collect up to  
30 double the amount due, the division's costs related to the suit and  
31 reasonable attorney's fees.

32  
33 20-77-2708. Notice of assessment.

34 (a)(1) The Division of Medical Services of the Department of Human  
35 Services shall send a notice of assessment to each medical transportation  
36 provider informing the medical transportation provider of the assessment

1 rate, the medical transportation provider's net operating revenue  
2 calculation, and the estimated assessment amount owed by the medical  
3 transportation provider for the applicable fiscal year.

4 (2) Except as set forth in subdivision (a)(3) of this section,  
5 annual notices of assessment shall be sent at least forty-five (45) days  
6 before the due date for the first quarterly assessment payment of each fiscal  
7 year.

8 (3) The first notice of assessment shall be sent within seventy-  
9 five (75) days after receipt by the division of notification from the Centers  
10 for Medicare and Medicaid Services that the payments required under § 20-77-  
11 2709 and, if necessary, the waiver granted under 42 C.F.R. § 433.68 have been  
12 approved.

13 (b) The medical transportation provider shall have thirty (30) days  
14 from the date of its receipt of a notice of assessment to review and verify  
15 the assessment rate, the medical transportation provider's net operating  
16 revenue calculation, and the estimated assessment amount.

17 (c)(1) If a medical transportation provider operates, conducts, or  
18 maintains more than one (1) medical transportation provider in the state, the  
19 medical transportation provider shall pay the assessment for each medical  
20 transportation provider separately.

21 (2) However, if the medical transportation provider operates  
22 more than one (1) medical transportation provider under one (1) Medicaid  
23 provider number, the medical transportation provider may pay the assessment  
24 for the medical transportation providers in the aggregate.

25 (d)(1) For a medical transportation provider subject to the assessment  
26 imposed under § 20-77-2703 that ceases to conduct medical transportation  
27 operations or maintain its state license or did not conduct medical  
28 transportation operations throughout a state fiscal year, the assessment for  
29 the state fiscal year in which the cessation occurs shall be adjusted by  
30 multiplying the annual assessment computed under § 20-77-2703 by a fraction,  
31 the numerator of which is the number of days during the year that the medical  
32 transportation provider operated and the denominator of which is three  
33 hundred sixty-five (365).

34 (2) Immediately upon ceasing to operate, the medical  
35 transportation provider shall pay the adjusted assessment for that state  
36 fiscal year to the extent not previously paid.

1 (e) A medical transportation provider subject to an assessment under  
2 this subchapter that has not been previously licensed as a medical  
3 transportation provider in Arkansas and that commences medical transportation  
4 operations during a state fiscal year shall pay the required assessment  
5 computed under § 20-77-2703 and shall be eligible for emergency medical  
6 transportation access payments under § 20-77-2709 on the date specified in  
7 rules promulgated by the division under the Arkansas Administrative Procedure  
8 Act, § 25-15-201 et seq.

9 (f) A medical transportation provider that is exempted from payment of  
10 the assessment under § 20-77-2706 at the beginning of a state fiscal year but  
11 during the state fiscal year experiences a change in status so that it  
12 becomes subject to the assessment shall pay the required assessment computed  
13 under § 20-77-2703 and shall be eligible for emergency medical transportation  
14 access payments under § 20-77-2709 on the date specified in rules promulgated  
15 by the division under the Arkansas Administrative Procedure Act, § 25-15-201  
16 et seq.

17 (g) A medical transportation provider that is subject to payment of  
18 the assessment computed under § 20-77-2703 at the beginning of a state fiscal  
19 year but during the state fiscal year experiences a change in status so that  
20 it becomes exempted from payment under § 20-77-2706 shall be relieved of its  
21 obligation to pay the medical transportation provider assessment and shall  
22 become ineligible for emergency medical transportation access payments under  
23 § 20-77-2709 on the date specified in rules promulgated by the division under  
24 the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

25  
26 20-77-2709. Emergency medical transportation access payments.

27 (a) To preserve and improve access to medical transportation services,  
28 for medical transportation services rendered on or after July 1, 2017, the  
29 Division of Medical Services of the Department of Human Services shall make  
30 emergency medical transportation access payments as set forth in this  
31 section.

32 (b) The division shall calculate the emergency medical transportation  
33 access payment amount as the balance of the Medical Transportation Assessment  
34 Account plus any federal matching funds earned on the balance, up to but not  
35 to exceed the upper payment limit gap for all medical transportation  
36 providers.

1 (c)(1) Except as provided in § 20-77-2706, all medical transportation  
2 providers shall be eligible for emergency medical transportation access  
3 payments each state fiscal year as set forth in this subsection.

4 (2)(A) In addition to any other funds paid to medical  
5 transportation providers for emergency medical services to Medicaid patients,  
6 each eligible medical transportation provider shall receive emergency medical  
7 transportation access payments each state fiscal year equal to the medical  
8 transportation provider's proportionate share of the total upper payment  
9 limit gap for all providers of emergency medical services.

10 (B) Emergency medical transportation access payments shall  
11 be made on a quarterly basis.

12 (C) In addition to other rules as the division determines  
13 are necessary to implement emergency medical transportation access payments,  
14 the division may create separate levels of assessments and emergency medical  
15 transportation access payments for ambulance services and air ambulance  
16 services.

17 (d) An emergency medical transportation access payment shall not be  
18 used to offset any other payment by Medicaid for emergency or nonemergency  
19 services to Medicaid beneficiaries.

20  
21 20-77-2710. Effectiveness – Cessation.

22 (a) The medical transportation provider assessment imposed under § 20-  
23 77-2703 shall cease to be imposed, the emergency medical transportation  
24 access payments made under § 20-77-2709 shall cease to be paid, and any  
25 moneys remaining in the Medical Transportation Assessment Account in the  
26 Arkansas Medicaid Program Trust Fund shall be refunded to medical  
27 transportation providers in proportion to the amounts paid by them if:

28 (1) The Medical Transportation Assessment Account access  
29 payments required under § 20-77-2709 are changed or the assessments imposed  
30 under § 20-77-2703 are not eligible for federal matching funds under Title  
31 XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., or Title XXI of the  
32 Social Security Act, 42 U.S.C. § 1397aa et seq.; or

33 (2) It is determined in the course of an administrative  
34 adjudication or in an action under § 25-15-207 that the Division of Medical  
35 Services of the Department of Human Services:

36 (A) Established Medicaid medical transportation provider

1 payment rates that include an offset, in whole or in part, for any emergency  
2 medical transportation access payments under § 20-77-2709; or

3 (B) Included the net effect of any emergency medical  
4 transportation access payment under § 20-77-2709 when considering whether  
5 Medicaid medical transportation provider payment rates are:

6 (i) Consistent with efficiency, economy, and quality  
7 of care; and

8 (ii) Sufficient to enlist enough providers so that  
9 Medicaid care and services are available at least to the extent that the care  
10 and services are available to the general population in the geographic area.

11 (b)(1) The medical transportation provider assessment imposed under §  
12 20-77-2703 shall cease to be imposed and the emergency medical transportation  
13 access payments under § 20-77-2709 shall cease to be paid if the assessment  
14 is determined to be an impermissible tax under Title XIX of the Social  
15 Security Act, 42 U.S.C. § 1396 et seq.

16 (2) Moneys in the Medical Transportation Assessment Account in  
17 the Arkansas Medicaid Program Trust Fund derived from assessments imposed  
18 before the determination described in subdivision (b)(1) of this section  
19 shall be disbursed under § 20-77-2709 to the extent federal matching is not  
20 reduced due to the impermissibility of the assessments, and any remaining  
21 moneys shall be refunded to medical transportation providers in proportion to  
22 the amounts paid by them.

23  
24 20-77-2711. State plan amendment.

25 (a) The Division of Medical Services of the Department of Human  
26 Services shall file with the Centers for Medicare and Medicaid Services a  
27 state plan amendment to implement the requirements of this subchapter,  
28 including the payment of emergency medical transportation access payments  
29 under § 20-77-2709, no later than forty-five (45) days after June 15, 2017.

30 (b) If the state plan amendment is not approved by the Centers for  
31 Medicare and Medicaid Services, the division shall:

32 (1) Not implement the assessment imposed under § 20-77-2703; and

33 (2) Return any assessment fees to the medical transportation  
34 providers that paid the fees if assessment fees have been collected.

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***APPROVED: 04/07/2017***

## **DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES**

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**SUBJECT:** SPA #2019-0009, Transportation 1-19, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payments

**DESCRIPTION:**

Statement of Necessity

This rule is necessary to comply with Acts 2017, No. 969, which is codified at Ark. Code Ann. § 20-77-2801 et seq. The rule seeks to improve the quality and timeliness of medical transports in Arkansas by establishing an ambulance assessment program.

In Act 969, the General Assembly found that emergency medical services:

- “constitute an invaluable part of the healthcare delivery system of Arkansas,”
- “will be a key element in any healthcare reform initiative,”
- “are a key component of any economic development program as emergency medical services are essential to recruiting and retaining industry,” and
- “are a critical element of the emergency preparedness system within Arkansas[.]”

In addition, the General Assembly found that, “[w]hile containing the cost of funding within the Arkansas Medicaid Program and providing healthcare services for the poor and uninsured individuals of this state are vital interests, the challenges associated with appropriate reimbursement for emergency medical services under the Arkansas Medicaid Program are recognized.”

Act 969 went on to provide that “it is the intent of the General Assembly to assure appropriate reimbursement by establishing an assessment on emergency medical services to preserve vital emergency medical services for all residents of Arkansas.”

This rule is being promulgated to effectuate these legislative findings and intent.

Rule Summary

The Division of Medical Services (DMS) of the Department of Human Services is proposing the following revisions:

Effective for dates of service on and after April 1, 2020, the State Plan Amendment will include the following:

- Qualifying medical transportation providers within the State of Arkansas except for volunteer ambulance services, ambulance services owned by the state, county, or political subdivision, nonemergency ambulance services, air ambulance services, specialty hospital-based ambulance services and ambulance services subject to the state’s



assessment on the ambulance revenue of hospitals shall be eligible to receive emergency medical transportation access payments;

- The specific payment methodology to be used in establishing the emergency medical transportation access payment for medical transportation providers. The payments shall be calculated on an annual basis and paid on a quarterly basis. The annual budget impact associated with this rule change is \$11,411,390. The assessment will generate the funding for the state share of the budget.

Effective upon legislative review and approval:

- The Transportation Provider Manual will be revised to include a new section within Reimbursement that outlines the process for transportation providers to receive the emergency medical transportation access payments.

- A new rule, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payment, is being promulgated, and a link to this rule will be added to the Transportation Provider Manual on the website of DMS. The procedures include:

- Definitions
- Initial Year Determination
- Provider Revenues and Assessment Rate
- Fee Assessment
- Fee Billing and Collection
- Administration of Fees
- Sanctions
- Recoupment Provisions
- Emergency Medical Transportation Access Payments

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on July 31, 2020. The agency indicated that it received no public comments.

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

1. What is the status on CMS approval for the SPA? **RESPONSE:** We are still working with CMS to get approval for the SPA. [At the Public Health, Welfare, and Labor Committee meeting on September 30, 2020, the agency indicated that the SPA received CMS approval on August 28, 2020.]

2. The proposed rules set the access payment at 80% of the difference between Medicaid payments and the average commercial rate. Where does that number come from? **RESPONSE:** We worked with the Ambulance Association and their attorney to arrive at 80% after CMS requested we use a specific percentage of UPL. The 80% is conservative

to ensure that no SGR is used to fund the access payments, and if enough revenue is generated, we may amend the SPA to a higher percentage.

**3.** Sections 8 and 9 of the new definitions substantially mirror language from Ark. Code Ann. § 20-77-2802, but the new definitions replace “hospital” with “medical transportation provider.” Why was this language changed? **RESPONSE:** This appears to be a typographical error and will be changed.

**4.** Ark. Code Ann. § 20-77-2808(a)(1) requires the Division to “send a notice of assessment to each medical transportation provider informing the medical transportation provider of the assessment rate, the medical transportation provider's net operating revenue calculation, and the estimated assessment amount owed by the medical transportation provider for the applicable fiscal year.” However, the Fee Assessment section of the proposed rules does not require the notice of assessment to include the provider’s net operating revenue calculation. Could you explain why this was omitted? **RESPONSE:** This appears to be an oversight and will be changed.

**5.** The new Fee Assessment section provides that “[t]he first notice of assessment will be sent within forty-five (45) calendar days” after DMS receives notice that CMS has approved the SPA. Ark. Code Ann. § 20-77-2808 requires the notice of assessment to be sent within 75 days of DMS receiving notice that CMS has approved the SPA. Why was this timeframe shortened? **RESPONSE:** In an effort to cooperate with the Ambulance Association and get the process started as quickly as possible after approval, we will send the notice in 45 days.

**6.** The new rules state, “For new medical transportation providers, the Division will calculate revenue to be assessed based on the population of the county for which the medical transportation provider is licensed. The per capita amount will be assigned and calculated based on the average net operating revenue per capita for all other medical transportation providers in the State that are currently being assessed. Average revenue per capita will be used in this way through the end of the second fiscal year.” Where does this calculation methodology come from?

**RESPONSE:** This methodology was developed by DHS for this program. Since assessments are based on prior year revenue, it was necessary to develop a basis for payment by new providers with no prior year revenue, or with an incomplete prior year. The solution substitutes a statewide average revenue until the provider has an entire year of revenue history. Specifically, the assessments paid by other providers is divided by the population of the paying providers’ counties. The assessment amount is then multiplied by the statewide per-capita average revenue times the population of the new provider’s county.

**7.** The “Application” section of the new rules states that providers must pay the assessment even if they fail to apply to receive access payments, but that providers cannot receive access payments if they fail to timely file an application. Is there specific authority for this provision? **RESPONSE:** Per 42 CFR 433.68, a state may only impose

health-care related taxes if they are broad-based and uniformly applied. Therefore, we must tax all providers in the class unless specifically exempt by statute. Additionally, Act 969 states that “unless otherwise provided in this subchapter, the rules adopted under subdivision (b)(1) of this section shall not grant an exceptions to or exemptions from the medical transportation provider assessment imposed under 20-77-2703.” While all providers are eligible to receive the access payment, we must receive the information contained in the application to be able to calculate it. Therefore, we are requiring the application be submitted.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the estimated cost to implement this rule is \$2,852,847 for the current fiscal year (\$2,030,942 in federal funds and \$821,905 in assessment fees) and \$11,411,390 for the next fiscal year (\$8,167,132 in federal funds and \$3,244,258 in assessment fees).

The total estimated cost to any private individual, entity, and business subject to the proposed rule is \$821,905 for the current fiscal year and \$3,244,258 for the next fiscal year. The agency indicated that the state share will be funded by an assessment fee imposed on each medical transportation provider except those exempted under Ark. Code Ann. § 20-77-2806. The total estimated cost by fiscal year to state, county, and municipal government to implement the rule is \$821,905 for the current fiscal year and \$3,244,258 for the next fiscal year.

The agency indicated that this rule will result in a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule’s basis and purpose;*

The rule establishes the Emergency Medical Transportation Access Payment.

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

Act 969 of the 2017 Regular Session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transports in Arkansas.

*(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;*

Act 969 of the 2017 Regular Session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transportation in Arkansas.

*(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;*

No comments received to date.

*(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;*

No alternatives are proposed at this time.

*(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*

Not applicable.

*(7) an agency plan for review of the rule no less than every ten 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.*

The agency monitors state and federal rules and policies for opportunities to reduce and control cost.

**LEGAL AUTHORIZATION:** The Department of Human Services, Division of Medical Services has the authority to administer a medical transportation provider assessment program. Ark. Code Ann. § 20-77-2804(a). The Division has authority to adopt rules implementing such a program. Ark. Code Ann. § 20-77-2804(b)(1). 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).

These rules implement Act 969 of 2017. The Act, sponsored by Senator Larry Teague, established an ambulance assessment program to improve the quality and timeliness of medical transports in Arkansas. The Act required the Division of Medical Services to “file with the Centers for Medicare & Medicaid Services a state plan amendment to implement the requirements of this subchapter, including the payment of emergency medical transportation access payments under § 20-77-2809, no later than forty-five (45)

days after June 15, 2017.” Ark. Code Ann. § 20-77-2811(a), *as created by* Act 969 of 2017.