

EXHIBIT J

DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS

SUBJECT: Medical Services Policy Manual Sections A-180, C-120, C-130, C-150, E-265 and E-270

DESCRIPTION: This proposed rule change revises Medical Services policy to switch Arkansas from a “determination” state to an “assessment” state and to remove the process of using projected income to determine Medicaid eligibility.

PUBLIC COMMENT: The Department did not hold a public hearing. The public comment period expired on December 13, 2017. The Department did not receive any comments.

The rules will require CMS approval, pending as of December 20, 2017. The proposed effective date for the changes to the rule is February 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Generally, the Department of Human Services is authorized to “make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith.” Arkansas Code Annotated § 20-76-201 (12). Arkansas Code § 20-77-107 specifically authorizes the Department to “establish and maintain an indigent medical care program.” The proposed amendments to existing rules are specifically authorized by the recent Acts of the Extraordinary Sessions of the 90th and 91st General Assemblies. The Department is authorized to promulgate rules to implement the Arkansas Works Program, *see* Ark. Code Ann. §23-61-1004(c) (Supp. 2017), and to establish rules for income eligibility standards for Arkansas Works program participants. *See* Ark. Code Ann. §23-61-1003(10) (Supp. 2017). Indeed, federal rules require that the state agency that is designated to administer or supervise the state plan for Medicaid must be certified by the State Attorney General to have legal authority to administer or supervise the plan and to make rules and regulations in administering the plan. *See* 42 CFR 431.10.

Arkansas law provides that, in establishing the Medicaid Eligibility Verification System, which is designed to prevent fraud, the Department has the flexibility to decide whether Arkansas shall be an “assessment state” or a “determination state” for purposes of Medicaid eligibility determinations by the federally facilitated marketplace. *See* Ark. Code Ann. §20-77-2102 (b) (Supp. 2017). An “assessment state” means a state with a federally facilitated marketplace that can elect to have the federally facilitated marketplace make assessments of Medicaid eligibility and then transfer the account of an individual to the state Medicaid agency for a final determination. A “determination state” means a state that requires the eligibility determination made by the federally facilitated marketplace to be accepted by the state Medicaid agency.

Under federal rules, Arkansas has discretionary authority to consider reasonably predictable future income or loss of income and to elect to use projected annual income for the Medicaid eligibility determination. *See* 42 CFR 435.603(h).

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

DEPARTMENT/AGENCY Arkansas Department of Human
DIVISION County Operations
DIVISION DIRECTOR Mary Franklin
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NAME OF PRESENTER AT COMMITTEE MEETING Lisa Teague
PRESENTER E-MAIL lisa.teague@dhs.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

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

1. What is the short title of this rule? Medical Services Policy Manual Sections A-180, C-120, C-130, C-150, E-265 and E-270.

2. What is the subject of the proposed rule? The proposed rule change revises Medical Services policy to switch Arkansas from a "determination" state to an "assessment" state and to remove the process of using projected income to determine Medicaid eligibility.

3. Is this rule required to comply with a federal statute, rule, or regulation?
If yes, please provide the federal rule, regulation, and/or statute citation. Yes No
42 CFR 431.10 and 45 CFR 155.302

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code 20-76-201
7. What is the purpose of this proposed rule? Why is it necessary?
The proposed rule change revises Medical Services policy to switch Arkansas from a "determination" state to an "assessment" state and to remove the process of using projected income to determine Medicaid eligibility.
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

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

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.)

December 13, 2017

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

February 1, 2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See Attached
13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). See Attached.
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. _____

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT David McMahon

david.mcmahon

TELEPHONE 501-396-6421 **FAX** 501-682-8367 **EMAIL:** @dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Medical Services Policy Manual Sections A-180, C-120, C-130, C-150, E-265 and E-270

- 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 0
Federal Funds 0
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Next Fiscal Year

General Revenue 0
Federal Funds 0
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0

Total 0

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

Current Fiscal Year

General Revenue 0
Federal Funds 0
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total 0

Next Fiscal Year

General Revenue 0
Federal Funds 0
Cash Funds _____
Special Revenue _____
Other (Identify) _____
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

\$ 0

Next Fiscal Year

\$ 0

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

\$ 0

Next Fiscal Year

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Summary of Changes
Sections A-180, C-120, C-130, C-150, E-265 and E-270

A-180, C-120, C-130 and C-150 – These sections of policy are being revised to change which entity will process applications received through the FFM. Applications received through the FFM will be processed by DHS.

E-265 – Removed the NOTE which referenced E-270.

E-270 – Removed this section of policy because projected income will no longer be used to determine Medicaid eligibility.