

**DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS**

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**SUBJECT:** Medical Services Policy Sections A-100; B-300; C-200; E-400; F-100; H-400; I-300; I-500; I-600; SPA #2019-0007 to Update Income Offsets Pursuant to Acts 2017, No. 892

**DESCRIPTION:****Statement of Necessity**

The Medical Services Policy Manual is being updated to reflect changes in coverage, service limits, and assessments due to Home and Community-Based Waiver (HCBS) reforms. Although there is no change to Medicaid eligibility, it has become necessary to update the business processes and information regarding coverage and service limits related to HCBS Waivers. Business processes are being removed throughout these sections and will no longer reside in the Medical Services Policy Manual. The State Plan has been amended and approved by CMS to detail income offsets for the post-eligibility treatment of income in long-term care.

In addition, terminology and grammar corrections have been made throughout MS section A-100.

**Rule Summary**

Changes to the MS A-100 section include:

- Updated terminology and grammar for clarity
- Updated division name changes (DAAS to DAABHS)
- Deleted business processes which belong in an internal business process manual
- Included a definition for “authorized representative”
- Removed contact information for Area Agencies on Aging

Changes to the MS B-300 section include:

- Updated language for clarity
- The removal of “Adult Family Home” references as a service available through ARChoices
- The addition of prevocational services for persons with physical disabilities to services available through ARChoices
- Added references to a penalty imposition for a transfer of assets for Assisted Living Facilities and ARChoices
- Removed the resource limit chart for the Medicare Savings Program from the policy manual to an appendix

Changes to the MS C-200 section include

- Updated language for clarity
- Removal of business processes to the business process manual
- The addition of when a DCO-0152 is required for Newborn coverage

Changes to the MS E-400 section include:

- Updated language for clarity
- References to Adult Family Home removed
- Business processes moved to business process manual

Changes to the MS F-100 section include:

- Updated language for clarity
- Updated division name changes (DAAS to DAABHS)
- Removal of business processes to the business process manual

Changes to the MS H-400 section include:

- The removal of “Adult Family Home” references and contribution to cost of care procedures
- Added 42 CFR § 435.725, Arkansas Act 892, and SPA language regarding reasonable limits to MS H-410 #7 Non-covered Medical Expenses
- Updated language/terminology for clarity
- Updated form number format
- Added already existing procedures to MS H-410 for clarity
- Updated division name change (DAAS to DAABHS; DMS to DPSQA, etc.)
- Removal of business processes to the business processes manual

Changes to the MS I-300 section include:

- Updated language for clarity
- Updated division name changes (DAAS to DAABHS, etc.)
- Removal of business processes to the business process manual (including the changes in the MSP DCO-0811 process)

Changes to the MS I-500 and MS I-600 sections include:

- Updated language and clarity
- Updated division name changes (DAAS to DAABHS, etc.)
- Removal of business processes to the business process manual

The State Plan (SPA 2019-0007) has been amended and approved by CMS to detail income offsets for the post-eligibility treatment of income in long-term care.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on May 11, 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:

**QUESTION 1:** Where does the description of the Children with Special Health Care Needs program in the second paragraph of section A-166 come from? **RESPONSE:** DDS provided revisions to that section based on the current rule being promulgated

titled: *Children with Chronic Health Conditions (CHC)*. This is a program under Title V of the Social Security Act. In context, this section is just informational to provide Medicaid eligibility caseworkers information to make appropriate referrals.

**QUESTION 2:** Where do the second and third bullet points under the note in section C-210 come from?

**RESPONSE:** The Newborn category is based on federal regulations found at 42 CFR § 435.117.

The second bullet point is children born to a mother receiving services under the Unborn Child category under CHIP, which covers undocumented alien pregnant women who will give birth to a US citizen child. The child isn't eligible for Newborn, but can apply and be eligible under ARKids or another category.

The third bullet point is procedural. The child is eligible for Newborn, even though they won't be living with the mother, but the form is requested so the agency will know about the child's household status and their parent or guardian.

**QUESTION 3:** Is there specific statutory authority for allowing a \$40 PNA to nursing facility residents with earned income when employment activity is prescribed by a physician for certain purposes? **RESPONSE:** 42 CFR § 435.725(c)(1) requires that the personal needs allowance be at least \$30 per month and allows the state, through a SPA approved by CMS, to set it at a higher amount. The state may set a special higher amount for specific groups such as employed individuals. The current \$40 PNA has not increased in Arkansas since the late 1990s.

**QUESTION 4:** Are the "reasonable limits" adopted in section H-410(7) taken from somewhere or were they drafted specifically for this rule? **RESPONSE:** These are what CMS approved in the State Plan Amendment that is also part of this rule amendment. 42 CFR 435.725(c)(4) allows states to set reasonable limits with CMS approval.

The proposed effective date is July 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). 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).

Some of these changes implement Act 892 of 2017, sponsored by Representative Austin McCollum, which clarified the proper administration by the Department of the federal regulations pertaining to post-eligibility treatment of income of institutionalized individuals of long-term care Medicaid.

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

**DEPARTMENT/AGENCY** Department of Human Services  
**DIVISION** Division of County Operations  
**DIVISION DIRECTOR** Mary Franklin  
**CONTACT PERSON** Alexandra Rouse  
**ADDRESS** PO Box 1437, Slot S295, Little Rock, AR 72203-1437  
**PHONE NO.** (501) 508.8875 **FAX NO.** (501) 404.4619 **E-MAIL** Alexandra.Rouse@dhs.arkansas.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING** Mary Franklin  
**PRESENTER E-MAIL** Mary.Franklin@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? MS Policy Sections A-100; B-300; C-200; E-400; F-100; H-400; I-300; I-500; I-600; SPA# 2019-0007 to Update Income Offsets pursuant to Acts 2017, No. 892

2. What is the subject of the proposed rule? The MS Policy Manual update reflects changes in coverage, service limits, and assessments due to Home & Community-Based Waiver (HCBS) reforms. Policy also updated to match State Plan Amendment regarding post eligibility treatment of income and allowable income offsets for nursing facility residents.

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. \_\_\_\_\_

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

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

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129
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> and <https://humanservices.arkansas.gov/resources/legal-notices>
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.)  
May 11, 2020
11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
July 1, 2020
12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached.
13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached.
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services

**DIVISION** Division of County Operations

**PERSON COMPLETING THIS STATEMENT** Brian Jones

**TELEPHONE** 501-537-2064      **FAX** 501-682-3889      **EMAIL:** Brian.Jones@dhs.arkansas.gov

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

**SHORT TITLE OF THIS RULE** MSP §§ A-100; B-300; C-200; E-400; F-100; H-400; I-300; I-500; I-600; SPA# 2019-0007 to Update Income Offsets pursuant to Acts 2017, No. 892

- 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	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

**Next Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>

Total 0

Total 0

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

**Current Fiscal Year**

**Next Fiscal Year**

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

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

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0

\$ 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**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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.

## NOTICE OF RULE MAKING

The Director of the Division of County Operations hereby issues, for a thirty-day public comment period, a notice of rulemaking for the following proposed Medicaid rule(s) under one or more of the following chapters, subchapters, or sections of the Arkansas Code Annotated: §§ 20-76-201, 20-77-107, and 25-10-129.

**Effective July 1, 2020, The Medical Services Policy Manual is being updated to reflect changes in coverage, service limits, and assessments due to Home and Community-Based Waiver (HCBS) reforms. Although there is no change to Medicaid eligibility, it has become necessary to update the business processes and information regarding coverage and service limits related to HCBS Waivers. Business processes are being removed throughout these sections and will no longer reside in the Medical Services Policy Manual. Pursuant to Acts 2017, No. 892, the State Plan and Medical Services Policy at H-410 has been amended and approved by CMS to detail income offsets for the post-eligibility treatment of income in long-term care. In addition, terminology and grammar corrections have been made throughout MS section A-100.**

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the Medicaid website at <https://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx> or DHS website at <https://humanservices.arkansas.gov/resources/legal-notices>. Public comments must be submitted in writing at the above address or at the following email address: [ORP@dhs.arkansas.gov](mailto:ORP@dhs.arkansas.gov). All public comments must be received by DHS no later than **May 11, 2020**. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6164.

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

  
\_\_\_\_\_  
Mary Franklin, Director  
Division of County Operations

## **Statement of Necessity and Rule Summary**

### **Medical Services Policy Sections A-100; B-300; C-200; E-400; F-100; H-400; I-300; I-500; I-600; SPA# 2019-0007 to Update Income Offsets pursuant to Acts 2017, No. 892**

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