

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: SPA #2020-007 Durable Medical Equipment Rate Adjustment

DESCRIPTION:

Statement of Necessity

Effective for dates of service occurring on or after April 1, 2020, the Arkansas Department of Human Services' (DHS) Division of Medical Services (DMS) will adjust the Medicaid maximum unit reimbursement rate for durable medical equipment codes, subject to Section 1903(i)(27) of the Social Security Act, as described in the State Medicaid Director (SMD) Letter 18-001. Currently, Arkansas Medicaid may have to repay \$5,062,687.67 due to DME expenditures exceeding what Medicare would have paid.

Rule Summary

A revision to the Arkansas Medicaid State Plan is necessary for claims with dates of service on or after April 1, 2020, to adjust the reimbursement rate maximums for codes subject to Section 1903(i)(27) of the Social Security Act. The rates will be set to comply with the Social Security Act Section 1903(i)(27). All rates are published on the agency's website (<http://medicaid.nmis.arkansas.gov>). Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on April 26, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is July 1, 2020.

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

Per the agency, this rule will result in a savings of \$1,265,673 in the current fiscal year (\$359,831 in general revenue and \$905,842 in federal funds) and \$5,062,688 in the next fiscal year (\$1,439,322 in general revenue and \$3,623,366 in federal funds). The total estimated savings by fiscal year to state, county, and municipal government as a result of this rule are \$359,831 in the current fiscal year and \$1,439,322 in the next fiscal year.

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).

The proposed rule implements Section 1903(i)(27) of the Social Security Act, which provides that states may not receive Medicaid reimbursement for durable medical equipment, as defined in 42 U.S.C. § 1395x(n), "in excess of the aggregate amount, if any, that would be paid for such items . . . on a fee-for-service basis under" Medicare Part B. *See* 42 U.S.C. § 396b(i)(27).

**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
CONTACT PERSON Alexandra Rouse
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437
PHONE NO. 501-320-6383 **FAX NO.** 501-404-4619 **E-MAIL** Alexandra.rouse@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Janet Mann
PRESENTER E-MAIL Janet.Mann@dhs.arkansas.gov

INSTRUCTIONS

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

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? SPA #2020-007 Durable Medical Equipment Rate Adjustment

2. What is the subject of the proposed rule? SPA #2020-007 Durable Medical Equipment Rate Adjustment

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. State Medicaid Director's Letter 18-001; Section 1903(i)(27) of the SSA

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? July 1, 2020

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, 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>

<https://humanservices.arkansas.gov/resources/promulgation-of-new-rules>

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.)

April 26, 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. DME providers, against.

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 #2020-007 Durable Medical Equipment Rate Adjustment

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) _____

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue	\$ (359,831)
Federal Funds	\$ (905,842)
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ (1,265,673)

General Revenue	\$ (1,439,322)
Federal Funds	\$ (3,623,366)
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ (5,062,688)

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

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ (359,831)

\$ (1,439,322)

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 Medical Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-7-201, 20-77-107, and 25-10-129.


Effective July 1, 2020:

The Arkansas Department of Human Services (DHS), Division of Medical Services (DMS), intends to revise the Arkansas Medicaid State Plan to comply with section 1903(i)(27) of Title XIX of the Social Security Act (the Act) as detailed by letter 18-001 to the State Medicaid Director (SMD) from the Centers for Medicare & Medicaid Services (CMS). DMS revises the maximum unit reimbursement rate for Durable Medical Equipment (DME). The rates will be set to comply with the Act. The agency publishes all rates at <http://medicaid.mmis.arkansas.gov/>. Unless noted otherwise in the plan, the fee schedule rates are the same for both governmental and private providers. The financial impact will be a savings of \$1,265,673 for State Fiscal Year (SFY) 2020; and a savings of \$5,062,688 for SFY 2021.

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 at <https://humanservices.arkansas.gov/resources/promulgation-of-new-rules>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than April 26, 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 501-320-6266.

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



Janet Mann, Director
Division of Medical Services

Statement of Necessity and Rule Summary

SPA #2020-0007 Durable Medical Equipment Rate Adjustment

Statement of Necessity

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