

DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

SUBJECT: Children with Chronic Health Conditions

DESCRIPTION:

Statement of Necessity

The rule establishes the eligibility criteria to receive services and the types of services that will be provided under Arkansas's Children with Special Health Care Needs program, the Children with Chronic Health Conditions (CHC) program, and will enable the state to access federal funding for this purpose.

Rule Summary

This rule establishes the eligibility criteria to receive services under the Children with Chronic Health Conditions (CHC) program. CHC is Arkansas's Children with Special Health Care Needs program that enables the state to access federal funding to assist children with chronic illness or disability and their parent or guardian. This rule contains eligibility criteria based on residency, medical diagnoses, age, and household income. The rule excludes recipients already receiving services in other programs.

The rule establishes the types of services and supports available to recipients within certain limits. It provides a process for a parent or guardian of a child to appeal a denial of services. Finally, the rule sets out provider requirements and the billing procedures they must use.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on April 18, 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: Is there specific statutory authority for the residency requirement in section 6(A)(1)-(2)? **RESPONSE:** No, the Maternal Child Health Bureau has a Title V Children with Special Health Care Needs Program in every state and territory in the United States. The Title V Children with Special Health Care Needs Program in Arkansas established residency requirements for over 25 years for all families, including those children that are not naturalized citizens.

QUESTION #2: Section 6(D) indicates that a family is only eligible for assistance if the family's income does not exceed 250% of the Federal Poverty Level. Where does this number come from? **RESPONSE:** The federal program allows states the flexibility to adjust the income limits to meet the needs of children with CHC qualifying medical

conditions, as funding allows. Historically, families with incomes up to 350% FPL were financially eligible for CHC. Due to usage and funding concerns at the time we included 250%, but believe keeping it at 350% is appropriate now so the rule has been changed to reflect 350%.

QUESTION #3: Section 6(D)(2) lists various categories that are/are not included in the definition of "income." Is there specific statutory or regulatory authority for these categories? **RESPONSE:** No. The CHC program modeled exclusions and inclusions of income based upon those required by Division of County Operations for Medicaid applicants.

QUESTION #4: Is there specific authority for the exclusions listed in section 7? **RESPONSE:** Yes, the Medicaid provider manual for Children's Services Targeted Case Management, Sec. 214.000 Exclusions, which prevents duplication of services.

QUESTION #5: Where do the assistance categories listed in Section 8 come from? **RESPONSE:** The CHC assistance categories were developed by division leaders to categorize types of needs and annual spending limits per child. The needs listed in the policy are examples of, but are not limited to, those that were identified by CHC program leadership as necessary services not available to children with special needs through Medicaid, private insurance, or any other source of payment.

QUESTION #6: Is there specific authority for the list of items and equipment CHC will not cover (section 8(A))? **RESPONSE:** No, there is no specific statutory requirement. Past program-related data that included Early Periodic Screening Diagnosis and Treatment information was used as a guide for the section of policy.

QUESTION #7: In addition, I think there is a slight misquote in section 4(C). The proposed rule reads:

The Maternal and Child Health Bureau (MCHB) broadly defines CSHCN as "...those that have or are at increased risk for chronic physical, developmental, behavioral, or emotional conditions and that also require health and related services of a type or amount beyond that required by children generally."

However, after comparing this with the MCHB's website (specifically, <https://mchb.hrsa.gov/maternal-child-health-topics/children-and-youth-special-health-needs>), I believe the rule should read:

The Maternal and Child Health Bureau (MCHB) broadly defines CSHCN as those that "have or are at increased risk for chronic physical, developmental, behavioral or emotional conditions and who also require health and related services of a type or amount beyond that required by children generally."

RESPONSE: The definition is misquoted and should be corrected. This has been amended in section 4c.

The proposed effective date is July 1, 2020.

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

Per the agency, the additional cost to implement the rule is \$3,886,715 for the current fiscal year (\$1,729,279 in general revenue and \$2,157,436 in federal funds) and \$3,886,715 for the next fiscal year (\$1,729,279 in general revenue and \$2,157,436 in federal funds).

The estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$1,729,279 for the current fiscal year and \$1,729,279 for the next fiscal year. This CHC policy is intended to establish the eligibility criteria and covered services and assistance under the DDS Children with Chronic Health Conditions (CHC) program. For FY2020 there is up to \$1,729,279 in state general revenue appropriated toward the direct services and potentially \$2,157,436 in federal Maternal and Child Health block grant dollars that may be applied towards the services covered by this policy through the CHC program.

Per the agency, the total estimated cost by fiscal year to any private individual, entity, and business subject to the proposed rule is unknown. CHC has a limited amount of federal and state funding to provide direct services to families each year. In an effort to serve more families, CHC is changing the service delivery model and array of covered services. Some providers will be impacted by this change of service array, but at this time CHC cannot determine what the overall impact for these providers will be. The program's budget has not changed.

The agency indicated that there is 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;

This rule establishes the eligibility criteria and covered services under the DDS Children with Chronic Health Conditions (CHC) program. CHC is Arkansas's Children with Special Health Care Needs (CSHCN) program under the Maternal and Child Health Block Grant.

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

This rule establishes the eligibility criteria and covered services under the DDS Children with Chronic Health Conditions (CHC) program. CHC is Arkansas's Children with Special Health Care Needs (CSHCN) program under the Maternal and Child Health Block Grant.

(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;

This rule is necessary for DHS to access federal funds under the Maternal and Child Health Block Grant.

(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;
There are no less costly alternatives.

(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;
The public comment period has not begun.

(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
There are no existing rules that have contributed to a need for this rule.

(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

If a change is made to the federal statute governing the proposed rule, we will act immediately to make sure that we are achieving the statutory objectives and meeting the costs objectives.

LEGAL AUTHORIZATION: The Department of Human Services has the authority to administer assigned forms of public assistance and “other welfare activities or services that may be vested in it” and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). This includes promulgating rules to ensure compliance with federal law in order to receive federal funding. Ark. Code Ann. § 25-10-129(b). This rule implements the federal Maternal and Child Health Services Block Grant. See 42 U.S.C. § 701(a)(1)(D).

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

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Developmental Disabilities
DIVISION DIRECTOR Melissa Stone
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 Melissa Stone
PRESENTER E-MAIL melissa.stone@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? Children with Chronic Health Conditions (CHC)
2. What is the subject of the proposed rule? See attached.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No X
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No X
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

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

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 §§ 20-48-103

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://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: N/A

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

April 18, 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.

Arkansas Children's Hospital; parents of children receiving services; other providers.(unknown)

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Developmental Disabilities Services

PERSON COMPLETING THIS STATEMENT Elizabeth Pitman

TELEPHONE NO. 501-682-8668 **FAX NO.** _____ **EMAIL:** elizabeth.pitman@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 Children with Chronic Health Conditions (CHC)

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

Next Fiscal Year

General Revenue _____ \$1,729,279
Federal Funds _____ \$2,157,436
Cash Funds _____
Special Revenue _____

General Revenue _____ \$1,729,279
Federal Funds _____ \$2,157,436
Cash Funds _____
Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total \$3,886,715

Total \$3,886,715

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total 0

Total 0

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

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

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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

\$ \$1,729,279

\$ \$1,729,279

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- 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 X 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;

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NOTICE OF RULE MAKING

The Director of the Division of Developmental Disabilities 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(s) under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-48-103 and 25-10-129.

Effective July 1, 2020:

This rule establishes the eligibility criteria to receive services under the Children with Chronic Health Conditions (CHC) program. CHC is Arkansas's Children with Special Health Care program that enables the state to access federal funding to assist children with chronic illness or disability and their parent or guardian. This rule contains eligibility criteria based on residency, medical diagnoses, age, and household income. The rule excludes recipients already receiving services in other programs.

The rule establishes the types of services and supports available to recipients within certain limits. It provides a process for a parent or guardian of a child to appeal a denial of services. Finally, the rule sets out provider requirements and the billing procedures they must use.

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 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 18, 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.



Melissa Stone, Director
Division of Developmental Disabilities Services

Statement of Necessity and Rule Summary Children with Chronic Health Conditions

Statement of Necessity

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