

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

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**SUBJECT:** Medical Services Policy Manual Section E-200

**DESCRIPTION:**

Statement of Necessity

The change is necessary in order to comply with the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (HEALTHY KIDS Act, P.L. 115-120), and the Bipartisan Budget Act of 2018 (BBA of 2018, P.L. 115-123). Also, the business processes are being removed from the Medical Services Policy Manual and relocated into a business process manual.

Rule Summary

Effective August 1, 2020, the Division of County Operations, Medical Services Policy Manual is being revised as follows:

- E-210: Clarified language and fixed grammatical errors
- E-220: Added Transitional Medicaid to the groups for which MAGI methodology is used to determine financial eligibility
- E-230: Removed example scenario
- E-240: Added clarifying language
- E-250: Removed example scenario
- E-251: Removed example scenario
- E-260: Added clarifying language
- E-261: Updated the section to comply with federal regulations
- E-262: Updated the section to comply with federal regulations
- E-263: Removed example scenarios
- E-264: Removed example scenario
- E-265: Added clarifying language and removed example scenario
- E-266: Changed caseworker to eligibility worker
- E-267: Added clarifying language
- E-268: Added clarifying language
- E-269: Changed section name from "Who is Eligible" to "Undue Hardship for Lottery/Gambling Winnings." Deleted example scenario and updated the language in this section to cover Undue Hardship for Lottery/Gambling Winnings

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on June 14, 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. Section E-261 states, "Income greater than or equal to \$80,000 to \$89,999 is countable income for two months, divided equally." 42 U.S.C. § 1396a(e)(14)(K)(i)(II) uses the language "greater than or equal to \$80,000 but less than \$90,000." Is DHS comfortable that the proposed language accurately indicates the applicable income range?

**RESPONSE:** Yes, a specific amount is used to be clearer for staff.

2. Section E-267 excludes the Full Pregnant Women and Parent Caretaker Relative categories of assistance from the five percent gross income disregard. Is there specific authority for these exclusions? **RESPONSE:** 42 CFR 435.100 and 42 CFR 435.116

3. Are the undue hardship factors in Section E-268 taken from somewhere, or were they formulated for this rule? **RESPONSE:** They were formulated for this rule.

The proposed effective date is August 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has no financial impact.

**LEGAL AUTHORIZATION:** The Department of Human Services is tasked with administering assigned forms of public assistance and other welfare activities or services that may be vested in it. Ark. Code Ann. § 20-76-201(1). The Department may "[m]ake rules and take actions as are necessary or desirable to carry out" this duty. Ark. Code Ann. § 20-76-201(12). "The appropriate division of the Department . . . is authorized to establish and maintain an indigent medical care program." Ark. Code Ann. § 20-77-107(a)(1). The Department and its divisions are specifically authorized to promulgate rules as necessary to conform programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).



**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 P.O. 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

**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? Medical Services Policy Manual Section E-200
2. What is the subject of the proposed rule? To update financial eligibility policy with the new changes in federal tax law in compliance with three acts.
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. Please see attached.
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



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

**Current Fiscal Year**

**Next Fiscal Year**

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

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

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**

\$ 0 \_\_\_\_\_

\$ 0 \_\_\_\_\_

This change in policy to determine eligibility should be considered budget neutral.

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.



**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** 501.682.8155 **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** Medical Services Policy Manual Section E-200

- 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?

<b><u>Current Fiscal Year</u></b>		<b><u>Next Fiscal Year</u></b>	
General Revenue	<u>0</u>	General Revenue	<u>0</u>
Federal Funds	<u>0</u>	Federal Funds	<u>0</u>
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____
<b>Total</b>	<b><u>0</u></b>	<b>Total</b>	<b><u>0</u></b>

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 (12), 20-77-107(a)(1), and 25-10-129(b)
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/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.)

June 14, 2020

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

August 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. No organizations/individuals known to be for or against this rule.

## NOTICE OF RULE MAKING

The Director of the Division of County Operations 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 §§ 20-76-201, 20-77-107 and 25-10-129.

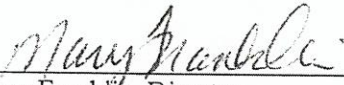
### **Effective August 1, 2020:**

The Division of County Operations (DCO) revises the Medical Services Policy Manual Section E to comply with the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97), Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (HEALTHY KIDS Act, P.L. 115-120), and the Bipartisan Budget Act of 2018 (BBA of 2018, P.L. 115-123). DCO added Transitional Medicaid to the groups for which Modified Adjusted Gross Income (MAGI) methodology is used to determine financial eligibility and updated sections to comply with federal regulations. In section E-266, the division changed the term "caseworker" to "eligibility worker." In section E-269, the division updated language to cover undue hardship for lottery and gambling winnings with a corresponding name change of the section title. Throughout Section E DCO clarified language, removed example scenarios, fixed grammatical errors, and removed business processes into a business process manual.

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>. 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 June 14, 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

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



## Statement of Necessity and Rule Summary

### Medical Services Policy Section E-200

#### Statement of Necessity:

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