

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: Ambulance Services – SPA 2020-0009 and Transportation Provider Manual

DESCRIPTION:

Statement of Necessity

A revision to the Arkansas Medicaid State Plan is necessary to increase rates for ambulance services in the Medicaid transportation program based upon a rate review by DHS, as required by Executive Order 19-02. The revisions to the transportation manual clarify who can sign the physician certification statement, how to calculate number of miles traveled, exclusions, and billing processes.

Rule Summary

Rates in the Ambulance program will increase by eleven percent (11%) based upon rate review of the service. The rate increase was recommended upon a regular rate review process.

- Section 201.100 clarifies provider participation and enrollment requirements for ambulance transportation providers applying to be reimbursed for Advanced Life Support services.
- Section 204.000 of the transportation manual is revised to clarify who can sign the physician certification statement.
- Section 205.000 of the manual is revised to clarify that mileage is paid only for that part of the trip the patient is a passenger in the ambulance and acceptable methods of calculating the mileage.
- Section 213.200 clarifies that ambulance service to a doctor's office or clinic is not covered except as described in Section 204.000.
- Section 214.000 is revised to clarify verbiage.
- Section 216.000 is revised to clarify verbiage.
- Section 241.000 is revised to remove methodology no longer in use.
- Section 251.000 clarifies that when more than one ambulance service is provided to one beneficiary on the same date of service, then all service runs must be billed on one claim.
- Section 252.410 is revised to define Advanced Life Support ambulance services and Basic Life Support Services.
- Arkansas Medicaid State Plan is amended at Attachment 4.19-B, Page 8 to indicate the rates for services in the ambulance program will increase effective for claims with dates of service on or after July 1, 2020.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on June 12, 2020. The agency indicated that it did not receive any public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. What is the status on CMS approval for the SPA? **RESPONSE:** The SPA was approved by CMS on June 10, 2020.

2. In Section 204.000, under Non-Repetitive Transports, the provider manual lists categories of medical personnel who are permitted to provide certification regarding a patient's condition. This list seems to substantially mirror the list found in 42 CFR § 410.40(a)(iii), which governs Medicare coverage of ambulance services. However, the CFR list includes "licensed practical nurse," "social worker," and "case manager." Is there a specific reason that the proposed rules do not allow for certification by an individual who falls into one of these three categories?

RESPONSE: You are correct in that we were trying to align more with Medicare policy. However, we were not comfortable expanding the certification to all providers at this time. We have historically required physicians to complete the certification, but feedback from providers indicated that more flexibility was desired. We wanted to move in that direction, but after consultation with our clinical staff, decided to limit it to clinicians who could use some medical judgment and would not be limited to only repeating what was in the chart.

The proposed effective date is August 1, 2020.

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

Per the agency, the additional cost of the rule is estimated at \$4,472,065 for the current fiscal year (\$1,271,408 in general revenue and \$3,200,657 in federal funds) and \$4,472,065 for the next fiscal year (\$1,271,408 in general revenue and \$3,200,657 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement the rule is estimated at \$1,271,408 for the current fiscal year and \$1,271,408 for the next fiscal year.

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;

As required by Executive Order 19-02, the rate review process for Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program. A revision of the Arkansas Medicaid Transportation Policy was necessary to clarify who can sign the physician certification statement; how to calculate the number of miles traveled; exclusions; and billing processes.

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

As required by Executive Order 19-02, the rate review process for Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program. A revision of the Arkansas Medicaid Transportation Policy was necessary to clarify who can sign the physician certification statement; how to calculate the number of miles traveled; exclusions; and billing processes.

(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;

As required by Executive Order 19-02, the rate review process for Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program based on a comparison to surrounding states.

(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;

None at this time.

(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

None.

(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.

Ambulance rates will be reviewed no less frequently than every four years in accordance with EO 19-02.

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). Portions of these revisions incorporate the federal regulations regarding Medicare coverage of ambulance services, including origin and destination requirements, special nonemergency transport requirements, and who may sign a certification statement. *See* 42 C.F.R. § 410.40.

**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 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 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? Ambulance Services – SPA 2020-0009 and Transportation Provider Manual

2. What is the subject of the proposed rule? Ambulance rate increase and clarification of who can sign the physician certification statement, how to calculate number of miles traveled, exclusions, and billing processes.

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?

As required by Executive Order 19-02, the rate review process for Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program. A revision of the Arkansas Medicaid Transportation Policy was necessary to clarify who can sign the physician certification statement; how to calculate number of miles traveled; exclusions and billing processes.

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> or <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.)

TBD

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

August 1, 2020 with retroactive rate change to 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 Ambulance Association-position unknown.

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: §§ 20-76-201, 20-77-107, and 25-10-129.

Effective July 1, 2020:

The Division of Medical Services (DMS) of the Arkansas Department of Human Services (DHS) intends to revise rates for ambulance services in the Medicaid transportation program. Rates in the Ambulance program will increase 11%. DMS bases the rate increases upon a rate review by DHS, as required by Executive Order 19-02. The annual financial impact for this change will be \$4,472,065 per state fiscal year.


DMS revises the transportation manual to clarify physician certification statement signature requirements, calculation methods for mileage paid, exclusions, and billing processes. Section 201.100 clarifies provider participation and enrollment requirements for ambulance transportation providers applying to be reimbursed for Advanced Life Support services. Section 204.000 clarifies who can sign the physician certification statement. Section 205.000 clarifies that mileage is paid only for that part of the trip the patient is a passenger in the ambulance and acceptable methods of calculating the mileage. Section 213.200 clarifies that ambulance service to a doctor's office or clinic is excluded from coverage except as detailed in Section 204.000. DMS updated language in Sections 214.000 and 216.000. Section 241.000 removes methodology no longer in use. Section 251.000 requires that when more than one ambulance service is provided to one beneficiary on the same date of service, then all service runs must be billed on one claim. Section 252.410 updates Ambulance Life Support levels, including defining Advanced Life Support ambulance services and Basic Life Support Services.

DMS revises the Arkansas Medicaid State Plan to reflect the rate increase. Specifically, the plan is amended at Attachment 4.19-B, Page 8, to increase rates for services in the ambulance program effective for claims with dates of service on or after July 1, 2020.

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 the DHS website 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 **June 12, 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

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 Ambulance Services – SPA 2020-0009 and Transportation Provider Manual

- 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) _____

Next Fiscal Year

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

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue	<u>\$1,271,408</u>
Federal Funds	<u>\$3,200,657</u>
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
 Total	 <u>\$4,472,065</u>

General Revenue	<u>\$1,271,408</u>
Federal Funds	<u>\$3,200,657</u>
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
 Total	 <u>\$4,472,065</u>

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

\$ \$1,271,408

\$ \$1,271,408

Cost to state government to fund the state match.

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;

As required by Executive Order 19-02, the rate review process for Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program. A revision of the Arkansas Medicaid Transportation Policy was necessary to clarify who can sign the physician certification statement; how to calculate number of miles traveled; exclusions and billing processes.

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

As required by Executive Order 19-02, the rate review process for Ambulance Services was completed in November 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program. Based on the rate review process, the following revisions to the manual are being made in conjunction with the rate increase: a revision to the transportation manual clarifies who can sign the physician certification statement; how to calculate the number of miles traveled; exclusions; and billing processes.

- (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;

As required by Executive Order 19-02, the rate review process for Ambulance Services was completed in November, 2019. The review resulted in a recommended increase of 11% for ambulance services performed in the Transportation program based on a comparison to surrounding states.

- (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; **None at this time.**
- (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 **None**
- (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.

Ambulance rates will be reviewed no less frequently than every four years in accordance with EO 19-02.

Statement of Necessity and Rule Summary

Ambulance Services – SPA 2020-0009 and Transportation Provider Manual

Statement of Necessity

A revision to the Arkansas Medicaid State Plan is necessary to increase rates for ambulance services in the Medicaid transportation program based upon a rate review by DHS, as required by Executive Order 19-02. A revision to the transportation manual clarifies who can sign the physician certification statement; how to calculate number of miles traveled; exclusions; and billing processes.

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