

**DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES**

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**SUBJECT:** SPA #2019-0009, Transportation 1-19, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payments

**DESCRIPTION:**

Statement of Necessity

This rule is necessary to comply with Acts 2017, No. 969, which is codified at Ark. Code Ann. § 20-77-2801 et seq. The rule seeks to improve the quality and timeliness of medical transports in Arkansas by establishing an ambulance assessment program.

In Act 969, the General Assembly found that emergency medical services:

- “constitute an invaluable part of the healthcare delivery system of Arkansas,”
- “will be a key element in any healthcare reform initiative,”
- “are a key component of any economic development program as emergency medical services are essential to recruiting and retaining industry,” and
- “are a critical element of the emergency preparedness system within Arkansas[.]”

In addition, the General Assembly found that, “[w]hile containing the cost of funding within the Arkansas Medicaid Program and providing healthcare services for the poor and uninsured individuals of this state are vital interests, the challenges associated with appropriate reimbursement for emergency medical services under the Arkansas Medicaid Program are recognized.”

Act 969 went on to provide that “it is the intent of the General Assembly to assure appropriate reimbursement by establishing an assessment on emergency medical services to preserve vital emergency medical services for all residents of Arkansas.”

This rule is being promulgated to effectuate these legislative findings and intent.

Rule Summary

The Division of Medical Services (DMS) of the Department of Human Services is proposing the following revisions:

Effective for dates of service on and after April 1, 2020, the State Plan Amendment will include the following:

- Qualifying medical transportation providers within the State of Arkansas except for volunteer ambulance services, ambulance services owned by the state, county, or political subdivision, nonemergency ambulance services, air ambulance services, specialty hospital-based ambulance services and ambulance services subject to the state’s

assessment on the ambulance revenue of hospitals shall be eligible to receive emergency medical transportation access payments;

- The specific payment methodology to be used in establishing the emergency medical transportation access payment for medical transportation providers. The payments shall be calculated on an annual basis and paid on a quarterly basis. The annual budget impact associated with this rule change is \$11,411,390. The assessment will generate the funding for the state share of the budget.

Effective upon legislative review and approval:

- The Transportation Provider Manual will be revised to include a new section within Reimbursement that outlines the process for transportation providers to receive the emergency medical transportation access payments.

- A new rule, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payment, is being promulgated, and a link to this rule will be added to the Transportation Provider Manual on the website of DMS. The procedures include:

- Definitions
- Initial Year Determination
- Provider Revenues and Assessment Rate
- Fee Assessment
- Fee Billing and Collection
- Administration of Fees
- Sanctions
- Recoupment Provisions
- Emergency Medical Transportation Access Payments

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on July 31, 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. What is the status on CMS approval for the SPA? **RESPONSE:** We are still working with CMS to get approval for the SPA.

2. The proposed rules set the access payment at 80% of the difference between Medicaid payments and the average commercial rate. Where does that number come from? **RESPONSE:** We worked with the Ambulance Association and their attorney to arrive at 80% after CMS requested we use a specific percentage of UPL. The 80% is conservative to ensure that no SGR is used to fund the access payments, and if enough revenue is generated, we may amend the SPA to a higher percentage.

3. Sections 8 and 9 of the new definitions substantially mirror language from Ark. Code Ann. § 20-77-2802, but the new definitions replace “hospital” with “medical transportation provider.” Why was this language changed? **RESPONSE:** This appears to be a typographical error and will be changed.

4. Ark. Code Ann. § 20-77-2808(a)(1) requires the Division to “send a notice of assessment to each medical transportation provider informing the medical transportation provider of the assessment rate, the medical transportation provider's net operating revenue calculation, and the estimated assessment amount owed by the medical transportation provider for the applicable fiscal year.” However, the Fee Assessment section of the proposed rules does not require the notice of assessment to include the provider’s net operating revenue calculation. Could you explain why this was omitted? **RESPONSE:** This appears to be an oversight and will be changed.

5. The new Fee Assessment section provides that “[t]he first notice of assessment will be sent within forty-five (45) calendar days” after DMS receives notice that CMS has approved the SPA. Ark. Code Ann. § 20-77-2808 requires the notice of assessment to be sent within 75 days of DMS receiving notice that CMS has approved the SPA. Why was this timeframe shortened? **RESPONSE:** In an effort to cooperate with the Ambulance Association and get the process started as quickly as possible after approval, we will send the notice in 45 days.

6. The new rules state, “For new medical transportation providers, the Division will calculate revenue to be assessed based on the population of the county for which the medical transportation provider is licensed. The per capita amount will be assigned and calculated based on the average net operating revenue per capita for all other medical transportation providers in the State that are currently being assessed. Average revenue per capita will be used in this way through the end of the second fiscal year.” Where does this calculation methodology come from?

**RESPONSE:** This methodology was developed by DHS for this program. Since assessments are based on prior year revenue, it was necessary to develop a basis for payment by new providers with no prior year revenue, or with an incomplete prior year. The solution substitutes a statewide average revenue until the provider has an entire year of revenue history. Specifically, the assessments paid by other providers is divided by the population of the paying providers’ counties. The assessment amount is then multiplied by the statewide per-capita average revenue times the population of the new provider’s county.

7. The “Application” section of the new rules states that providers must pay the assessment even if they fail to apply to receive access payments, but that providers cannot receive access payments if they fail to timely file an application. Is there specific authority for this provision? **RESPONSE:** Per 42 CFR 433.68, a state may only impose health-care related taxes if they are broad-based and uniformly applied. Therefore, we must tax all providers in the class unless specifically exempt by statute. Additionally, Act 969 states that “unless otherwise provided in this subchapter, the rules adopted under

subdivision (b)(1) of this section shall not grant an exceptions to or exemptions from the medical transportation provider assessment imposed under 20-77-2703.” While all providers are eligible to receive the access payment, we must receive the information contained in the application to be able to calculate it. Therefore, we are requiring the application be submitted.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the estimated cost to implement this rule is \$2,852,847 for the current fiscal year (\$2,030,942 in federal funds and \$821,905 in assessment fees) and \$11,411,390 for the next fiscal year (\$8,167,132 in federal funds and \$3,244,258 in assessment fees).

The total estimated cost to any private individual, entity, and business subject to the proposed rule is \$821,905 for the current fiscal year and \$3,244,258 for the next fiscal year. The agency indicated that the state share will be funded by an assessment fee imposed on each medical transportation provider except those exempted under Ark. Code Ann. § 20-77-2806. The total estimated cost by fiscal year to state, county, and municipal government to implement the rule is \$821,905 for the current fiscal year and \$3,244,258 for the next fiscal year.

The agency indicated that this rule will result in 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;*

The rule establishes the Emergency Medical Transportation Access Payment.

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

Act 969 of the 2017 Regular Session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transports in Arkansas.

*(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;*

Act 969 of the 2017 Regular Session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transportation in Arkansas.

*(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;*

No comments received to date.

*(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;*

No alternatives are proposed 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*

Not applicable.

*(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.*

The agency monitors state and federal rules and policies for opportunities to reduce and control cost.

**LEGAL AUTHORIZATION:** The Department of Human Services, Division of Medical Services has the authority to administer a medical transportation provider assessment program. Ark. Code Ann. § 20-77-2804(a). The Division has authority to adopt rules implementing such a program. Ark. Code Ann. § 20-77-2804(b)(1). 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).

These rules implement Act 969 of 2017. The Act, sponsored by Senator Larry Teague, established an ambulance assessment program to improve the quality and timeliness of medical transports in Arkansas. The Act required the Division of Medical Services to “file with the Centers for Medicare & Medicaid Services a state plan amendment to implement the requirements of this subchapter, including the payment of emergency medical transportation access payments under § 20-77-2809, no later than forty-five (45) days after June 15, 2017.” Ark. Code Ann. § 20-77-2811(a), *as created by Act 969 of 2017.*

**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, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? SPA#2019-0009, Transportation 1-19, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payments

2. What is the subject of the proposed rule? SPA#2019-0009, Transportation 1-19, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payments

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. 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, 20-77-2801 et seq., 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>

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.)

July 31, 2020

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

October 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. Position Unknown.

**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#2019-0009, Transportation 1-19, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payments

- 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	_____
Federal Funds	\$2,030,942
Cash Funds	_____
Special Revenue	_____
Other	\$821,905
(Assessment Fee)	_____
<b>Total</b>	<b>\$2,852,847</b>

General Revenue	_____
Federal Funds	\$8,167,132
Cash Funds	_____
Special Revenue	_____
Other	\$3,244,258
(Assessment Fee)	_____
<b>Total</b>	<b>\$11,411,390</b>

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**

\$ 821,905

\$ 3,244,258

**The State Share will be funded by an assessment fee imposed on each medical transportation provider except those exempted under Arkansas Code Ann. § 20-77-2806.**

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**

\$ 821,905

\$ 3,244,258

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:

**The rule establishes the Emergency Medical Transportation Access Payment.**

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

**Act 969 of the 2017 regular session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transports in Arkansas.**

- (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;

**Act 969 of the 2017 regular session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transports in Arkansas.**

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**No comments received to date.**

- (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;

**No Alternatives are proposed at this time.**

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**Not applicable**

- (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;
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**Statement of Necessity and Rule Summary**  
**SPA#2019-0009, Transportation 1-19, Administrative Procedures for the**  
**Emergency Medical Transportation Assessment Fee and Access Payment**

**Statement of Necessity**

This rule is necessary to comply with Acts 2017, No. 969, which is codified at Ark. Code Ann. § 20-77-2801 et seq. The rule seeks to improve the quality and timeliness of medical transports in Arkansas by establishing an ambulance assessment program.

In Act 969, the General Assembly found that:

- “[e]mergency medical services constitute an invaluable part of the healthcare delivery system of Arkansas,”
- “will be a key element in any healthcare reform initiative,”
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In addition, the General Assembly found that “[w]hile containing the cost of funding within the Arkansas Medicaid Program and providing healthcare services for the poor and uninsured individuals of this state are vital interests, the challenges associated with appropriate reimbursement for emergency medical services under the Arkansas Medicaid Program are recognized.”

Act 969 went on to provide that “it is the intent of the General Assembly to assure appropriate reimbursement by establishing an assessment on emergency medical services to preserve vital emergency medical services for all residents of Arkansas.”

This rule is being promulgated to effectuate these legislative findings and intent.

**Rule Summary**

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Effective for dates of service on and after April 1, 2020, the State Plan Amendment will include the following:

- Qualifying medical transportation providers within the State of Arkansas except for volunteer ambulance services, ambulance services owned by the state, county or political subdivision, nonemergency ambulance services, air ambulance services, specialty hospital-based ambulance services and ambulance services subject to the state’s assessment on the ambulance revenue of hospitals shall be eligible to receive emergency medical transportation access payments;
- The specific payment methodology to be used in establishing the emergency medical transportation access payment for medical transportation providers. The payments shall be calculated on an annual basis and paid on a quarterly basis. The annual budget impact associated with this rule change is \$11,411,390.00. The assessment will generate the funding for the state share of the budget.

Effective October 1, 2020:

- The Transportation Provider Manual will be revised to include a new section within Reimbursement that outlines the process for transportation providers to receive the emergency medical transportation access payments.
- A new rule, Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payment, is being promulgated, and a link to this rule will be added to the Transportation Provider Manual on the website of DMS. The procedures include:
  - Definitions
  - Initial Year Determination
  - Provider Revenues and Assessment Rate
  - Fee Assessment
  - Fee Billing and Collection
  - Administration of Fees
  - Sanctions
  - Recoupment Provisions
  - Emergency Medical Transportation Access Payments

## 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, 20-77-2804, and 25-10-129.

Effective October 1, 2020:

Arkansas Act 969 of 2017 sought to improve the quality and timeliness of medical transports in Arkansas by establishing an ambulance assessment program by ensuring appropriate reimbursement of emergency medical services. The Arkansas Department of Human Services (DHS), Division of Medical Services (DMS), intends to adopt a state plan amendment, revise the Transportation Provider Manual, and issue a new rule to effectuate the Act.


The state plan amendment will state that qualifying medical transportation providers within the State of Arkansas, except for volunteer ambulance services, ambulance services owned by the state, county or a political subdivision, nonemergency ambulance services, air ambulance services, specialty hospital-based ambulance services and ambulance services subject to the state's assessment on the ambulance revenue of hospitals, shall be eligible to receive emergency medical transportation access payments. The plan establishes payment methodology to be used in establishing the payments, which shall be calculated on an annual basis and paid on a quarterly basis. The annual budget impact associated with this rule change is \$11,411,390.00. The assessment will generate the funding for the state share of the budget. The state plan amendment will be effective October 1, 2020, but upon approval, will be retroactive for dates of service on and after April 1, 2020.

DMS revises the Transportation Provider Manual to include the process for transportation providers to receive emergency medical transportation access payments. Also, DMS issues a new rule that will be linked to the Transportation Provider Manual. The Administrative Procedures for the Emergency Medical Transportation Assessment Fee and Access Payment details definitions, initial year determination, provider revenues and assessment rate, fee assessment, fee billing and collection, administration of fees, sanctions, recoupment provisions, and the emergency medical transportation access payments.

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 July 31, 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