

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

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**SUBJECT:** Hyperalimentation 1-19, Prosthetics 3-19, and State Plan Amendment 2020-0017

**DESCRIPTION:**

Statement of Necessity

Providers are required to use HCPCS (Healthcare Common Procedure Coding System) procedure codes for billing nutritional formulas. The Arkansas Medicaid program mirrors coverage of approved WIC (Women, Infants, and Children) nutritional formulas. Because WIC approved formulas are updated periodically, resulting in the need to subsequently update provider manuals, DMS is deleting specific brand names for nutritional formulas in the Hyperalimentation and Prosthetics Provider Manuals. This change will reduce the need for frequent rule revisions pertaining to nutritional formulae.

As part of an ongoing project, DMS is removing all references to vendors. The MIC-Key brand name for low-profile button feeding tubes is being removed from the provider manuals and the Arkansas Medicaid State Plan as well.

Rule Summary

Effective December 1, 2020, the following Medicaid provider manuals and the Arkansas State Medicaid Plan are revised as follows:

**Hyperalimentation Manual, Section 242.120 Enteral (Sole Source) Formulae:**

- Deleted the paragraph that reads, “For a non-covered prescribed formula, a review for medical necessity will be performed upon request. The product information, with assigned HCPCS code and physician documentation of the medical necessity of the formula for a specific beneficiary, must be submitted to Utilization Review. If approved, the formula will be added to the list of covered formulae and the Provider will be notified. If denied, the Provider and beneficiary will be notified.”
- Deleted the sentence that reads, “\*\* - These covered formulae are substitutions for PediaSure.”
- Deleted brand names listed under the covered formulae column except for MCT Oil, Procel Protein Supplement, Provimin, Polycose Powder, Scandical, and Microlipid.
- Made other technical changes to the language in the manuals.

**Prosthetics Manual, Section 212.209 – (DME) MIC-KEY Skin Level Gastrostomy Tube (MIC-Key Button) and Supplies for Beneficiaries of All Ages:**

- Changed “MIC-Key” to “Low-Profile.”
- Deleted references to AFMC.

**Prosthetics Manual, Section 212.210 – DME MIC-KEY Percutaneous Cecostomy Tube (MIC-Key Button) for Beneficiaries of All Ages:**

- Changed “MIC-Key” to “Low-Profile.”
- Deleted references to AFMC.

**Prosthetics Manual, Section 242.150 – Nutritional Formulae for Child Health Services (EPSDT) Beneficiaries Under Twenty-One Years of Age:**

- Deleted the sentence that reads, “\*\* - These covered formulae are substitutions for PediaSure.”
- Deleted brand names listed under the covered formulae column except for MCT Oil, Procel Protein Supplement, Provimin, SolCarb, Scandical, and Microlipid.
- Deleted the paragraph that reads, “NOTE: If a specific formula is not listed by is prescribed as the result of the EPSDT screening of an Arkansas Medicaid beneficiary, the provider may forward a copy of the screening and prescription, along with product information, to Utilization Review for consideration.”
- Made other technical changes to the language in the manual.

**Prosthetics Manual, Section 242.153 – MIC-KEY Skin Level Gastronomy Tube (MIC-Key Button) and MIC-KEY Percutaneous Cecostomy Tube and Supplies for Beneficiaries of All Ages:**

- Changed “MIC-Key” to “Low-Profile.”

**Arkansas State Medicaid Plan:**

- Changed “MIC-Key” to “Low-Profile.”
- Changed “Arkansas Department of Human Services, Division of Health” to “the Arkansas Department of Health.”
- Made other technical changes to the language in the state plan.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired September 7, 2020. The agency indicated that it received no public comments.

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

**QUESTION:** What is the status on CMS approval for the SPA? **RESPONSE:** We are still working with CMS on requests for additional information. The SPA was submitted on August 6, 2020, and the 90th day is November 4, 2020. So, we will hopefully have approval before review in November.

The proposed effective date is December 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule does not have a financial impact.

**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).

**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 Mac Golden  
ADDRESS PO Box 1437, Slot S295, Little Rock, AR 72203-1437  
PHONE NO. (501) 563.7634 FAX NO. (501) 404.4619 E-MAIL Mac.E.Golden@dhs.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Mark White  
PRESENTER E-MAIL Mark.White@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? Hyperalimantation 1-19, Prosthetics 3-19, and State Plan Amendment 2020-0017

DMS is deleting specific brand names for nutritional formulas in the Hyperalimantation and Prosthetics Provider Manuals. This change will reduce the need for frequent rule revisions pertaining to nutritional formulae. In addition, the MIC-KEY brand name for Low-Profile button feeding tubes is being removed from the provider manuals and the Arkansas Medicaid State Plan. As part of an ongoing project DMS is also removing references to vendors.

2. What is the subject of the proposed rule? an ongoing project DMS is also removing references to vendors.

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? 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.)

September 7, 2020

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

December 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.

Unknown

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT**     Department of Human Services

**DIVISION**        Division of Medical Services

**PERSON COMPLETING THIS STATEMENT**   Brian Jones

**TELEPHONE** 501-537-2064        **FAX** \_\_\_\_\_        **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**   Hyperalimentation 1-19, Prosthetics 3-19, and State Plan Amendment 2020-0017

- 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	<u>0</u>	Cash Funds	<u>0</u>
Special Revenue	<u>0</u>	Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>	Other (Identify)	<u>0</u>
<b>Total</b>	<u>0</u>	<b>Total</b>	<u>0</u>

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

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

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ 0	\$ 0

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.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ _____	\$ _____

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.



## **Statement of Necessity and Rule Summary**

### **Nutritional Formulae Changes to Division of Medical Services (DMS) Hyperalimentation and Prosthetics Provider Manuals; State Plan Amendment 2020-0017**

#### **Statement of Necessity**

Providers are required to use HCPCS (Healthcare Common Procedure Coding System) procedure codes for billing nutritional formulas. The Arkansas Medicaid program mirrors coverage of approved WIC (Women, Infant, and Children) nutritional formulas. Because WIC approved formulas are updated periodically, resulting in the need to subsequently update provider manuals, DMS is deleting specific brand names for nutritional formulas in the Hyperalimentation and Prosthetics Provider Manuals. This change will reduce the need for frequent rule revisions pertaining to nutritional formulae.

As part of an ongoing project DMS is removing all references to vendors. The MIC-Key brand name for low-profile button feeding tubes is being removed from the provider manuals and the Arkansas Medicaid State Plan as well.

#### **Rule Summary**

Effective December 1, 2020, the following Medicaid provider manuals and the Arkansas State Medicaid Plan are revised as follows:

#### **Hyperalimentation Manual, Section 242.120 Enteral (Sole Source) Formulae:**

- Deleted the paragraph that reads, "For a non-covered prescribed formula, a review for medical necessity will be performed upon request. The product information, with assigned HCPCS code and physician documentation of the medical necessity of the formula for a specific beneficiary, must be submitted to Utilization Review. If approved, the formula will be added to the list of covered formulae and the Provider will be notified. If denied, the Provider and beneficiary will be notified."
- Deleted the sentence that reads "\*\*\* - These covered formulae are substitutions for PediaSure."
- Deleted brand names listed under the covered formulae column except for MCT Oil, Procel Protein Supplement, Provimin, Polycose Powder, Scandical, and Microlipid.
- Made other technical changes to the language in the manuals.

#### **Prosthetics Manual, Section 212.209 – (DME) MIC-KEY Skin Level Gastrostomy Tube (MIC-Key Button) and Supplies for Beneficiaries of All Ages:**

- Changed "MIC-KEY" to "Low-Profile"
- Deleted references to AFMC

#### **Prosthetics Manual, Section 212.210- DME MIC-KEY Percutaneous Cecostomy Tube (MIC-KEY Button) for Beneficiaries of All Ages:**

- Changed "MIC-KEY" to "Low-Profile"
- Deleted references to AFMC

**Prosthetics Manual, Section 242.150 – Nutritional Formulae for Child Health Services (EPSDT) Beneficiaries Under Twenty-one (21) Years of Age:**

- Deleted the sentence that reads "\*\*\* - These covered formulae are substitutions for PediaSure."
- Deleted brand names listed under the covered formulae column except for MCT Oil, Procel Protein Supplement, Provimin, SolCarb, Scandical, and Microlipid.
- Deleted the paragraph that reads, "NOTE: If a specific formula is not listed but is prescribed as the result of the EPSDT screening of an Arkansas Medicaid beneficiary, the provider may forward a copy of the screening and prescription, along with product information, to Utilization Review for consideration."
- Deleted references to AFMC.
- Made other technical changes to the language in the manuals.

**Prosthetics Manual 242.153- MIC-Key Skin Level Gastrostomy Tube (MIC KEY Button) and MIC-KEY Percutaneous Cecostomy tube and Supplies for Beneficiaries of All Ages:**

- Changed "MIC-KEY" to "Low-Profile"

**Arkansas State Medicaid Plan:**

- Changed "MIC-KEY" to "Low-Profile"
- Changed "Arkansas Department of Human Services, Division of Health" to "the Arkansas Department of Health"
- Made other technical changes to the language in the state plan

## 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 medical assistance 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 December 1, 2020:**

The Division of Medical Services (DMS) provider manuals are being revised to update procedure codes for billing nutritional formulas and to make other technical changes to language in the manual. Providers must use HCPCS (Healthcare Common Procedure Coding System) procedure codes for billing nutritional formulas. As part of an ongoing project, DMS is removing all references to specific brand names and vendors. The Arkansas Medicaid program mirrors coverage of approved WIC (Women, Infant, and Children) nutritional formulas. Because WIC approved formulas are updated periodically, resulting in the need to subsequently update provider manuals, DMS is deleting specific brand names of nutritional formulas and non-formula medical supplies in the Hyperalimentation and Prosthetics Provider Manuals. A corresponding deletion of the non-formula medical supplies is being made to the Arkansas Medicaid State Plan.

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 September 7, 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 501-320-6164.

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. 4501960528

  
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Janet Mann, Director  
Division of Medical Services