

DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS

SUBJECT: Division of County Operations (DCO) COVID-19 Response Manual

DESCRIPTION:

Statement of Necessity

The rule is needed to render maximum assistance to the citizens of Arkansas so that the Division of County Operations (DCO) may continue to provide services to its clients. The temporary provisions amend certain rules and provide guidance, safeguarding DHS with adequate time to close out temporary measures that will no longer be needed in coming months without creating a financial risk for the state.

DCO identifies certain rules needing temporary revision and the necessity of continuing guidance to providers and clients so that services provided by the agency are available for the remainder of the year or through the national health emergency. The rule continues certain rule suspensions and issued guidance that began in March 2020. The provisions in the rule are temporary, expiring upon the end of the federal national health emergency, or as detailed in the rule.

Summary

DCO issues revisions, suspensions, and guidance in relation to certain rules. The affected areas and rules manuals affected are contained in the following chart.

Division	DCO Covid Response Manual – Section Number and Title	Regular Manual
DCO – Medicaid Eligibility	251.000 – Section A-200 Medicaid Coverage Periods	Medical Services Policy Manual
DCO – Medicaid Eligibility	252.000 – Section F-130 Child Support Enforcement Services	Medical Services Policy Manual
DCO – Medicaid Eligibility	253.000 – Section F-172 Adjustments of Premiums	Medical Services Policy Manual
DCO – Medicaid Eligibility	255.000 – Section L-120 Continuation of Assistance or Services During Appeal Process	Medical Services Policy Manual
DCO – SNAP	282.000 – Provision for Impacted Students	Supplemental Nutrition Assistance Program Certification Manual
DCO – SNAP	284.000 – Work Participation for Able-Bodied Adults Without Dependents	Supplemental Nutrition Assistance Program Certification Manual

DCO – SNAP	285.000 – Supplemental Benefits	Supplemental Nutrition Assistance Program Certification Manual
DCO – TEA	291.000 – Section 2004 Application Interview and 2004.1 Personal Responsibility Agreement	Transitional Employment Assistance (TEA) Policy Manual

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on May 10, 2021. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on March 22, 2021. The proposed effective date for permanent promulgation is July 1, 2021.

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

Per the agency, the additional cost to implement this rule is \$70,699,701 for the current fiscal year (\$0 in general revenue and \$70,699,701 in federal funds) and \$141,399,402 for the next fiscal year (\$0 in general revenue and \$141,399,402 in federal funds). There is no estimated cost (\$0) to state, county, and municipal government to implement this rule.

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, along with the Division of Workforce Services, administers Arkansas’s Transitional Employment Assistance Program. See Ark. Code Ann. § 20-76-401(a)(2)(A). The Department also administers Arkansas’s Supplemental Nutrition Assistance Program (SNAP). See Ark. Code Ann. § 11-10-111(c).

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); see also Ark. Code Ann. § 20-10-203(b). 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 this proposed rule implement the Families First Coronavirus Response Act (P.L.116-127, Mar. 8, 2020). Division B, Title III of the Act provided for SNAP flexibility for low-income jobless workers and additional SNAP flexibilities in a public health emergency. P.L. 116-127, §§ 2301-02. Division F of the Act provided a temporary increase to the Medicaid Federal medical assistance percentage (FMAP) determined for each state. P.L. 116-127, § 6008(b). However, a state may only receive that increase if individuals who were enrolled for benefits under a state plan or waiver at the time of the

Act's enactment or who subsequently enrolled in such benefits are "treated as eligible for such benefits through the end of the month in which [the COVID-19 national public health emergency] ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State[.]" P.L. 116-127, § 6008(b)(3).

Other portions of this rule implement the Emergency Unemployment Insurance Stabilization and Access Act of 2020. The Act, part of the Families First Coronavirus Response Act, provided for emergency flexibility regarding modifications to "unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID-19[.]" P.L. 116-127, § 4102(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 Mac Golden
ADDRESS P. O. 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 Mary Franklin
PRESENTER E-MAIL Mary.Franklin@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 Whittaker
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? Division of County Operations (DCO)
COVID-19 Response Manual

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
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? April 1, 2021

When does the emergency rule expire? July 29, 2021

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. Please note, this rule contains temporary provisions of existing rules to meet the needs of the pandemic and will end upon the conclusion of the national health emergency. There will be no mark-up of existing rules.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code Annotated §§ 20-76-201, 20-76-401, 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://humanservices.arkansas.gov/do-business-with-dhs/proposed-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.)

May 10, 2021

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

July 1, 2021

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 County Operations

PERSON COMPLETING THIS STATEMENT Jason Callan

TELEPHONE (501) 320-6540 **FAX** _____ **EMAIL:** Jason.Callan@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 Division of County Operations (DCO) COVID-19 Response 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

Next Fiscal Year

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

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

Total \$0 _____

Total \$0 _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue	\$0
Federal Funds	\$70,699,701.00
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ 70,699,701.0

General Revenue	\$0
Federal Funds	\$141,399,402.00
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ 141,399,402.00

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 _____

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 _____

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.

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 under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§20-76-201, 20-76-401, 20-77-107, and 25-10-129.

Effective July 1, 2021:

The Director of the Division of County Operations (DCO) is establishing temporary rules suspending current rules due to the continuing declaration of a National Public Health Emergency. The suspension of current rules implements one or more portions of the Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, including the enhanced Federal Medical Assistance Percentage (FMAP), the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136, 42 C.F.R. 433.400, 45 C.F.R. 260-265, 268, and TANF-ACF-PI-2007-08.

Suspending these rules allow providers to render maximum assistance to the citizens of Arkansas and provide uninterrupted services. The provisions in the rule are temporary, expiring upon the end of the federal national health emergency, or as detailed otherwise in the rule. Medicaid coverage periods affected due to ineligibility are extended, except for closure requested by the client, death, out-of-state residence, or incarceration. The requirement that beneficiaries cooperate with the Office of Child Support Enforcement is suspended. The Tax Equity and Fiscal Responsibility Act (TEFRA) premium adjustment and case closure for non-payment of premiums rule is suspended. Continuation of coverage will be automatic for the beneficiaries who have an appeal pending.

Supplemental Nutrition Assistance Program (SNAP) post-secondary student eligibility requirements are suspended. Work requirements for able bodied adults are suspended. DCO will grant the maximum benefit amount to SNAP participants, based on household size. The Transitional Employment Assistance (TEA) rule requiring a face to face interview with the applicant is suspended.

The proposed rules are 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 rules at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-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 **May 10, 2021**. 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 501-396-6428.

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**

Mary Franklin Digitally signed by Mary Franklin
Date: 2021.04.08 11:39:40 -05'00'

Mary Franklin, Director
Division of County Operations

**Division of County Operations (DCO)
COVID-19 Response Manual**

Statement of Necessity

The rule is needed to render maximum assistance to the citizens of Arkansas so that the Division of County Operations (DCO) may continue to provide services to its clients. The temporary provisions amend certain rules and provide guidance, safeguarding DHS with adequate time to close out temporary measures that will no longer be needed in coming months without creating a financial risk for the state.

DCO identifies certain rules needing temporary revision and the necessity of continuing guidance to providers and clients so that services provided by the agency are available for the remainder of the year or through the national health emergency. The rule continues certain rule suspensions and issued guidance that began in March 2020. The provisions in the rule are temporary, expiring upon the end of the federal national health emergency, or as detailed in the rule.

Summary

DCO issues revisions, suspensions, and guidance in relation to certain rules. The affected areas and rules manuals affected are contained in the following chart.

Division	DCO COVID Response Manual—Section number & Title	Regular Manual
DCO-Medicaid Eligibility	251.000—Section A-200 Medicaid Coverage Periods	Medical Services Policy Manual
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DCO-Medicaid Eligibility	253.000—Section F-172 Adjustments of Premiums	Medical Services Policy Manual
DCO-Medicaid Eligibility	255.000—Section L-120 Continuation of Assistance or Services During Appeal Process	Medical Services Policy Manual
DCO-SNAP	282.000—Provision for Impacted Students	Supplemental Nutrition Assistance Program Certification Manual
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DCO-SNAP	285.000—Supplemental Benefits	Supplemental Nutrition Assistance Program Certification Manual
DCO-TEA	291.000—Section 2004 Application Interview and 2004.1 Personal Responsibility Agreement	Transitional Employment Assistance (TEA) Policy Manual

Division of County Operations (DCO)

COVID-19 Response Manual

July 1, 2021

Proposed

**DCO COVID-19 RESPONSE
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Proposed

200.000 OVERVIEW

201.000 Authority

The following rules are duly adopted and promulgated by the Division of County Operations (DCO) of the Arkansas Department of Human Services (DHS) under the authority of Arkansas Code Annotated §§ 20-76-201, 20-76-401, 20-77-107, and 25-10-129.

Applicable Guidance:

Families First Coronavirus Response Act (Public Law 116-127 – March 18, 2020)

CMS Families First Coronavirus Response Act – Increased FMAP FAQ (question 6):
<https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf>

Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136 – March 27, 2020)

42 C.F.R. § 433.400; 45 C.F.R. § 260-265, § 286; and TANF-ACF-PI-2007-08

202.000 Purpose

In response to the COVID-19 pandemic, DHS identified programs and services that required additional flexibility or changes to adapt to ensuring the health and safety of our clients. This manual details them so that DHS may render uninterrupted assistance and services to our clients.

203.000 Appeals

Appeal requests for the COVID-19 response policies must adhere to the policy set forth in the Medicaid Provider Manual Section 160.000 Administrative Reconsideration and Appeals which can be accessed at <https://medicaid.mmis.arkansas.gov/Provider/Docs/all.aspx>.

204.000 Severability

Each section of this manual is severable from all others. If any section of this manual is held to be invalid, illegal, or unenforceable, such determination shall not affect the validity of other sections in this manual and all such other sections shall remain in full force and effect. In such an event, all other sections shall be construed and enforced as if this section had not been included therein.

250.000 MEDICAID ELIGIBILITY

Centers for Medicaid and Medicare Services (CMS) provided guidance that outlines the allowances States are permitted to use for standards required for both eligibility and enrollment of beneficiaries during the National Health Emergency. The threat is that during the COVID-19 Pandemic, the State and/or beneficiaries may not be able to comply with eligibility and enrollment procedures regarding timeliness, renewals, asset verification, other verification policies, or change in circumstances, causing Medicaid cases to be denied or close, which will affect the household's access to health care.

The suspension of the following Medical Services Policy Sections is part of the Families First Corona Virus Response Act enhanced FMAP requirement.

Applicable Guidance: Families First Coronavirus Response Act (Public Law 116-127 – March 18, 2020), Section 6008(b), Coronavirus Aid, Relief, and Economic Security (CARES) Act

See also the CMS Families First Coronavirus Response Act – Increased FMAP FAQ (question 6): <https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf>

251.000 Section A-200 Medicaid Coverage Periods

Medical Services Policy A-200 details the Medicaid coverage periods for eligible beneficiaries. Due to the National Health Emergency, coverage periods affected due to ineligibility will be extended; except for closure requested by client, death, out-of-state residence, or incarceration. This policy is suspended until the end of the National Health Emergency.

252.000 Section F-130 Child Support Enforcement Services

Medical Services Policy F-130 has a requirement which mandates a beneficiary to cooperate with the Office of Child Support Enforcement. This requirement is suspended until the end of the National Health Emergency.

253.000 Section F-172 Adjustments of Premiums

Medical Services Policy F-172 requires TEFRA beneficiaries to pay a premium in order to receive coverage. TEFRA premium adjustments and case closures for non-payment of premiums are suspended until the end of the National Health Emergency.

255.000 Section L-120 Continuation of Assistance or Services during the Appeal Process

While the appeal is pending, the continuation of assistance (coverage) will be automatic for beneficiaries during the National Health Emergency.

280.000 SNAP

The Supplemental Nutrition Assistance Program (SNAP) guidance that has been provided by Food and Nutrition Services (FNS) outlines the allowances States are permitted to use for standards for both eligibility and enrollment of recipients and the operation of the State Agency. The COVID-19 pandemic has altered the standard procedures of the Agency and has affected the compliance processing standards of the Agency and its recipients. The suspension of the following SNAP policy sections is in response to the National Health Emergency.

Applicable Guidance: Families First Coronavirus Response Act (Public Law 116-127 – March 18, 2020) and Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136 – March 27, 2020)

282.000 Provision for Impacted Students

The Supplemental Nutrition Assistance Program (SNAP) Policy 1622.2 describes the criteria that students must meet to be eligible for the program. A household member who is enrolled in an institution of higher education or an institution of post-secondary education is defined a student. Students are eligible to participate in SNAP if they:

- A. Meet employment criteria
- B. Are approved to participate in a state or federally financed work-study program
- C. Are responsible for the care of a dependent under the age of six or under the age of 12 if adequate childcare is unavailable or if the student is unable to meet the employment criteria due to caring for the child
- D. Are receiving TEA Benefits, or
- E. Participating in an on-the-job training program

This suspension will end at the conclusion of the National Health Emergency unless the regulating agency (FNS) ends suspension earlier.

284.000 Work Participation for Abled-Bodied Adults Without Dependents

The Supplemental Nutrition Assistance Program (SNAP) Policy 3503 states that Abled-Bodied Adults without Dependents are ineligible to receive SNAP benefits beyond a three-month period unless they meet the following criteria:

- A. Work at least 20 hours per week
- B. Participate and comply with a Workforce Investment Opportunities Act (WIOA)
- C. Participate and comply with SNAP Employment and Training Program
- D. Participate in and comply with a Workfare Program
- E. Participate at least half-time in a recognized refugee training program operated by the Office of Refugee Resettlement (ORR).

The Families First Coronavirus Response Act, March 2020, allowed flexibilities to States to grant good cause to individuals who were not able to comply with work requirements due to the National Health Emergency. In response to the National Health Emergency, DCO has suspended the work requirements for this group until the Secretary of the United States Department of Agriculture declares the National Public Health Emergency has ended.

Applicable Guidance: Families First Coronavirus Response Act (Public Law 116-127 – March 18, 2020)

285.000 Supplemental Benefits

Supplemental Nutrition Assistance Program (SNAP) Policy 13200 states that supplemental benefits are issued to a household to correct errors made by the agency or the automated system.

In response to the National Public Health Emergency, and provisions made in the Families First Coronavirus Response Act of 2020 (FFCRA), the agency will grant the maximum benefit amount the SNAP participants based on their household size.

The additional benefits will remain while both the National Public Health Emergency and State Public Health Emergency are in effect. The benefits end upon conclusion of either emergency.

290.000 TEA

The Administration of Children and Families (ACF) provided guidance to States outlining broad flexibility for adjustments to the TANF program due to the National Health Emergency. This guidance allows the States to make eligibility and enrollment adjustments for TANF applicants and recipients to be less burdensome. This is due to the extensive requirements to maintain eligibility or become eligible in TANF as households were affected by the National Health Emergency.

291.000 Section 2004 Application Interview and Section 2004.1 Personal Responsibility Agreement

TEA Policy Section 2004 and 2004.1 addresses TEA interviews and the requirement that TEA interviews be face to face with the applicant. Due to the National Health Emergency, telephone interviews are allowed regardless of the application origin (paper or online). This suspension will remain in effect until the end of the National Public Health Emergency.