

DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS

SUBJECT: MS E-300 Sponsor Deeming

DESCRIPTION:

Statement of Necessity

Medical Services Policy is updated to reflect a change in the sponsor affidavits of support and deeming policy. The change applies to deeming instruction and conditions. It has become necessary to update the business processes and information regarding the deeming process.

Policy MS E-300 outlines the factors that are used to determine alien sponsor deeming that apply to Medicaid categories.

A few steps are used in sponsor deeming and conditions:

- Count all income of the sponsor and sponsor's spouse living in the same household as if they were income and resources of the alien.
- States may apply approved income and resource disregards.
- Count the sponsor's income as the alien's unearned income and use it to determine the alien's eligibility.
- Do not count the sponsor's income when determining eligibility for the alien's eligible children.
- Count the household size of the alien according to MAGI or SSI rules.

Deeming continues until one of the following conditions is met:

- The sponsored immigrant becomes a naturalized citizen.
- The sponsored immigrant achieves 40 qualifying work quarters, as defined by the Social Security Act.
- The sponsored immigrant or the sponsor dies.

Rule Summary

The change to MS E-300 includes adjusting the sponsor deeming instructions.

1. Income and resource disregards may be applied for sponsor; and
2. Household size is counted according to MAGI or SSI rules.

In addition, some changes to deeming conditions are:

1. Updated wording to match CMS updates;
2. Removed wording that did not match changes to CMS updates; and
3. Added 40 qualified work quarters.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on July 24, 2021. The agency indicated that it received no public comments.

The proposed effective date is November 1, 2021.

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

Per the agency, this rule implements a federal rule or regulation. The cost to implement the federal rule or regulation is estimated at \$157,300 for the current fiscal year (\$44,720 in general revenue and \$112,580 in federal funds) and \$0 for the next fiscal year. The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$44,720 for the current fiscal year and \$0 for the next fiscal year.

Per the agency, this rule change requires a system change to a DHS administrated system. The agency anticipates the system change to be completed between CY 2021 July – September for a November 1, 2021 rule change implementation.

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).

Federal law requires consideration of a sponsor's income and resources when determining certain immigrants' eligibility for federal means-tested public benefits. 8 U.S.C. § 1631(a). States may also consider the sponsor's income and resources "in determining the eligibility and the amount of benefits of an alien for any State public benefits[.]" 8 U.S.C. § 1632(a).

This rule implements guidance from the Centers for Medicare and Medicaid Services providing examples of appropriate deeming methodologies. *See* Ctrs. for Medicare & Medicaid Servs., Letter Re. Sponsor Deeming and Repayment for Certain Immigrants (Aug. 23, 2019), at 4-6. The guidance authorizes states to "[d]eem all gross or countable income and resources," "account for the sponsors' needs or the needs of sponsors' dependents," and "[a]pply income and/or resource disregards adopted under the state plan[.]" Letter, at 5-6.

QUESTIONNAIRE FOR FILING PROPOSED RULES 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 PO Box 1437, Slot S295, Little Rock, AR 72203-1437
PHONE NO. (501) 320.6383 **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 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? MS E-300 Sponsor Deeming
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. _____
Title 8 U.S.C. §§ 1182, 1183, and 1631; and May 23, 2019 Presidential Memorandum,
"Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens" _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No X
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 _____



ARKANSAS
DEPARTMENT OF
**HUMAN
SERVICES**

Division of County Operations

P.O. Box 1437, Slot S301, Little Rock, AR 72203-1437

P: 501.682.8375 F: 501.682.8367 TDD: 501.682.8933

June 25, 2021

Mrs. Jessica Whittaker, Administrator
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
#1 Capitol, 5th Floor
Little Rock, AR 72201

Dear Mrs. Whittaker:

RE: MS E-300 Sponsor Deeming

Please arrange for this rule to be reviewed by the ALC-Administrative Rules Subcommittee. If you have any questions or need additional information, please contact Mac Golden, Office of Rules Promulgation at 501-563-7634 or by emailing Mac.E.Golden@dhs.arkansas.gov.

Sincerely,

A handwritten signature in cursive script that reads "Mary Franklin".

Mary Franklin
Director

MF:ccb

Attachments

5. Is this a new rule? Yes _____ No If yes, please provide a brief summary explaining the rule.

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, 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/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.)

11/1/2021

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 Medical Services
PERSON COMPLETING THIS STATEMENT Jason Callan
TELEPHONE NO. 501-320-6540 **FAX NO.** 501-682-8155 **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 MS-E300 Sponsor Deeming

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 \$44,720
Federal Funds \$112,580
Cash Funds _____
Special Revenue _____

General Revenue \$0
Federal Funds \$0
Cash Funds _____
Special Revenue _____

Other (Identify) _____
 Total _____ \$157,300

Other (Identify) _____
 Total _____ \$0

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

Current Fiscal Year

General Revenue _____ \$0
 Federal Funds _____ \$0
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____ \$0

Next Fiscal Year

General Revenue _____ \$0
 Federal Funds _____ \$0
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 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.

Current Fiscal Year

\$ _____ 0

Next Fiscal Year

\$ _____ 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

\$ _____ 44,720

Next Fiscal Year

\$ _____ 0

This rule change requires a system change to a DHS administrated system. We anticipate the system change to be completed between CY 2021 July - September for an 11/1/21 rule change implementation.

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 X

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, 20-77-107, and 25-10-129.

Effective November 1, 2021:

The Director of the Division of County Operations (DCO) updates the Medical Services Policy Manual section E-300 to reflect a change in the sponsor affidavits of support and deeming as a result of guidance issued by the Centers for Medicare and Medicaid Services (CMS) regarding the Presidential Memorandum, "Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens." DCO updates the deeming instructions and conditions, and the business processes and information regarding the deeming process.

DCO updates adjusts the sponsor deeming instructions to state that income and resource disregards may be applied for sponsor, and household size is counted according to modified adjusted gross income (MAGI) or supplemental security income (SSI) rules. Deeming condition updates include amending language to match CMS guidance and updates and adding forty (40) qualified work quarters as defined by the Social Security Act.

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://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 July 24, 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, Director
Division of County Operations

Statement of Necessity and Rule Summary

Medical Services Policy Section E-300 Sponsor Deeming

Statement of Necessity

Medical Services Policy is updated to reflect a change in the sponsor affidavits of support and deeming policy. The change applies to deeming instructions and conditions. It has become necessary to update the business processes and information regarding the deeming process.

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Deeming continues until one of the following conditions is met:

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- The sponsored immigrant achieves 40 qualifying work quarters, as defined by the Social Security Act (the Act).
- The sponsored immigrant or the sponsor dies.

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The change to MS E-300 section includes adjusting the sponsor deeming instructions.

- 1.) Income and resource disregards may be applied for sponsor; and
- 2.) Household size is counted according to MAGI or SSI rules.

In addition, some changes to deeming conditions are:

- 1.) Updated wording to match CMS updates;
- 2.) Removed wording that did not match changes to CMS updates; and
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