

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: Division of Medical Services (DMS) Manual Extension

DESCRIPTION:

Statement of Necessity

The rule was initially promulgated to sunset on December 31, 2021; however, the public health emergency is ongoing, therefore the Division of Medical Services (DMS) amends the termination date.

Rule Summary

The Director of the Division of Medical Services (DMS) amends the COVID-19 Response Manual to extend the sunset date from December 31, 2021 to the end of the federal public health emergency, including any extensions.

The proposed rule amends the termination date from December 31, 2021 to “the termination of the federal public health emergency, including any extensions” for:

- Fingerprint submission requirements,
- The definition of Ambulatory Surgical Center concerning temporary enrollment as a hospital,
- The temporary use of phone assessments and the suspension of timeliness for reassessments,
- The prohibition of coverage of swing bed services,
- Private authorization requirements related to Medicaid Utilization Management Program review,
- Annual review and renewal of personal care service plans,
- The coverage of administration of monoclonal antibodies,
- Limitations on outpatient laboratory services for COVID-19 and:
 - COVID-19 antigen laboratory testing with procedure code 87426,
 - COVID-19 laboratory testing with codes U0001, U0002, U0003, and U0004,
- Annual limitations for physician and outpatient hospital visits for:
 - Treatment of COVID-19 by COVID-19 diagnosis codes, and
 - Physician and nurse practitioner visits to patients in skilled nursing facilities,
- Places of delivery of services provided by physicians, and advanced practice registered nurses and hospitals,
- Pick-up and delivery locations and physician certifications prior to transport by non-emergency ground ambulances.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on November 8, 2021. The agency provided the following summary of the single public comment it received and its response to that comment:

Commenter's Name: Wendy Funk Schrag, LMSW, ACSW, Vice President State Government Affairs, on behalf of Fresenius Medical Care North America

COMMENT: Fresenius Medical Care operates 12 dialysis clinics in Arkansas serving over 960 people with End Stage Renal Disease.

Regarding the proposed changes for non-emergency ambulance services in Sections 204.00 and 205.00, it appears the proposed rule removes the usual requirements around medical necessity forms being completed in emergencies, which we support.

Currently, the manual does not include any coverage of non-emergency ambulance trips to or from dialysis clinics that we see; however, the proposed rule highlighted below mentions dialysis services. We hope these proposed changes in Section 213.00 do apply to dialysis facilities so that anywhere a patient is located, the patient can receive ambulance non-emergency transportation if necessary to get to their dialysis treatments. We support this change.

A. Section 213.000 of the Medicaid Provider Manual for Transportation:

1. Ground transportation trips by Ambulance providers may be made to any destination that is able to provide treatment to the patient in a manner consistent with state and local Emergency Medical Services (EMS) protocols in use where the services are being furnished. These destinations may include, but are not limited to:

a. Any location that is an alternative site determined to be part of a hospital, Critical Access Hospitals (CAH) or Skilled Nursing Facilities (SNF), community mental health centers federally qualified health centers (FQHCs), physician's offices, urgent care facilities, ambulatory surgery centers (ASCs), and any other location furnishing dialysis services outside of the ESRD facility.

Thank you for the opportunity to submit these comments.

RESPONSE: This rule pertains to the COVID-19 Public Health Emergency exceptions to existing policy. It is being promulgated to remove the sunset clause of 12/31/2021 and will remain in effect until the end of the Federal Public Health Emergency. The rule referenced in Section 213.000 of the Transportation manual will revert back to its previous language at the end of the Federal Public Health Emergency.

The proposed effective date is January 1, 2022.

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

Per the agency, the total cost to implement this rule is \$584,549 for the current fiscal year (\$165,895 in general revenue and \$418,654 in federal funds) and \$1.169.097 for the next fiscal year (\$331,790 in general revenue and \$837,307 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$165,895 for the current fiscal year and \$331,790 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

- Due to the COVID-19 pandemic, DMS made revisions to rules to ensure continuity of services for clients.

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

- Due to the COVID-19 pandemic, DMS made revisions to rules to ensure continuity of services for clients.

(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;

- Due to the COVID-19 pandemic, DMS made revisions to rules to ensure continuity of services for clients.

(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;

- None

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- None at this time.

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

- N/A

(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.

- The Agency monitors State and Federal rules and policies for opportunities to reduce and control costs.

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); *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).

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services (DMS)
DIVISION DIRECTOR Elizabeth Pitman
CONTACT PERSON Mac Golden
ADDRESS P. O. 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 Elizabeth Pitman
PRESENTER E-MAIL Elizabeth.Pitman@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. 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 Medical Services (DMS) Manual Extension

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? N/A

When does the emergency rule expire? N/A

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.

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, 20-77-107, 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.)

November 8, 2021

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

January 1, 2022

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 (DMS)

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 Medical Services (DMS) Manual Extension

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?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	<u>\$0</u>	General Revenue	<u>\$0</u>
Federal Funds	<u>\$0</u>	Federal Funds	<u>\$0</u>
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____
Total	<u>\$0</u>	Total	<u>\$0</u>

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

Current Fiscal Year

General Revenue \$165,895
Federal Funds \$418,654
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$584,549

Next Fiscal Year

General Revenue \$331,790
Federal Funds \$837,307
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$1,169,097

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

\$ 165,895

Next Fiscal Year

\$ 331,790

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

\$ 0

Next Fiscal Year

\$ 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;
- Due to the COVID-19 pandemic, DMS made revisions to rules to ensure continuity of services for clients.
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
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(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;

- *Due to the COVID-19 pandemic, DMS made revisions to rules to ensure continuity of services for clients.*

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- *None at this time.*

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- *N/A*

(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.

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Statement of Necessity and Rule Summary Division of Medical Services (DMS) Manual Extension

Statement of Necessity

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The proposed rule

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-

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 rules 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 January 1, 2022:

The Director of the Division of Medical Services (DMS) amends the COVID-19 Response Manual to remove the sunset date of December 31, 2021, and to align with the termination of the federal public health emergency, including any extensions.

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 November 8, 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. 4502035775



Elizabeth Pitman, Director
Division of Medical Services