

EXHIBIT E

DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS

SUBJECT: Section F-180: Exceptions to the 90-Day waiting Period for ARKids-B Applicants with Additional Health Insurance Coverage

DESCRIPTION: Section MS F-180, Other Health Insurance Coverage, is updated to comply with federal regulations regarding exceptions to the 90-day waiting period for ARKids-B applicants with additional health insurance coverage.

PUBLIC COMMENT: The Department did not hold a public hearing. The public comment period ended on July 14, 2018. The Department received no comments.

The proposed effective date of the rules is September 1, 2018.

FINANCIAL IMPACT: There is no financial impact as the policy change only adds exemptions to existing policy.

LEGAL AUTHORIZATION: The Department is authorized to “make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith.” Arkansas Code Annotated § 20-76-201 (12). DHS is also authorized to promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. See Ark. Code Ann. § 25-10-129(b).

Generally, ARKids First health insurance provides two coverage options: ARKids A is Medicaid for children and offers benefits to low-income families and ARKids B provides coverage for families with higher incomes. The Department avers that this rule is required to comply with a federal regulation regarding exceptions to the 90-day waiting period for ARKids B applicants with additional health insurance coverage.

A federal regulation that addresses state plan requirements and substitution under group health plans, 42 CFR 457.805, provides that a state plan must include reasonable procedures to ensure that health benefits coverage provided under the state plan does not substitute for coverage provided under group health plans. However, a state may not impose a period of uninsurance which exceeds 90 days from the date a child otherwise eligible for CHIP is disenrolled from coverage under a group health plan. A waiting period may not be applied to a child following the loss of eligibility for and enrollment in Medicaid or another insurance affordability program. If a state elects to impose a period of uninsurance following the loss of coverage under a group health plan under this section, such period may not be imposed in the case of any child if:

- (i) The premium paid by the family for coverage of the child under the group health plan exceeded five (5) percent of household income;
- (ii) The child’s parent is determined eligible for advance payment of the premium tax credit for enrollment in a Qualified Health Plan (QHP) through the Exchange because the Employer-Sponsored Insurance (ESI) in which the family was enrolled is determined unaffordable;

- (iii)** The cost of family coverage that includes the child exceeds 9.5 percent of the household income;
- (iv)** The employer stopped offering coverage of dependents (or any coverage) under an employer-sponsored health insurance plan;
- (v)** A change in employment, including involuntary separation, resulted in the child's loss of employer-sponsored insurance (other than through full payment of the premium by the parent under COBRA);
- (vi)** The child has special health care needs; or
- (vii)** The child lost coverage due to the death or divorce of a parent.

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

DEPARTMENT/AGENCY Arkansas Department of Human
DIVISION County Operations
DIVISION DIRECTOR Mary Franklin
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NAME OF PRESENTER AT COMMITTEE MEETING Kristie Hayes
PRESENTER E-MAIL kristie.hayes@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:

**Donna K. Davis
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? Exceptions to the 90 day waiting period for ARKids-B applicants with additional health insurance coverage

2. What is the subject of the proposed rule? This proposed rule change revises Medical Services policy to comply with Federal Regulations regarding exceptions to the 90 day waiting period for ARKids B applicants with additional health insurance coverage.

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. 42 CFR 457.805

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."**

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

7. What is the purpose of this proposed rule? Why is it necessary?
This proposed rule change revises Medical Services policy to comply with Federal Regulations regarding exceptions to the 90 day waiting period for ARKids B applicants with additional health insurance coverage.

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).

<http://humanservices.arkansas.gov/resources/legal-notices>

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 14, 2018

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

09/01/18

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. _____
13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). _____
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. _____

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** 501-682-3889 **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 Exceptions to the 90 day waiting period for ARKids-B applicants with additional health insurance coverage

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	0
Federal Funds	0
Cash Funds	
Special Revenue	
Other (Identify)	
Total	

Next Fiscal Year

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

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

Current Fiscal Year

General Revenue	
Federal Funds	
Cash Funds	
Special Revenue	
Other (Identify)	
Total	

Next Fiscal Year

General Revenue	
Federal Funds	
Cash Funds	
Special Revenue	
Other (Identify)	
Total	

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

\$ _____

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 _____

No financial impact as policy change only adds exemptions to existing policy

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.

Summary of Changes

Updated policy section MS F-180, Other Health Insurance Coverage, to comply with Federal Regulations regarding exceptions to the 90 day waiting period for ARKids B applicants with additional health insurance coverage.

PROPOSED

MEDICAL SERVICES POLICY MANUAL, SECTION F

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F-180 Other Health Insurance Coverage

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MS Manual 09/01/18

For most eligibility groups, an individual may be covered by other health insurance without affecting his or her eligibility for Medicaid. There are two exceptions to this which are described below.

Adult Expansion Group

An individual who is eligible for or enrolled in Medicare is not eligible for the Adult Expansion Group.

ARKids B

Children who have health insurance or who have been covered by health insurance other than Medicaid in the 90 days preceding the date of application will not be eligible for ARKids B unless one of the following conditions is met:

- a. The premium paid by the family for coverage of the child under the group health plan exceeded 5 percent of household income.



NOTE: A group health plan means an employee welfare benefit plan that provides medical care to employees or their dependents directly or through insurance, reimbursement, or otherwise.

- b. The child's parent is determined eligible for advance payment of the premium tax credit for enrollment in a Qualified Health Plan (QHP) through the Exchange because the Employer-Sponsored Insurance (ESI) in which the family was enrolled is determined unaffordable in accordance with 26 CFR 1.36B-2(c)(3)(v).
- c. The cost of family coverage that includes the child exceeds 9.5 percent of the household income.
- d. The employer stopped offering coverage of dependents (or any coverage) under an employer-sponsored health insurance plan.
- e. A change in employment, including involuntary separation, resulted in the child's loss of employer-sponsored insurance (other than through full payment of the premium by the parent under COBRA).

MEDICAL SERVICES POLICY MANUAL, SECTION F

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F-180 Other Health Insurance Coverage

- f. The child has special health care needs. Special health care needs are defined as the health care and related needs of children who have chronic physical, developmental, behavioral or emotional conditions. Such needs are of a type or amount beyond that required by children generally
- g. The child lost coverage due to the death or divorce of a parent.
- h. Health insurance coverage is available to a child through a person other than the child's custodial adult and is determined to be inaccessible (e.g., the absent parent lives out of state and covers the child on his or her HMO, which the child cannot access due to distance). This determination will be made on a case-by-case basis by the caseworker based on information provided by the applicant.

If a parent or guardian voluntarily terminates insurance within the 90 days preceding application for a reason other than those listed above, the children will **not** be eligible for ARKids B.

The applicant's declaration regarding the child's health insurance coverage will be accepted.

This is a special requirement for ARKids B only and does not apply to ARKids A or other Medicaid categories.