

# EXHIBIT I

## DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS

### SUBJECT: Medical Services Policy Manual Sections H-300 through H-325

DESCRIPTION: The summary of changes for Section MS H-300 Transfer of Resources follows:

Various sections under MS H-300 are being amended to revise the process of determining a start date of an asset transfer penalty period for Home and Community-Based Services (HCBS) Waivers, incorporating a new interpretation of the law by CMS; and to revise that an individual may establish their own special needs trust, complying with 5007 of the Cures Act (42 U.S.C. § 1396p(d)(4)(A)).

MS H-303 *Transfer for Less than Fair Market Value*: Revised that an HCBS Waiver applicant/recipient who has transferred resources for less than fair market value will be ineligible for a period of time as specified at MS H-308.

MS H-304 *Transfers to Trusts*: For trusts established after 8/11/93, revised policy allowing that an individual may establish their own special needs trust.

MS H-308 *Determination of Uncompensated Value and Penalty Period*: Revised how long HCBS Waiver applicants/recipients remain ineligible due to a transfer of resources for less than fair market value.

MS H-310 *Imposing the Penalty*: Revised the criteria necessary to impose a penalty period for HCBS Waiver applicants and the begin dates of the penalty period for applicants and recipients.

MS H-311 *Notifying Individual of Established Uncompensated Value and Penalty Period*: Revised when a penalty period for HCBS Waiver applicants can and cannot be imposed.

MS H-316 *Transfer of Resources Divisor Definition*: Revised when the HCBS Waiver case may be approved following the penalty period.

Terminology updates and formatting corrections have been made throughout MS H-300:

- *Caseworker* changed to *eligibility worker*;
- *DCO-707* changed to *DHS-707*;
- *DCO-727* changed to *DHS-727*;
- *DCO-732* changed to *DHS-732*;
- *Office of Policy and legal Services (OPLS)* changed to *Office of Chief Counsel (OCC)*;
- *LTC* changed to *nursing facility* for clarity;
- Punctuation, spacing, and capitalization corrected throughout for consistency;
- Business processes and examples removed; and
- *Home and Community Based (HCBS)* added to replace *Waiver* for clarity.

# EXHIBIT I

**PUBLIC COMMENT:** The Department of Human Services (DHS) did not hold a public hearing. The public comment period ended on November 6, 2018. DHS received no public comments.

Per the agency, this change did not require CMS approval, as it was a change to become compliant with federal regulations.

The proposed effective date is January 1, 2019.

**FINANCIAL IMPACT:** The impact is unknown as no record of the number of persons who did not apply for Medicaid Home and Community Based Services (HCBS) due to this rule exists. However, some persons not eligible for Medicaid waiver services may have entered long term care facilities due to difference in eligibility criteria (being corrected here). Had this proposed rule been in place, they may have entered a HCBS waiver at a cost savings to the state.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 20-76-201, DHS shall administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it. *See Ark. Code Ann. § 20-76-201(1).* DHS shall also make rules and regulations and take actions as are necessary or desirable to carry out the provisions of Title 20, Chapter 76, Public Assistance Generally, of the Arkansas Code. *See Ark. Code Ann. § 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).* Arkansas Code Annotated § 20-77-107(a)(1) specifically authorizes DHS to “establish and maintain an indigent medical care program.”

Per the agency, the portion of the policy change allowing that an individual may establish his or her own special needs trust is being promulgated to comply with Section 5007 of the 21st Century Cures Act (the “Cures Act”), Pub. L. No. 114-255.



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

DEPARTMENT/AGENCY Arkansas Department of Human Services  
DIVISION County Operations  
DIVISION DIRECTOR Mary Franklin  
CONTACT PERSON Isaac Linam  
ADDRESS PO Box 1437, Slot S295, Little Rock AR 72203  
PHONE NO. 501-320-6570 FAX NO. 404-4619 E-MAIL Isaac.Linam@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:

Donna K. Davis  
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?

Medical Services Policy Manual Sections H-300 through H-325

The proposed rule change revises the Medical Services policy to incorporate CMS's new interpretation of the law that the penalty period start date for a Home and Community-Based Waiver Services (HCBS) applicant will be no later than the point at which the applicant would otherwise be receiving HCBS waiver coverage, except for the penalty. It also revises policy to allow that an individual may establish their own special needs trust, to comply with 5007 of the Cures Act.

2. What is the subject of the proposed rule?

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.

Section 1917(c) of the Social Security Act (the Act) for certain Medicaid applicants who are seeking eligibility for Home and Community-Based Services (HCBS) delivered through waivers approved under section 1915(c) of the Act; Section 5007 of

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 Annotated §§ 20-76-201, 20-77-107, and 25-10-129

7. What is the purpose of this proposed rule? Why is it necessary?

The proposed rule change revises the Medical Services policy to incorporate CMS's new interpretation of the law that the penalty period start date for a Home and Community-Based Waiver Services (HCBS) applicant will be no later than the point at which the applicant would otherwise be receiving HCBS waiver coverage except for the penalty. It also revises policy to allow that an individual may establish their own special needs trust.

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-notice>

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.)

November 6, 2018

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

January 1, 2019

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 and the Arkansas State Library 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. There are no known groups at this time.



## FINANCIAL IMPACT STATEMENT

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services

**DIVISION** Division of Medical Services

**PERSON COMPLETING THIS STATEMENT** David J. McMahon II, CPA  
CFO for Medicaid Services

**TELEPHONE** 501-396-6421 **FAX** 501-682-1597 **EMAIL:** David.McMahon@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** Medical Services Policy Manual Sections H-300 through H-325

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☐

Impact is unknown as no record of the number of persons who did not apply for Medicaid Home and Community Based Services (HCBS) due to this rule exists.

However, some persons not eligible for Medicaid waiver services may have entered long term care facilities due to difference in eligibility criteria (being corrected here). Had this proposed rule been in place, they may have entered a HCBS waiver at a cost savings to the State.

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) \_\_\_\_\_  
  
Total \_\_\_\_\_

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

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

**Current Fiscal Year**

**Next Fiscal Year**

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

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**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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.



## Summary of Changes

### Section MS H-300 *Transfer of Resources*

Various sections under MS H-300 are being amended to revise the process of determining a start date of an asset transfer penalty period for Home and Community-Based Services (HCBS) Waivers, incorporating a new interpretation of the law by CMS; and to revise that an individual may establish their own special needs trust, complying with 5007 of the Cures Act (42 U.S.C. § 1396p(d)(4)(A)).

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