

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: Episode 1-19; Section I-3-19; and State Plan #20-0002

DESCRIPTION:

Statement of Necessity

The Episode of Care (EOC) program has been successful as each episode is now reporting stability in cost and quality. Financially, the positive incentives (gain share) now outweigh negative incentives (risk share). The program has exhausted any practical selection of new or additional conditions or procedures for which to study.

Asthma, Chronic Obstructive Pulmonary Disease, and Congestive Heart Failure episodes have all increased follow up visits with physicians which decreased repeat visits to the emergency room. Tonsillectomy episode had a huge decrease in pathology rate from 70% the first year to 22% currently along with a decrease in steroid rate. Average length of inpatient stay has decreased for Total Joint Replacement and Congestive Heart Failure and Perinatal was successful in dramatically increasing Strep, HIV, and Chlamydia screenings while also reducing the number of emergency room visits. Upper Respiratory Episode decreased unnecessary antibiotic prescriptions typing a quality measure for strep tests to a prescription. With quality stabilizing, informational reporting is replacing the financial reporting to allow providers to see trends in quality metrics, comparing practice methodology with peers.

As a result of stabilization and no new avenues of consideration, the Episodes of Care program will gradually conclude over the next two (2) years. State fiscal year 2020 (July 1, 2019 – June 31, 2020) will be the last reporting period for each episode's performance period. In State fiscal year 2021, the final reconciliation episode report will be generated. The reconciliation report period allows Principal Accountable Providers the opportunity to improve their gain share/risk share or incentive position. The report will reconcile the payment report for a final determination of possible risk share or gain share. The reporting timeframe table below identifies the episode programs and the timeframe for each Episode of Care.

Rule Summary

This proposed rule provides that the Episode of Care (EOC) Program will sunset over a period of two years, state fiscal year 2020 and state fiscal year 2021. The EOC program is a retroactive, financial program of Arkansas fee-for-services Medicaid. The episodes were launched quarterly and, as a result, have different performance periods. Hence, the reason for a gradual sunset of the program.

The Arkansas Medicaid State Plan is being revised throughout to announce the sunset of the Episode of Care Program gradually over SFY 2020 and SFY 2021.

Section I, 180.000, Episodes of Care, of the Medicaid provider manuals is being revised to announce the conclusion of the Episode of Care Program gradually over SFY 2020 and SFY 2021.

Section II, 200.000, Episodes of Care General Information, of the Episodes of Care Provider Manual is being revised to announce the conclusion of the Episode of Care Program gradually over SFY 2020 and SFY 2021. Included in the section is a timeframe of the gradual sunset for each episode of care.

Section II, 210.000 – 223.000, of the Episodes of Care Provider Manual are being revised to reflect the final payment report date and the final reconciliation report date of each episode of care.

Episodes of Care Reporting Timeframe

Report Type	SFY 2020				SFY 2021			
	7/31/19	10/31/19	1/31/20	4/30/20	7/31/20	10/31/20	1/31/21	4/30/21
Payment	CABG	ASTHMA	URIN URIS URIP CHOLE PERINATAL	COPD HF COLON TONSIL TJR				
Reconciliation					CABG	ASTHMA	URIN URIS URIP CHOLE PERINATAL	COPD HF COLON TONSIL TJR

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on July 25, 2020. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. What is the status on CMS approval of the SPA? **RESPONSE:** The SPA is still pending with CMS. It was submitted on June 17, 2020. The 90th day is September 15, 2020. We have not received any requests for additional information at this point in time from CMS.

2. Are the other Episodes of Care listed on the Department’s website (ADHD, ODD, Hysterectomy, Pediatric Pneumonia, Appendectomy, and UTI) affected by the EOC program sunset process? **RESPONSE:** No, the ones you listed are not affected by the current sunset process. ADHD and ODD were retired as part of the behavioral health transformation in 2017. DHS has left them on the website for reference only. Hysterectomy, Pediatric Pneumonia, Appendectomy, and UTI are all informational reports based on Episode “technology” (algorithms, etc.). These reports do not have

financial incentives and are informational for providers, and therefore are not part of this sunset rule promulgation.

The proposed effective date is October 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

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).

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Janet Mann
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** Isaac.Linam@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Janet Mann
PRESENTER E-MAIL janet.mann@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? Episode 1-19; SectionI 3-19; and State Plan # 20-0002
To sunset all Episodes of Care: Asthma, Cholecystectomy, Chronic Obstructive Pulmonary Disease, Colonoscopy, Congestive Heart Failure, Coronary Arterial Bypass Graft, Perinatal, Tonsil, Total Joint Replacement, Upper Respiratory Infection Non-Specific, Pharyngitis, and Sinusitis
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 x
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 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 _____

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 Stature 20-76-201

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/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 25, 2020

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

October 1, 2020

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.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT of Human Services

DIVISION of Medical Services

PERSON COMPLETING THIS STATEMENT James Gallaher

TELEPHONE NO. 501-396-6364

FAX NO. 504-404-4619

EMAIL: James.gallaher@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 Episode-1-19 Section I-3-19 and State Plan #20-0002

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

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 x 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 x
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 _____ 0

General Revenue _____ 0

Federal Funds _____ 0

Federal Funds _____ 0

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____
Total _____ 0

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 _____ 0
Special Revenue _____ 0
Other (Identify) _____ 0

Total _____ 0

Next Fiscal Year

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

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

\$ _____ 0

Next Fiscal Year

\$ _____ 0

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.

Statement of Necessity and Rule Summary

Episode-1-19, SectionI-3-19, and State Plan #20-0002

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Statement of Necessity

The Episode of Care (EOC) program has been successful as each episode is now reporting stability in cost and quality. Financially, the positive incentives (gain share) now outweigh negative incentives (risk share). The program has exhausted any practical selection of new or additional conditions or procedures for which to study.

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Rule Summary

This proposed rule provides that the Episode of Care (EOC) Program will sunset over a period of two years, state fiscal year 2020 and state fiscal year 2021. The EOC program is a retroactive, financial program of Arkansas fee-for-service Medicaid. The episodes were launched quarterly and, as a result, have different performance periods. Hence, the reason for a gradual sunset of the program.

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Episodes of Care Reporting Timeframe

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Reconciliation					CABG	ASTHMA	URIN URIS URIP CHOLE PERINATAL	COPD HF COLON TONSIL TJR

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 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 October 1, 2020:

The Division of Medical Services (DMS) announces it will amend the Arkansas Medicaid State Plan to sunset the Episode of Care Program.

Background: The Episode of Care (EOC) program has been successful as each episode is now reporting stability in cost and quality. Financially, the positive incentives now outweigh negative incentives. The program has exhausted any practical selection of new or additional conditions or procedures for which to study. The proposed rule provides that the EOC Program will sunset over a period of two state fiscal years. State fiscal year 2020 (July 1, 2019 – June 31, 2020) will be the last reporting period for each episode's performance period. In State fiscal year 2021, the final reconciliation episode report will be generated. The reconciliation report period allows Principal Accountable Providers the opportunity to improve their gain share/risk share or incentive position. The report will reconcile the payment report for a final determination of possible risk share or gain share. The reporting timeframe below identifies the episode programs and the timeframe for each EOC.

Arkansas Medicaid State Plan changes: The Arkansas Medicaid State Plan is being revised to announce the sunset of the Episode of Care Program gradually over SFY 2020 and SFY 2021. Section I, 180.000, Episodes of Care, of the Medicaid provider manual, is being revised to announce the conclusion of the Episode of Care Program gradually over SFY 2020 and SFY 2021. Section II, 200.000, Episodes of Care General Information, of the Episodes of Care Provider Manual, is being revised to announce the conclusion of the Episode of Care Program gradually over SFY 2020 and SFY 2021. Included in the section is a timeframe of the gradual sunset for each episode of care. Section II, 210.000 – 223.000, Episodes of Care Provider Manual, are being revised to reflect the final payment report date and the final reconciliation report date of each episode of care.

The EOC program is a retroactive, financial program of Arkansas fee-for-service Medicaid. The episodes were launched quarterly and, as a result, have different performance periods. Each EOC will sunset as follows:

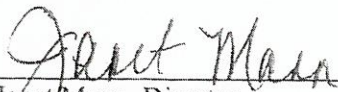
- Coronary Arterial Bypass Graft (CABG) will have a final payment report produced on July 31, 2019 and final reconciliation report produced on July 31, 2020
- Asthma will have a final payment report produced on October 31, 2019 and final reconciliation report produced on October 31, 2020
- Acute Ambulatory Upper Respiratory Infection (URI) will have a final payment report produced on January 31, 2020 and final reconciliation report produced on January 31, 2021
- Cholecystectomy (CHOLE) will have a final payment report produced on January 31, 2020 and final reconciliation report produced on January 31, 2021
- Perinatal will have a final payment report produced on January 31, 2020 and final reconciliation report produced on January 31, 2021
- Chronic Obstructive Pulmonary Disease (COPD) will have a final payment report produced on April 30, 2020 and final reconciliation report produced on April 30, 2021
- Congestive Heart Failure (CHF) will have a final payment report produced on April 30, 2020 and final reconciliation report produced on April 30, 2021
- Colonoscopy (COLON) will have a final payment report produced on April 30, 2020 and final reconciliation report produced on April 30, 2021

- Tonsillectomy (TONSIL) will have a final payment report produced on April 30, 2020 and final reconciliation report produced on April 30, 2021
- Total Joint Replacement (TJR) will have a final payment report produced on April 30, 2020 and final reconciliation report produced on April 30, 2021

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://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx>. 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 25, 2020. 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 501-320-6266.

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. 4501888131



Janet Mann, Director
Division of Medical Services