

EXHIBIT D

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: State Plan Amendment #2012-012 & Pharmacy 4-12

DESCRIPTION: To comply with Section 1860D-2(e)(2)(A) of the Social Security Act, the Division of Medical Services will no longer cover barbiturates and benzodiazepines for the dual eligible population.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on August 21, 2012. No public comments were submitted. The only changes made were some formatting changes requested by CMS. The proposed effective date is November 1, 2012.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: This amendment will not affect small business.

The incremental savings to implement this rule is \$600,000 for SFY 2013 (\$178,980 general revenue and \$421,020 federal funds) and \$1,200,000 for SFY 2014 (\$357,960 general revenue and \$842,040 federal funds).

LEGAL AUTHORIZATION: Arkansas Code § 20-76-201 authorizes the Department of Human Services to administer programs for the indigent and to "make rules and regulations" pertaining to the administration of those programs. Arkansas Code § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

EXHIBIT D



Division of Medical Services
Program Development & Quality Assurance

P.O. Box 1437, Slot S-295 · Little Rock, AR 72203-1437
501-682-8368 · Fax: 501-682-2480 ·



July 20, 2012

Ms. Donna Davis
Committee on Administrative Rules and Regulations
Arkansas Legislative Council
Room 315 State Capitol Building
Little Rock, AR 72201

Dear Ms. Davis:

Enclosed are two copies of the Questionnaire with the proposed rule regarding the following: Arkansas Medicaid State Plan Amendment #2012-012 and Pharmacy 4-12.

If you have any questions or comments, please address them to Division of Medical Services, P. O. Box 1437, Mail Slot S295, Little Rock, AR 72203-1437.

Sincerely,

A handwritten signature in cursive that reads "Andy Allison 1/02".

Andrew Allison, PhD
Director

AA/bam
Enclosure

RECEIVED
JUL 20 2012
BUREAU OF
LEGISLATIVE RESEARCH

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Andrew Allison, PhD
CONTACT PERSON Brett Hays
ADDRESS P.O Box 1437, Slot S295, Little Rock, AR 72203
PHONE NO. 682-8859 **FAX NO.** 682-2480 **E-MAIL** brett.hays@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Marilyn Strickland
PRESENTER E-MAIL marilyn.strickland@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
Room 315; State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule?

Arkansas Medicaid State Plan Amendment #2012-012, and Pharmacy 4-12
- 2. What is the subject of the proposed rule?

Eliminating coverage for barbiturates and benzodiazepines.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes X No
If yes, please provide the federal rule, regulation, and/or statute citation.

Section 1860D-2(e)(2)(A) of the Social Security Act
- 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 X If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes ___ No X 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 X 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 Arkansas Code citation.

Arkansas Statute 20-76-201

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

The purpose of the proposed rule is to eliminate coverage for barbiturates and benzodiazepines for the dual eligible population. The proposed rule is necessary in order to comply with Section 1860D-2(e)(2)(A) of the Social Security Act.

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://www.medicaid.state.ar.us/InternetSolution/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes ___ No X
If yes, please complete the following:

Date: _____
Time: _____
Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 21, 2012

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

November 1, 2012

12. Do you expect this rule to be controversial? Yes ___ No X If yes, please explain.

13. 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.

Medical associations, interested providers, and advocacy organizations. Their positions for or against is not known 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 Tom Show

TELEPHONE NO. 683-2483 **FAX NO.** 682-2480 **EMAIL:** tom.show@arkansas.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE – Arkansas Medicaid State Plan Amendment #2012-012 and Pharmacy 4-12

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

2. Does this proposed, amended, or repealed rule affect small businesses?
Yes No X

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental savings for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year (SFY 2013)

Next Fiscal Year (SFY 2014)

General Revenue (\$178,980)

General Revenue (\$ 357,960)

Federal Funds (\$421,020)

Federal Funds (\$ 842,040)

Cash Funds

Cash Funds

Special Revenue

Special Revenue

Other (Identify)

Other (Identify)

Total Savings (\$600,000)

Total Savings (\$1,200,000)

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party 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 the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

Next Fiscal Year

Summary for
Arkansas Medicaid State Plan Amendment #2012-012 and Pharmacy 4-12

In order to comply with Section 1860D-2(e)(2)(A) of the Social Security Act, the Division of Medical Services will no longer cover barbiturates and benzodiazepines for the dual eligible population.



Division of Medical Services
Program Development & Quality Assurance

P.O. Box 1437, Slot S-295 · Little Rock, AR 72203-1437
501-682-8368 · Fax: 501-682-2480



TO: Arkansas Medicaid Health Care Providers – Pharmacy
DATE: November 1, 2012
SUBJECT: Provider Manual Update Transmittal PHARMACY-4-12

PROPOSED

Table with 4 columns: REMOVE Section, REMOVE Date, INSERT Section, INSERT Date. Row 1: 212.000, 10-1-06, 212.000, 11-1-12

Explanation of Updates

Section 212.000 is updated, in accordance with Section 1860D-2(e)(2)(A) of the Social Security Act, to exclude the coverage of barbiturates and benzodiazepines for the dual eligible population.

The paper version of this update transmittal includes revised pages that may be filed in your provider manual. See Section I for instructions on updating the paper version of the manual. For electronic versions, these changes have already been incorporated.

If you have questions regarding this transmittal, please contact the HP Enterprise Services Provider Assistance Center at 1-800-457-4454 (Toll-Free) within Arkansas or locally and Out-of-State at (501) 376-2211.

If you need this material in an alternative format, such as large print, please contact our Americans with Disabilities Act Coordinator at 501-682-6453 (Local); 1-800-482-5850, extension 2-6453 (Toll-Free) or to obtain access to these numbers through voice relay, 1-800-877-8973 (TTY Hearing Impaired).

Arkansas Medicaid provider manuals (including update transmittals), official notices, notices of rule making and remittance advice (RA) messages are available for downloading from the Arkansas Medicaid website: www.medicaid.state.ar.us.

Thank you for your participation in the Arkansas Medicaid Program.

Signature of Andrew Allison, PhD, Director

TOC not required

212.000 Exclusions 11-1-12

- A. Products manufactured by non-rebating pharmaceutical companies.
- B. Effective January 1, 2006, the Medicaid agency will not cover any drug covered by Medicare Part D for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.
- C. The Medicaid agency provides coverage, to the same extent that it provides coverage for all Medicaid beneficiaries under § 1927 (d) of the Social Security Act, for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses; with the exception of those covered by Part D plans as supplemental benefits through enhanced alternative coverage as provided in 42 CFR § 423.104 (f) (1) (ii) (A) to full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit- Part D.

The following excluded drugs set forth on the Arkansas Medicaid website (www.medicaid.state.ar.us), are covered:

1. select agents when used for weight gain
 2. select agents when used for the symptomatic relief of cough and colds
 3. select prescription vitamins and mineral products, except prenatal vitamins and fluoride
 4. select nonprescription drugs
 5. select agents when used to promote smoking cessation
 6. barbiturates – (Except for dual eligible individuals effective January 1, 2013, when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications per 1860D-2(e)(2)(A) of the Social Security Act, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA))
 7. benzodiazepines – (Except for dual eligible individuals effective January 1, 2013, as Part D will cover all indications per 1860D-2(e)(2)(A) of the Social Security Act, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA))
- D. Medical accessories are not covered under the Arkansas Medicaid Pharmacy Program. Typical examples of medical accessories are atomizers, nebulizers, hot water bottles, fountain syringes, ice bags and caps, urinals, bedpans, glucose monitoring devices and supplies, cotton, gauze and bandages, wheelchairs, crutches, braces, supports, diapers and nutritional products.

AMOUNT, DURATION AND SCOPE OF
SERVICES PROVIDED

Revised: November 1, 2012

CATEGORICALLY NEEDY

12. Prescribed drugs, dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist

PROPOSED

a. Prescribed Drugs

- (1) Each recipient age 21 or older may have up to six (6) prescriptions each month under the program. The first three prescriptions do not require prior authorization. The three additional prescriptions must be prior authorized. Family Planning, tobacco cessation and EPSDT prescriptions do not count against the prescription limit.
- (2) Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.
- (3) The Medicaid agency provides coverage, to the same extent that it provides coverage for all Medicaid recipients, for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses – with the exception of those covered by Part D plans as supplemental benefits through enhanced alternative coverage as provided in 42 C.F.R. §423.104 (f) (1) (ii) (A) – to full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit – Part D.

The following excluded drugs, set forth on the Arkansas Medicaid Website (www.medicaid.state.ar.us/InternetSolution/Provider/pharm/scripinfo.aspx#1927d), are covered:

- a. select agents when used for weight gain:
Androgenic Agents
 - b. select agents when used for the symptomatic relief of cough and colds:
Antitussives; Antitussive-Decongestants; Antitussive-Expectorants
 - c. select prescription vitamins and mineral products, except prenatal vitamins and fluoride:
B 12; Folic Acid, Vitamin K
 - d. select nonprescription drugs:
Antiarthritics; Antibacterials and Antiseptics; Antitussives; Antitussives-Expectorants; Analgesics; Antipyretics; Antacids; Antihistamines; Antihistamine-Decongestants; Antiemetic/Vertigo Agents; Gastrointestinal Agents; Hematinics; Laxatives; Ophthalmic Agents; Sympathomimetics; Topical Antibiotics; Topical Antifungals; Topical Antiparasitics; Vaginal Antifungals;
 - e. all barbiturates (Except for dual eligible individuals effective January 1, 2013 when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications per 1860D-2(e)(2)(A) of the Social Security Act, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)
 - f. all benzodiazepines (Except for dual eligible individuals effective January 1, 2013 as Part D will cover all indications per 1860D-2(e)(2)(A) of the Social Security Act, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA)
 - g. prescription and non-prescription products for smoking cessation:
Nicotine Gum; Nicotine Patches; Generic Zyban, Varenicline
- (4) The State will reimburse only for the drugs of pharmaceutical manufacturers who have entered into and have in effect a rebate agreement in compliance with Section 1927 of the Social Security Act, unless the exceptions in Section 1902(a)(54), 1927(a)(3) or 1927(d) apply. The State permits coverage of participating manufacturers' drugs, even though it may be using a formulary or other restrictions. Utilization controls will include prior authorization and may include drug utilization reviews. Any prior authorization program instituted after July 1, 1991 will provide for a 24-hour turnaround from receipt of the request for prior authorization. The prior authorization program also provides for at least a 72 hour supply of drugs in emergency situations.

AMOUNT, DURATION AND SCOPE OF
SERVICES PROVIDED

Revised: November 1, 2012

MEDICALLY NEEDY

12. Prescribed drugs, dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist

a. Prescribed Drugs

PROPOSED

- (1) Each recipient age 21 or older may have up to six (6) prescriptions each month under the program. The first three prescriptions do not require prior authorization. The three additional prescriptions must be prior authorized. Family Planning, tobacco cessation and EPSDT prescriptions do not count against the prescription limit.
- (2) Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.
- (3) The Medicaid agency provides coverage, to the same extent that it provides coverage for all Medicaid recipients, for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses – with the exception of those covered by Part D plans as supplemental benefits through enhanced alternative coverage as provided in 42 C.F.R. §423.104 (f) (1) (ii) (A) – to full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit – Part D.

The following excluded drugs, set forth on the Arkansas Medicaid Website (www.medicaid.state.ar.us/InternetSolution/Provider/pharm/scrpinfo.aspx#1927d), are covered:

- a. select agents when used for weight gain:
Androgenic Agents
 - b. select agents when used for the symptomatic relief of cough and colds:
Antitussives; Antitussive-Decongestants; Antitussive-Expectorants
 - c. select prescription vitamins and mineral products, except prenatal vitamins and fluoride:
B 12; Folic Acid; Vitamin K
 - d. select nonprescription drugs:
Antiarthritics; Antibacterials and Antiseptics; Antitussives; Antitussives-Expectorants; Analgesics; Antipyretics; Antacids; Antihistamines; Antihistamine-Decongestants; Antiemetic/Vertigo Agents; Gastrointestinal Agents; Hematinics; Laxatives; Ophthalmic Agents; Sympathomimetics; Topical Antibiotics; Topical Antifungals; Topical Antiparasitics; Vaginal Antifungals;
 - e. all barbiturates (Except for dual eligible individuals effective January 1, 2013 when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications per 1860D-2(e)(2)(A) of the Social Security Act, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA))
 - f. all benzodiazepines (Except for dual eligible individuals effective January 1, 2013 as Part D will cover all indications per 1860D-2(e)(2)(A) of the Social Security Act, as amended by Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA))
 - g. prescription and non-prescription products for smoking cessation:
Nicotine Gum; Nicotine Patches; Generic Zyban, Varenicline
- (4) The State will reimburse only for the drugs of pharmaceutical manufacturers who have entered into and have in effect a rebate agreement in compliance with Section 1927 of the Social Security Act, unless the exceptions in Section 1902(a)(54), 1927(a)(3) or 1927(d) apply. The State permits coverage of participating manufacturers' drugs, even though it may be using a formulary or other restrictions. Utilization controls will include prior authorization and may include drug utilization reviews. Any prior authorization program instituted after July 1, 1991 will provide for a 24-hour turnaround from receipt of the request for prior authorization. The prior authorization program also provides for at least a 72 hour supply of drugs in emergency situations.