

EXHIBIT E

EMERGENCY REGULATIONS

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL SERVICES
AMENDING ADMINISTRATIVE REGULATIONS

NUMBER AND TITLE: Arkansas Medicaid State Plan Amendment #2012-008 – Provider Preventable Conditions

PROPOSED EFFECTIVE DATE: July 1, 2012

STATUTORY AUTHORITY:

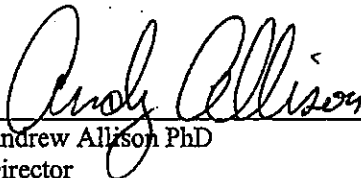
NECESSITY AND FUNCTION: The purpose of the proposed rule is to be in compliance with federal regulation 42 CFR Part 447 which ensures that Medicaid payments will not be made for specific provider preventable conditions and specific hospital acquired conditions. The proposed rule is necessary since the federal rule requires that providers report any of these specific conditions.

RECEIVED

JUN 29 2012

BUREAU OF
LEGISLATIVE RESEARCH

PAGES FILED:



Andrew Allison PhD
Director
Division of Medical Services

Promulgation date:

Contact Person:

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Little Rock, AR 72203-1437

(501) 682-8363

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 Lisa Smith
ADDRESS P.O Box 1437, Slot S295, Little Rock, AR 72203
PHONE NO. 682-8363 FAX NO. 682-2480 E-MAIL lisa.smith@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 #2012-008 – Provider Preventable Conditions

2. What is the subject of the proposed rule?

42 CFR Part 447 Subpart A prohibits state Medicaid agencies from covering Health Acquired Conditions or Provider Preventable Conditions.

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.

45 CFR Subpart 447 Subpart A and sections 1902(a)(4), 1902(a)(6) and 1903.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes X No ____.

If yes, what is the effective date of the emergency rule?

July 1, 2012

When does the emergency rule expire?

October 28, 2012

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes X 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 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 be in compliance with federal regulation 42 CFR Part 447 which ensures that Medicaid payments will not be made for specific provider preventable conditions and specific hospital acquired conditions. The proposed rule is necessary since the federal rule requires that providers report any of these specific conditions.

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

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 29, 2012

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

November 1, 2012 (Adopted by Federal Regulation July 1, 2012)

12. Do you expect this rule to be controversial? Yes No 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. 682-2483 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 #2012-008 – Provider Preventable Conditions

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X
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 cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

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 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

None

None

Summary for
Arkansas Medicaid State Plan Amendment #2012-008
Provider Preventable Conditions

Effective July 1, 2012, Arkansas Medicaid will be implementing 42 CFR 477.26 (c) (1); which requires that all state Medicaid plans prohibit payment for "provider-preventable conditions." The umbrella term "provider-preventable conditions" (PPCs) includes two separate categories: "healthcare-acquired conditions" (HCACs) and "other provider-preventable condition" (OPPC). HCACs apply to Medicaid inpatient hospital settings and are generally defined to include the full list of Medicare's previous inpatient "hospital-acquired conditions" (HAC). Other provider preventable conditions that Arkansas Medicaid will be prohibiting payment for in any healthcare setting will be wrong surgical or other invasive procedures performed on a patient, surgical or other invasive procedures performed on the wrong body part or surgical or other invasive procedures performed on the wrong patient.

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -
INPATIENT HOSPITAL SERVICES

July 1, 2012

1. Inpatient Hospital Services (continued)

Citation

42 CFR 447, 434, 438, and 1902(a)(4), 1902(a)(6), and 1903

Payment Adjustment for Provider Preventable Conditions

The Medicaid agency meets the requirements of 42 CFR ~~Part 447, Subpart A, and sections~~ 1902(a)(4), 1902(a)(6), and 1903 with respect to non-payment for provider-preventable conditions.

STATE <u>Arkansas</u>	A
DATE REC'D <u>06-27-12</u>	
DATE APP'D <u>AUG 10 2012</u>	
DATE EFF <u>07-01-12</u>	
HCEA 179 <u>AR-12-08</u>	

Health Care-Acquired Conditions

The State identifies the following Health Care-Acquired Conditions for non-payment under Section 4.19 (A) of this State plan.

Hospital-Acquired Conditions as identified by Medicare other than Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) following total knee replacement or hip replacement surgery in pediatric and obstetric patients.

Other Provider-Preventable Conditions

The State identifies the following Other Provider-Preventable Conditions for non-payment under Section 4.19 (A) of this State plan.

Wrong surgical or other invasive procedure performed on a patient; surgical or other invasive procedure performed on the wrong body part; surgical or other invasive procedure performed on the wrong patient.

Additional Other Provider-Preventable Conditions identified below:

For per diem payments or cost-based reimbursement, the number of covered days shall be reduced by the number of days associated with the diagnosis not present on admission for any HAC.

No payment shall be made for inpatient services for Hospital Acquired conditions defined to include the full list of Medicare's previous inpatient "hospital-acquired conditions" (HAC) and for Other Preventable Conditions (OPPCs). OPPCs include the three Medicare National Coverage Determinations; wrong surgical or other invasive procedure performed on a patient; surgical or other invasive procedure performed on the wrong body part; and surgical or other invasive procedure performed on the wrong patient.

No reduction in payment for a provider-preventable condition will be imposed on a provider when the condition defined as a PPC for a particular patient existed prior to the initiation of treatment for that patient by that provider.

Reductions in provider payment may be limited to the extent that the following apply:

- i. The identified provider-preventable conditions would otherwise result in an increase in payment.
- ii. The State can reasonably isolate for nonpayment the portion of the payment directly related to treatment for, and related to, the provider-preventable conditions.

Non-payment of provider-preventable conditions shall not prevent access to services for Medicaid beneficiaries.

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METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -
OTHER TYPES OF CARE

Revised: July 1, 2012

2.a. Outpatient Hospital Services (continued)

(6) Payment Adjustment for Provider Preventable Conditions

The Medicaid agency meets the requirements of 42 CFR Part 447, Subpart A, and sections 1902(a)(4), 1902(a)(6), and 1903 with respect to non-payment for provider-preventable conditions.

Citation

42 CFR 447, 434, 438, and 1902(a)(4), 1902(a)(6), and 1903

Other Provider-Preventable Conditions

The State identifies the following Other Provider-Preventable Conditions for non-payment under Section 4.19 (B) of this State plan.

X Wrong surgical or other invasive procedure performed on a patient; surgical or other invasive procedure performed on the wrong body part; surgical or other invasive procedure performed on the wrong patient.

___ Additional Other Provider-Preventable Conditions identified below:

No payment shall be made for services for the Other Preventable Conditions (OPPCs). OPPC is one category of Provider Preventable Conditions (PPC), as identified by the Centers for Medicare & Medicaid services, and applies broadly to any health care setting where an OPPC may occur. OPPCs include the three Medicare National Coverage Determinations; wrong surgical or other invasive procedure performed on a patient; surgical or other invasive procedure performed on the wrong body part; and surgical or other invasive procedure performed on the wrong patient.

No reduction in payment for a provider-preventable condition will be imposed on a provider when the condition defined as a PPC for a particular patient existed prior to the initiation of treatment for that patient by that provider.

Reductions in provider payment may be limited to the extent that the following apply:

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Non-payment of provider-preventable conditions shall not prevent access to services for Medicaid beneficiaries.

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DATE APPVD <u>AUG 10 2012</u>	
DATE EFF <u>07-01-12</u>	
HCFA 179 <u>AK-12-08</u>	

SUPERSEDES: ~~FN~~ New Page

Citation

42 CFR 447, 434, 438, and 1902(a)(4), 1902(a)(6), and 1903

Payment Adjustment for Provider Preventable Conditions

The Medicaid agency meets the requirements of 42 CFR Part 447, Subpart A, and sections 1902(a)(4), 1902(a)(6), and 1903 with respect to non-payment for provider-preventable conditions.

Other Provider-Preventable Conditions

The State identifies the following Other Provider-Preventable Conditions for non-payment under Section 4.19 (D) of this State plan.

X Wrong surgical or other invasive procedure performed on a patient; surgical or other invasive procedure performed on the wrong body part; surgical or other invasive procedure performed on the wrong patient.

_____ Additional Other Provider-Preventable Conditions identified below:

No payment shall be made for services for the Other Preventable Conditions (OPPCs). OPPC is one category of Provider Preventable Conditions (PPC), as identified by the Centers for Medicare & Medicaid services, and applies broadly to any health care setting where an OPPC may occur. OPPCs include the three Medicare National Coverage Determinations; wrong surgical or other invasive procedure performed on a patient; surgical or other invasive procedure performed on the wrong body part; and surgical or other invasive procedure performed on the wrong patient.

No reduction in payment for a provider-preventable condition will be imposed on a provider when the condition defined as a PPC for a particular patient existed prior to the initiation of treatment for that patient by that provider.

Reductions in provider payment may be limited to the extent that the following apply:

- i. The identified provider-preventable conditions would otherwise result in an increase in payment.
- ii. The State can reasonably isolate for nonpayment the portion of the payment directly related to treatment for, and related to, the provider-preventable conditions.

Non-payment of provider-preventable conditions shall not prevent access to services for Medicaid beneficiaries.

STATE	Arkansas	A
DATE RE	06-27-12	
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HCFA 178	AR-12-08	

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