

EXHIBIT D

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
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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?

State Plan Amendment #2013-004, MedX-1-13

2. What is the subject of the proposed rule?

The Arkansas Title XIX State Plan has been amended to change Medicaid Reimbursement for Inpatient and Outpatient Hospital Services Covered by Medicare Part A and Medicare Part B Programs (Medicare Crossover Claims).

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 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 Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire.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 change reimbursement for inpatient and outpatient hospital services in which primary payment is made by the Medicare Part A and Part B programs pertaining to dually eligible Medicare and Medicaid patients. Specifically, the reimbursement change pertains to secondary or Medicare crossover claims that are sent to Medicaid for payment pertaining to a patient responsibility amount, or coinsurance and/or deductible liability in which Medicare made a payment as a primary payer. Currently, Medicaid pays the deductible and coinsurance portions of Medicare services covered under the Medicare Part A and Part B programs for inpatient and outpatient hospital services.

Effective for all claims and claim adjustments with dates of service on and after July 1, 2013, the Division of Medical Services (DMS) will implement Medicaid reimbursement for Medicare Part A and Part B coinsurance and deductibles related to inpatient and outpatient hospital services to the lesser of the Medicaid allowed amount minus the Medicare payment or the sum of the Medicare coinsurance and deductible. Please note if the Medicaid allowed amount minus the Medicare paid amount is zero or a negative number, Medicaid's reimbursement will be zero.

The proposed rule is necessary to ensure the Division consistently reimburses inpatient and outpatient hospital services as well as reduce unnecessary Medicaid expenditures. The current payment methodology in effect allows providers to be reimbursed up to the Medicare rate for those claims in which Medicare is the primary payer and there is a patient liability amount. The Medicare rate is significantly higher than Medicaid reimbursement rates, which results in reimbursement inequity for Medicaid services. Furthermore, the methodology the Division is proposing to implement is a national best practice and will result in cost savings to the Medicaid program, as well as consistent Medicaid reimbursement for inpatient and outpatient hospital services, regardless if Medicaid is a primary or secondary payer.

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 X No _____.
If yes, please complete the following:

Date: TBA

Time: TBA

Place: TBA

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

April 16, 2013

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

July 1, 2013

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 Lynn Burton

TELEPHONE NO. 682-1857 **FAX NO.** 682-3889 **EMAIL:** lynn.burton@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 State Plan Amendment #2013-004 and MedX 1-13

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No
2. Does this proposed, amended, or repealed rule affect small businesses?
Yes No

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. **(The Medicaid program projects program savings in the following amounts)**

The savings below are shown net of the state and federal portion of the 7.5% contingency fee that is to be paid on total savings. The contingency fee can be claimed at the 50% administrative rate.

First Fiscal Year (2014)

Next Fiscal Year (2015)

(\$ 9,668,408) State
(\$24,557,683) Federal
(\$34,226,091) Total Savings

(\$ 9,668,408) State
(\$24,557,683) Federal
(\$34,226,091) Total Savings

ECONOMIC IMPACT STATEMENT
(As Required under Arkansas Code § 25-15-301)

Department: Arkansas Department of Human Services
Division: Medical Services
Person Completing this Statement: Lynn Burton
Telephone Number: 501-682-1857 **Fax Number:** 501-682-3889
EMAIL: Lynn.Burton@Arkansas.gov

Short Title of this Rule: SPA #2013-004 & MedX-1-13

(1) The type or types of small businesses that will be directly affected by the proposed rule, bear the cost of the proposed rule, or directly benefit from the proposed rule.

Acute Care, Psychiatric and Rehab Hospitals

(2) A description of how small businesses will be adversely affected.

Hospital Providers who are reimbursed by Medicaid for inpatient and outpatient services in which primary payment is made by Medicare Part A and Part B will be adversely affected. Currently, Medicaid pays 100% of the deductible and coinsurance portions of Medicare services covered under the Medicare Part A and Part B programs for inpatient and outpatient hospital services. The proposed rule changes the way Medicaid will pay the deductible and coinsurance amounts for these services. The Division of Medical Services (DMS) will implement Medicaid reimbursement for Medicare Part A and Part B coinsurance and deductibles related to inpatient and outpatient hospital services to the lesser of the Medicaid allowed amount minus the Medicare payment or the sum of the Medicare coinsurance and deductible. If the Medicaid allowed amount minus the Medicare paid amount is zero or a negative number, Medicaid's reimbursement will be zero. Currently, (1) hospitals will be able to claim as a bad debt expense on their annual Medicare cost report any uncollected coinsurance and deductible amounts due to this Medicaid reimbursement change/decrease and (2) 70% of this additional bad debt expense is included as an allowable cost for Medicare cost settlement purposes.

(3) A reasonable determination of the dollar amounts the proposed rule will cost small businesses in terms of fees, administrative penalties, reporting, recordkeeping, equipment, construction labor, professional services, revenue loss, or other costs associated with compliance.

It is projected that the affected Hospitals will receive an estimated \$37,001,179 less annually in Medicaid compensation after this change in reimbursement and \$25,900,825 additional annually in Medicare compensation for a net reduction of \$11,100,354.

(4) A reasonable determination of the dollar amounts of the costs to the agency of implementing the proposed rule, as well as the financial benefit to the agency of implementing the rule.

It is projected that the Department of Human Services will realize a net annual savings of \$34,226,091 (Federal and State Amounts) after this change in reimbursement. The savings to the Department are shown net of a 7.5% contingency fee on total savings.

(5) Whether and to what extent alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses and why such alternatives are not being proposed.

Not Applicable

(6) A comparison of the proposed rule with federal and state counterparts.

Not Applicable

**Summary for State Plan Amendment #2013-004
and MedX 1-13**

This State Plan Amendment proposes a change in reimbursements for inpatient and outpatient hospital services in which primary payment is made by the Medicare Part A and Part B programs pertaining to dually eligible Medicare and Medicaid patients. Specifically, the reimbursement change pertains to secondary or Medicare crossover claims that are sent to Medicaid for payment pertaining to a patient responsibility amount, or coinsurance and/or deductible liability in which Medicare made a payment as a primary payer. Currently, Medicaid pays the deductible and coinsurance portions of Medicare services covered under the Medicare Part A and Part B programs for inpatient and outpatient hospital services.

Effective for all claims and claim adjustments with dates of service on and after July 1, 2013, the Division will implement Medicaid reimbursement for Medicare Part A and Part B coinsurance and deductibles related to inpatient and outpatient hospital services to the lesser of the Medicaid allowed amount minus the Medicare payment or the sum of the Medicare coinsurance and deductible. Please note if the Medicaid allowed amount minus the Medicare paid amount is zero or a negative number, Medicaid's reimbursement will be zero. The estimated annualized savings for FFY2014 is \$25,937,826.

Below are three examples of how the limitation is applied.

Reimbursement Examples for Medicare Part A and Part B Covered Inpatient Hospital Services

Medicare coinsurance and/or deductible crossed over to Medicaid	\$500	\$500	\$500
Medicare allowed amount	\$1,500	\$1,500	\$1,500
Medicare paid amount	\$1,000	\$1,000	\$1,000
Medicaid allowed amount	\$800	\$1,200	\$1,800
Medicaid allowed amount minus the Medicare paid amount	(\$200)	\$200	\$800
Medicaid payment	\$0	\$200	\$500