

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Section I 6-13 and Section V 10-13

DESCRIPTION: Effective August 1, 2014, the Department of Human Services will require that participants comply with Arkansas tax law to qualify as Medicaid provider in accordance with Act 1436 of 2013. The Department of Human Services and the Department of Finance and Administration have worked together to implement rules that will allow for the exchange and verification of current provider data to comply with the act that established this law.

PUBLIC COMMENT: A public hearing was not held on this rule. The public comment period expired May 8, 2014. The Department received no public comments.

Isaac Linam, an attorney with the Bureau of Legislative Research, asked the following question:

QUESTION: In the new language added to Section 141.000, third paragraph, the following sentence appears:

“The provider will have thirty (30) calendar days to resolve this matter or be excluded as an Arkansas Medicaid provider.”

The phrase “resolve this matter” is ambiguous, but it suggests that the provider must rectify its failure to follow the tax laws of Arkansas, in particular those delineated in Acts 2013, No. 1436, now codified as Ark. Code Ann. § 20-77-130, in order to remain an enrolled Medicaid provider. However, the language of Act 1436 states, in § 20-77-130(b)(3), that the provider’s Medicaid enrollment will be terminated for failure to comply with the tax laws of Arkansas “unless the [provider] shows good cause why the [provider’s] enrollment should continue”. Does the phrase “resolve this matter” in the rules meant to encompass the statutory language of “show[ing] good cause”? If yes, why did the Department use such ambiguous language, thereby risking confusion for providers? If no, why does the Department’s rule differ from the statute?

RESPONSE: The Department revised the language of the rule that allows provider enrollment staff to determine “good cause” as outlined in the Act.

The proposed effective date for the final rule is August 1, 2014.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Ark. Code Ann. § 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. Ark. Code Ann. § 20-77-

107 specifically authorizes the Department of Human Services to "establish and maintain an indigent medical care program."

Acts 2013, No. 1436, codified at Ark. Code Ann. § 20-77-130, provides that the Department of Human Services may promulgate rules to implement Act 1436, which requires the Department of Finance and Administration and the Department of Human Services to work together to identify Medicaid providers that have failed to comply with the tax laws of Arkansas. The Act further provides when a provider is identified, the Department of Human Services must notify that provider that the provider's enrollment will be terminated unless the provider "shows good cause why the [provider's] Medicaid enrollment should continue.

**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 Ward Hanna
ADDRESS PO Box 1437, Slot S295, Little Rock, AR 72203-1437
PHONE NO. 320-6201 FAX NO. 682-2480 E-MAIL ward.hanna@dhs.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
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Section I-6-13 and Section V 10-13

2. What is the subject of the proposed rule? Adding information to the Medicaid provider manual, which is required to comply with the Arkansas Tax Law (Act 1436) in order to qualify as Medicaid Provider.

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. Act 1436 of the 89th General Assembly

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 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 notify providers of what is required to comply with the Arkansas Tax Law in order to qualify as a Medicaid provider. The proposed rule is necessary to comply with Act 1436 of the 89th General Assembly.

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.)

May 8, 2014

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

August 1, 2014

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.

None

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. 501-682-1857 **FAX NO.** 501-682-3889 **EMAIL:** lynn.burton@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 Section I-6-13 and Section V 10-13 (Act 1436)

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

- 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

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

Next Fiscal Year

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

Total _____

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 \$ 0 _____

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

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

\$ 0 _____

\$ 0 _____

The purpose of the proposed rule is to notify providers of what is required to comply with the Arkansas Tax Law in order to qualify as a Medicaid Provider. This rule to implement Act 1436 of the 89th General Assembly. There is no fiscal impact for this rule.

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

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

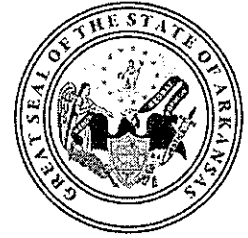
Section 1 6-13 & Section V 10-13

ACT 1436

The DHS Office of Chief Counsel edited the original policy language in order to make it clearer that DHS, Office of Appeals and Hearings would hear any appeals generated by the new policy. In addition, language was added that allows provider enrollment staff to determine “good cause” as outlined in the Act.



Division of Medical Services
Program Development & Quality Assurance



P.O. Box 1437, Slot S295 · Little Rock, AR 72203-1437
501-320-6428 · Fax: 501-682-2480
TDD/TTY: 501-682-6789

TO: Arkansas Medicaid Health Care Providers – All Providers
DATE: August 1, 2014
SUBJECT: Provider Manual Update Transmittal Secl-6-13

<u>REMOVE</u>		<u>INSERT</u>	
Section	Date	Section	Date
—	—	144.000	8-1-14

Explanation of Updates

Section 144.000 is added to include information regarding tax compliance as a condition for continued Medicaid enrollment for Affected Medicaid Providers.

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 the Program Development and Quality Assurance Unit at 501-320-6429.

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.

Andrew Allison, PhD
Director

TOC required144.000 Tax Compliance8-1-14

Under Ark. Code Ann. § 20-77-130, compliance with Arkansas tax laws is a condition of the continued Medicaid enrollment of Affected Medicaid Providers. The law requires that the Arkansas Medicaid Program disenroll noncompliant providers unless the provider can show good cause to remain in the Medicaid program. Good cause includes, without limitation, proof that Medicaid eligible beneficiaries will be unable to access medically necessary care if the Affected Provider is no longer enrolled in the Medicaid Program.

If the Department of Finance and Administration notifies the Medicaid Program that an Affected Provider is noncompliant, the Medicaid Program will notify the Affected Provider that the Affected Provider's Medicaid Provider Agreement will be terminated effective sixty (60) calendar days from the date of the notice unless:

- A. The Department of Finance and Administration notifies the Department of Human Services that:
 1. The Affected Medicaid Provider's tax obligation has been satisfied, otherwise resolved, or is the subject of a pending appeal; or
 2. The Medicaid Provider is not an Affected Provider.
- B. The Department of Human Services determines the Medicaid Provider is not an Affected Provider or there is good cause not to exclude the Affected Medicaid Provider from the Medicaid Program.

To request Department of Finance and Administration notification described in part A (above), Affected Medicaid Providers should contact the Sales and Use Tax Unit. **View or print the Department of Finance and Administration Sales and Use Tax Unit contact information.**

Department of Finance and Administration notification must be delivered to the Medicaid Provider Enrollment Unit. **View or print the Provider Enrollment contact information.**

To establish that a Medicaid Provider is not an Affected Medicaid Provider as defined by Ark. Code Ann. § 20-77-125 or that good cause exists for the Medicaid Program to continue the Affected Medicaid Provider's enrollment as a Medicaid provider, the Affected Medicaid Provider should contact the Medicaid Provider Enrollment Unit. **View or print the Provider Enrollment contact information.**

TOC required144.000 Tax Compliance8-1-14

Under Ark. Code Ann. § 20-77-125, compliance with Arkansas tax laws is a condition of the continued Medicaid enrollment of Affected Medicaid Providers. The law requires that the Arkansas Medicaid Program disenroll noncompliant providers unless the provider can show good cause to remain in the Medicaid program. Good cause includes, without limitation, proof that Medicaid eligible beneficiaries will be unable to access medically necessary care if the Affected Provider is no longer enrolled in the Medicaid Program.

If the Department of Finance and Administration notifies the Medicaid Program that an Affected Provider is noncompliant, the Medicaid Program will notify the Affected Provider that the Affected Provider's Medicaid Provider Agreement will be terminated effective sixty (60) calendar days from the date of the notice unless:

- A. The Department of Finance and Administration notifies the Department of Human Services that:
1. The Affected Medicaid Provider's tax obligation has been satisfied, otherwise resolved, or is the subject of a pending appeal; or
 2. The Medicaid Provider is not an Affected Provider.
- B. The Department of Human Services determines the Medicaid Provider is not an Affected Provider or there is good cause not to exclude the Affected Medicaid Provider from the Medicaid Program.

To request Department of Finance and Administration notification described in part A (above), Affected Medicaid Providers should contact the Sales and Use Tax Unit. **View or print the Department of Finance and Administration Sales and Use Tax Unit contact information.**

Department of Finance and Administration notification must be delivered to the Medicaid Provider Enrollment Unit. **View or print the Provider Enrollment contact information.**

To establish that a Medicaid Provider is not an Affected Medicaid Provider as defined by Ark. Code Ann. § 20-77-125 or that good cause exists for the Medicaid Program to continue the Affected Medicaid Provider's enrollment as a Medicaid provider, the Affected Medicaid Provider should contact the Medicaid Provider Enrollment Unit. **View or print the Provider Enrollment contact information.**