

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Registered Sex Offenders and the AR Medicaid Program – Section 1 1-14 and Section V 3-14

DESCRIPTION: Effective August 1, 2014, Arkansas will implement new rules that will prohibit registered sex offenders from participating in the Arkansas Medicaid program. Staff at the Department of Human Services has worked closely with staff at the Arkansas Crime Information Center (ACIC) to ensure that appropriate personnel have been screened and have access to records in order to comply with this rule.

PUBLIC COMMENT: A public hearing was not held on this rule. The public comment period expired May 8, 2014. The Department received the following public comment:

Johnny Miller

COMMENT: Mr. Miller requested additional information on Act 1504. **RESPONSE:** Act 1504 was passed in the last session of the Arkansas Legislature and prohibits registered sex offenders from participating in the Arkansas Medicaid program. Since this legislation pertains to the Arkansas Medicaid program, state staff had to update the State Medicaid policy. The Department sent a copy of Act 1504 to Mr. Miller for his review.

COMMENT: Mr. Miller requested additional information on form DMS 675.

RESPONSE: Form 675 is being updated to be in compliance with federal requirement on enhanced address collection requirements for providers enrolling in the Arkansas Medicaid program. The Department sent a copy of form 675 to Mr. Miller for his review.

COMMENT: Mr. Miller requested additional information on form DMS 689.

RESPONSE: This form is being updated to be compliant with new federal disclosure requirements for providers enrolling in the Arkansas Medicaid program. The Department sent a copy of form 689 to Mr. Miller for his review.

COMMENT: Mr. Miller requested additional information on Act 1436. **RESPONSE:** Act 1436 was passed in the last session of the Arkansas Legislature and requires that Arkansas Medicaid providers be compliant with Arkansas tax law in order to be Arkansas Medicaid providers. The Department sent a copy of Act 1436 to Mr. Miller for his review.

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

QUESTION: The new language added Section 141.000 states that providers that are registered as sex offenders “will be automatically and permanently excluded from providing goods and services under the Arkansas Medicaid program”. Is it the Department’s interpretation that Acts 2013, No. 1504, codified at Ark. Code Ann. § 12-12-927, requires a provider to be “permanently” excluded from providing Medicaid services if the provider is ordered to register or is listed on a sex offender registry?

RESPONSE: The Department revised the language in the rule to remove the permanent exclusion language that was not specifically cited in Act 1504. In addition, state staff felt that the new language would be better suited to be placed in section 142.000, "Conditions of Participation". Additional language has been stricken to remove "examples" of potential exclusions that staff feels is too narrow and are now adequately addressed by federal law and state policy.

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 to "establish and maintain an indigent medical care program."

Ark. Code Ann. § 25-10-129 directs the Department to promulgate rules to conform to federal law that affects "programs administered or funded by or through the department" as necessary to receive available federal funds.

Acts 2013, No. 1504, codified at § 12-12-927, provides that a person ordered to register or who is listed in a sex offender registry is prohibited from providing goods or services under Arkansas Medicaid.

**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
 PHONE NO. 320-6201 FAX NO. 501-682-2480 E-MAIL ward.hanna@dhs.arkansas.gov
 NAME OF PRESENTER AT COMMITTEE MEETING Marilyn Strickland
 PRESENTER E-MAIL marilyn.strickland@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:

**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? Registered sex offenders and the Arkansas Medicaid program – Section 1 1-14 and Section V 3-14.

2. What is the subject of the proposed rule? To prohibit registered sex offenders from providing goods or services through the Arkansas Medicaid program.

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 1504 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? To prohibit registered sex offenders from participating in the Arkansas Medicaid program. To comply with Act 1504 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.

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 Registered sex offenders and the Arkansas Medicaid program – Section 1 1-14 and Section V 3-14.

- 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

Next Fiscal Year

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

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 _____

This rule implements Act 1504 of the 89th General Assembly that prohibits registered sex offenders from providing good or services through the Arkansas Medicaid program. 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.

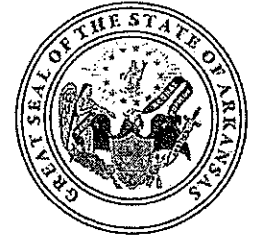
**Summary of Changes
For Section 1-14 and Section V 3-14
Act 1504**

Original draft policy language was edited to remove language that was not specifically cited in ACT 1504. In addition, state staff felt that the new language would be better suited to be placed in section 142.000, "Conditions of Participation". Additional language has been stricken to remove "examples" of potential exclusions that staff feel are too narrow and are now adequately addressed by federal law and state policy.



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
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TO: Arkansas Medicaid Health Care Providers – All Providers
DATE: August 1, 2014
SUBJECT: Provider Manual Update Transmittal Secl-1-14

<u>REMOVE</u>		<u>INSERT</u>	
Section	Date	Section	Date
142.000	9-15-09	142.000	8-1-14
142.500	6-1-10	142.500	8-1-14

Explanation of Updates

Section 142.000 is updated to include information regarding the exclusion and prohibition of a registered sex offender from the Arkansas Medicaid Program according to Arkansas Code Annotated 12-12-925.

Section 142.500 is updated to add the word prohibition to the current text and to remove the list of examples of unreimbursed services for excluded and prohibited 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 not required***142.000 Conditions of Participation**9-15-098-1-
14

Providers enrolled in the Arkansas Medicaid Program must agree to and meet the conditions of participation contained in sections within 140.000.

- A. Failure to comply with the requirements contained within Section 140.000 may result in termination from the Medicaid Program and/or recovery of money paid for services by the Division of Medical Services.
- B. Nothing in the conditions of participation is a limitation on the ability of DMS to take any action that is authorized by federal or state laws, regulations or rules or to refrain from taking any action that is not mandated by federal or state laws, regulations or rules.
- C. Arkansas Code Annotated 12-12-925 prohibits the provision of goods and services under the Arkansas Medicaid program by persons that are required to register as a sex offender, listed in the Federal Bureau of Investigation's National Sex Offender Registry or listed in the United States Department of Justice Dru Sjodin National Sex Offender Public Website. Persons to which this law is applicable will be denied enrollment as a Medicaid provider or terminated if a current Medicaid provider. As this law applies regardless of enrollment as a Medicaid provider, please see also Section 142.500 E for additional information.

142.500 Conditions Related to Fraud and Abuse6-1-108-1-
14

- A. Any provider who engages in fraudulent billing practices will be immediately suspended from participation until these practices are evaluated and resolved. Also, any provider discovered to be involved in fraudulent billing practices or found to be accepting or soliciting unearned rebates, refunds or other unearned considerations, whether in the form of money or otherwise, will be referred to the appropriate legal agency for prosecution under applicable federal or state laws.
- B. Any provider who engages in abuse or over-utilization of services provided to Medicaid beneficiaries, when such abuse or over-utilization has been determined by DMS professional staff, medical consultants, contractors or designees, may be terminated from participation in the Medicaid Program, required to repay monies paid by the Medicaid Program for such services or have other appropriate action taken upon recommendation of the above-referenced parties.
- C. Except where participation has been terminated, each provider who has been sanctioned may be required to participate in a provider education program as a condition of continued participation. Provider education programs will include, at a minimum, the following:
 - 1. Instruction on admissions and authorization for payments
 - 2. Instruction on the use and format of required program forms
 - 3. Instruction on key provisions of the Medicaid Program
 - 4. Instruction on reimbursement rates
 - 5. Instruction on how to inquire about program requirements, payment or billing problems and the overall operation of the program
- D. Providers are obligated to screen all employees and contractors to determine if any of them are excluded from participation in Federal health care programs.
 - 1. Providers can search the LEIE website maintained by the United States Health and Human Services Office of Inspector General which contains the names of any excluded individual or entity. (<http://www.oig.hhs.gov/fraud/exclusions.asp>). The

United States General Services Administration maintains a list of excluded providers at <https://www.epls.gov/>. Providers should search the website monthly to capture exclusions and reinstatements that have occurred since the last search.

2. Providers can find a Department of Human Services excluded list on the Arkansas Department of Human Services website at: <https://ardhs.sharepoint.com/ExcludedProvidersList/Excluded%20Provider%20List.html>. This list contains the names of any excluded individuals or entities. The Arkansas Department of Finance and Administration, Office of State Procurement, maintains a list of suspended or debarred vendors at: <http://www.dfa.arkansas.gov/offices/procurement/guidelines/Pages/suspendedDebarredVendors.aspx>
3. If providers discover any exclusion information other than what is provided on the websites, providers should report that information to Provider Enrollment.
4. Providers should check the websites monthly to capture exclusions and reinstatements which may have occurred since the last search.

E. No Medicaid payments can be made for any times or services directed or prescribed by an excluded or prohibited provider; or any other authorized person, when the individual entity furnishing the services knew or should have known of the exclusion or prohibition. This prohibition applies even when the Medicaid payment itself is made to another provider, practitioner or supplier that is not excluded or prohibited. (See 42 CFR Section 1001.1901(b)). The following listing sets forth examples of types of services that are reimbursed by Medicaid which, when provided by excluded parties, are not reimbursable:

1. ~~Nurses, technicians or other excluded individuals who work for a hospital, nursing home, home health agency or physician practice, where such services are related to administrative duties, preparation of surgical trays or review of treatment plans if such services are reimbursed directly or indirectly by a Medicaid program, even if the individuals do not furnish direct medical care to Medicaid beneficiaries.~~
2. ~~Services performed by excluded pharmacists or other excluded individuals who input prescription information for pharmacy billing or who are involved in any way in filling prescriptions for drugs reimbursed directly or indirectly by a Medicaid program.~~
3. ~~Services performed by excluded ambulance drivers, dispatchers or other employee's patients or nursing home residents.~~
4. ~~Services performed for program beneficiaries by excluded individuals who sell, deliver or refill orders for medical devices or equipment being reimbursed by a Medicaid program.~~
5. ~~Services performed by excluded social workers who are employed by health care entities to provide services to Medicaid beneficiaries and whose services are reimbursed, directly or indirectly by a Medicaid program.~~
6. ~~Services performed by an excluded administrator, billing agent, accountant, claims processor or utilization reviewer that are related to and reimbursed, directly or indirectly by a Medicaid program.~~
7. ~~Items or services provided to a Medicaid beneficiary by an excluded individual who works for an entity that has a contractual agreement with, and is paid by, a Medicaid program.~~
8. ~~Items or equipment sold by an excluded manufacturer or supplier, used in the care or treatment of beneficiaries and reimbursed, directly or indirectly by a Medicaid program.~~

F. Civil monetary penalties may be imposed against Medicaid providers who employ or enter into contracts with excluded individuals or entities to provide items or services to Medicaid beneficiaries. (See 1128A(a)(6) of the Act and 42 CFR Section 1003.102(a)(2).)