

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: State Plan Amendment #2013-010 & Ambulatory Surgical Center Update #1-14

DESCRIPTION: Effective July 1, 2014, Arkansas Medicaid Ambulatory Surgical Center (ASC) reimbursement rates are revised in accordance with Act 1352 of 2013. These new reimbursement rates are based on 80% of the current Medicare reimbursement amounts for the like services. In addition to the above reimbursement, implantable devices which are not bundled as part of the appropriate procedure code rate under Medicare will also be reimbursed at a pass-through cost if the combined cost of the appropriate implantable devices is greater than 50% of the appropriate reimbursement Medicaid Ambulatory Surgery Center procedure code.

PUBLIC COMMENT: A public hearing was not held on this rule. The public comment period expired April 22, 2014. The Department received no public comments.

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

CONTROVERSY: This is expected to be controversial. Act 1352 established new reimbursement methodology for procedures performed in Ambulatory Surgical Centers. Surgical procedures performed in other settings such as the outpatient hospital setting are not changed.

FINANCIAL IMPACT: The additional cost to implement the rule is \$2,315,000 for the current fiscal year (\$693,000 in general revenue and \$1,622,000 in federal funds) and \$2,315,000 for the next fiscal year (\$701,000 in general revenue and \$1,614,000 in federal funds). The new reimbursement rates are based on 80% of the current Medicare Reimbursement amounts for like services. The current reimbursement rates are based on 105% of the 1985 Medicare reimbursement rates and have not been updated since July 1, 1992.

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.

This rule implements Acts 2013, No. 1352, codified as Ark. Code Ann. § 20-77-129, which set the reimbursement rates for certain procedures performed at ambulatory surgery centers.

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 Glenda Higgs
ADDRESS P.O. Box 1437, Slot S295, Little Rock, AR 72203-1437
PHONE NO. 501-320-6425 **FAX NO.** (501)682-2480 **E-MAIL** glenda.higgs@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

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1. What is the short title of this rule? State Plan Amendment #2013-010 & Ambulatory Surgical Center Update # 1-14
 2. What is the subject of the proposed rule? Ambulatory Surgical Centers revised reimbursement methodology in accordances with Act 1352
 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 1352 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 decrease the cost of Arkansas Medicaid while increasing access to care for Arkansas beneficiaries.

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.)

April 22, 2014

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

Adopted by Federal Regulation July 1, 2013....APA Effective Date July 1, 2014

12. Do you expect this rule to be controversial? Yes No

Act 1352 established new reimbursement methodology for procedures performed in Ambulatory Surgical Centers. Surgical procedures performed in other settings such as the outpatient hospital setting are not changed.

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)682-2480 **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 State Plan Amendment #2013-010 and Ambulatory Surgical Center Update #1-14

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

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	\$ 693,000
Federal Funds	\$1,622,000
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$2,315,000

General Revenue	\$ 701,000
Federal Funds	\$1,614,000
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$2,315,000

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

\$ \$ 693,000

\$ \$ 701,000

These new reimbursement rates are based on 80% of the current Medicare Reimbursement amounts for like services. Our current reimbursement rates are based on 105% of the 1985 Medicare reimbursement rates and have not been updated since July 1, 1992.

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.

**Attachment to APA Questionnaire
State Plan Amendment #2013-010**

7. (1) a statement of the rule's basis and purpose;

This rule's basis and purpose is to lower the cost of care and increase access to care for Medicaid patients as required by Act 1352 of the 89th General Assembly.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

Implementation of the rule is required to be in compliance with Arkansas Act 1352 of the 89th General Assembly.

(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 cost;

The rule is necessary to comply with Act 1352 of the 89th General Assembly.

(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;

There are no alternatives to 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;

Not Applicable

(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

Medicaid patients did not have access to services because reimbursement rates were extremely low and have not been updated in over twenty years. This rule is required by Act 1352 of the 89th General Assembly.

(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 cost; and

(c) the rule can be amended or repealed to reduce cost while continuing to achieve the statutory objectives.

The agency monitors State and Federal rules and policies for opportunities to reduce and control cost.

Summary for Ambulatory Surgical Center change in Reimbursement Methodology

Effective July 1, 2013 Arkansas Medicaid Ambulatory Surgical Center (ASC) reimbursement rates are revised in accordance with Act 1352 of the 2013 General Assembly. These new reimbursement rates are based on 80% of the current Medicare reimbursement amounts for the like services. In addition to the above reimbursement, implantable devices which are not bundled as part of the appropriate procedure code rate under Medicare will also be reimbursed at a pass-through cost; if the combine cost of the appropriate implantable devices is greater than 50% of the appropriate reimbursement Medicaid Ambulatory Surgery Center procedure code.