

# EXHIBIT D

## DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS

**SUBJECT:** Medical Services Policy Manual Sections G-140 and G-141

**DESCRIPTION:** This rule amends the DHS Medical Services Policy Manual to be consistent with federal law requiring a reasonable opportunity enrollment period for verification of immigration status for an otherwise eligible individual.

G-140 – Changed 10-day notice to 90-day notice for an alien to verify immigration status.

G-141 – Added a new section of policy to describe the 90-day reasonable opportunity period for an alien to verify immigration status if that status cannot be verified through FDSH, SAVES, or if the individual does not have immigration documentation. The individual will receive Medicaid coverage during this reasonable opportunity period. If immigration status is not verified during the reasonable opportunity period, Medicaid coverage will end on the 90<sup>th</sup> day.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on September 1, 2016. The department received no comments.

The proposed effective date is February 1, 2017.

**CONTROVERSY:** DHS expects this rule to be controversial because it relates to both Medicaid and verification of immigration status.

**FINANCIAL IMPACT:** The cost to implement the rule is \$4,010,610 for the current fiscal year (\$1,212,407 in general revenue and \$2,798,203 in federal funds) and \$9,759,150 for the next fiscal year (\$2,958,974 in general revenue and \$6,800,176 in federal funds).

Since the increased cost or obligation is at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of the entities combined, the agency provided the following additional detail:

(1) a statement of the rule's basis and purpose; **The purpose of this rule change is to amend the DHS Medical Services Policy Manual to be consistent with federal law requiring a reasonable opportunity enrollment period for verification of immigration status for an otherwise eligible individual.**

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; **To become compliant with federal regulations and or statute 42 U.S.C. 1320b-7(d)(4)(A).**

## EXHIBIT D

(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; **Federal mandate/regulation**

(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; **No alternatives mandated by federal regulation.**

(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; **N/A**

(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 **N/A**

(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. **Agency will continue to monitor federal regulations and if changes occur then will comply as mandated.**

**LEGAL AUTHORIZATION:** The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). In addition, A.C.A. § 25-10-129 (b) states that the Department of Human Services has the authority to promulgate rules, as necessary to conform to federal statutes, rules and regulations that affect current and future programs administered or funded by or through the department, as necessary to receive any current or future federal funds available to the department.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Department of Human Services  
DIVISION County Operations  
DIVISION DIRECTOR Mary Franklin  
CONTACT PERSON Larry Crutchfield  
ADDRESS PO Box 1437, Slot S332, Little Rock AR 72203  
PHONE NO. 501-682-8257 FAX NO. 501-682-1597 E-MAIL larry.crutchfield@dhs.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Dave Mills  
PRESENTER E-MAIL dave.mills@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, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Medical Services Policy Manual Sections G-140 and G-141

The proposed rule change clarifies the DHS Medical Services Policy Manual to bring it into compliance with federal law by explicitly allowing a reasonable opportunity enrollment period for verification of immigration status for an otherwise eligible individual.

2. What is the subject of the proposed rule? \_\_\_\_\_

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. 42 U.S.C. 1320b-7(d)(4)(A)

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 Code 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary?

The purpose of this rule change is to amend the DHS Medical Services Policy Manual to be consistent with federal law requiring a reasonable opportunity enrollment period for verification of immigration status for an otherwise eligible individual.

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).

<http://humanservices.arkansas.gov/Pages/LegalNotices.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.)

September 1, 2016

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

February 1, 2017

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

If yes, please explain. DHS expects this rule to be controversial because it relates to both Medicaid and verification of immigration status.

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.

Medicaid associations, interested providers and advocacy organizations. Their positions for or against are not known at this time.

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**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT**     Department of Human Services  
**DIVISION**        Division of County Operations  
**PERSON COMPLETING THIS STATEMENT** Brian Jones  
**TELEPHONE NO.** 501-537-2064 **FAX NO.** 501-682-3889 **EMAIL:** brian.jones@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**     Medical Services Policy Manual Sections G-140 and G-141

- 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?

<b><u>Current Fiscal Year</u></b>		<b><u>Next Fiscal Year</u></b>	
General Revenue	<u>\$1,212,407</u>	General Revenue	<u>\$2,958,974</u>
Federal Funds	<u>\$2,798,203</u>	Federal Funds	<u>\$6,800,176</u>
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____

Total \$4,010,610

Total \$9,759,150

(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 \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total \_\_\_\_\_

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**

\$ \$1,212,407

\$ 2,958,974

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; **The purpose of this rule change is to amend the DHS Medical Services Policy Manual to be consistent with federal law requiring a reasonable opportunity enrollment period for verification of immigration status for an otherwise eligible individual.**

- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; **To become compliant with federal regulations and or statute 42 U.S.C. 1320b-7(d)(4)(A).**
- (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; **Federal mandate/regulation**
- (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; **No alternatives mandated by federal regulation.**
- (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; **N/A**
- (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 **N/A**
- (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. **Agency will continue to monitor federal regulations and if changes occur then will comply as mandated.**



Summary of Changes  
Section G-140 & 141  
Alien Status

G-140 - Changed 10-day notice to 90-day notice for an alien to verify immigration status.

G-141 – A new section of policy to describe the 90 day reasonable opportunity period for an alien to verify immigration status if that status cannot be verified through FDSH, SAVES or if the individual does not have immigration documentation. The individual will receive Medicaid coverage during this reasonable opportunity period. If immigration status is not verified during the reasonable opportunity period, Medicaid coverage will end on the 90<sup>th</sup> day.

## MEDICAL SERVICES POLICY MANUAL, SECTION G MARKUP

### G-100 Verification Standards

#### **G-133 Acceptable Documents for Proof of Citizenship**

physically incapacitated), and lacks someone who can act on their behalf, the caseworker should assist the recipient with obtaining the documentation of U.S. citizenship.

#### **G-133 Acceptable Documents for Proof of Citizenship**

MS Manual 07/06/15

When citizenship cannot be verified via the electronic sources, the applicant will be notified to provide verification. If the documents provided by the applicant are in the secondary or lower level of verification used to verify citizenship, identity must be verified also. Refer to Appendix C for acceptable documents for proof of citizenship and identity.

#### **G-134 Subsequent Citizenship Verification**

MS Manual 01/01/14

Once an individual's citizenship is documented and recorded, any subsequent changes in eligibility should not require repeating the documentation of citizenship. If an individual's Medicaid case is closed and he later reapplies, the worker will not need to request additional verification as long as proper documentation has been retained in the case file or narrated properly in the electronic record. However, if one of the two exceptions below occurs, the individual's citizenship must be verified again.

1. If later evidence raises a question of a person's citizenship or identity; or,
2. If there is a gap of more than 5 years since the Medicaid case was closed and the verification had been previously destroyed.

#### **G-140 Alien Status Verification Requirements**

MS Manual ~~021101/0130/17615~~

For the Families and Individuals group, verification will first occur through the FDSH. For other groups, alien status will be verified through SAVE (Systematic Alien Verification for Entitlement). If verification cannot be completed through these processes, refer to MS Appendix C.

In order to obtain verification from SAVE, the alien must provide documentation of alien status. In addition to providing alien documentation, all aliens must provide verification of their identity. If the documentation provided does not contain a photograph, another form of identification must be obtained.

# MEDICAL SERVICES POLICY MANUAL, SECTION G MARKUP

## G-100 Verification Standards

### G-140 Alien Status Verification Requirements

If the alien does not have any documentation, refer him/her to the Immigration and Naturalization Service (INS) to obtain proof of status. Provide the individual with a 190-day written notice requesting the documentation and extend the ~~10~~-day notice if additional time is needed. The INS National Customer Service Center phone number is 1-800-375-5283. The customer service center will answer all questions and schedule appointments for the INS field offices. The INS field office addresses and the Arkansas counties serviced by each office are listed below:

The Fort Smith field office is located at 4977 Old Greenwood Road, Fort Smith, AR 72903. This office services the following counties in Arkansas:

Ashley	Baxter	Benton	Boone
Bradley	Calhoun	Carroll	Clark
Columbia	Crawford	Franklin	Garland
Hempstead	Hot Spring	Howard	Johnson
Lafayette	Little River	Logan	Madison
Marion	Miller	Montgomery	Nevada
Newton	Ouachita	Pike	Polk
Scott	Searcy	Sebastian	Sevier
Union	Washington		

The Memphis Field Office is located at 842 Virginia Run Cove, Memphis, TN 38122. This office services the following counties in Arkansas:

Arkansas	Chicot	Clay	Cleburne
Cleveland	Conway	Craighead	Crittenden
Cross	Dallas	Desha	Drew
Faulkner	Fulton	Grant	Greene
Independence	Izard	Jackson	Jefferson
Lawrence	Lee	Lincoln	Lonoke
Mississippi	Monroe	Perry	Phillips
Poinsett	Pope	Prairie	Pulaski
Randolph	Saint Francis	Saline	Sharp
Stone	Van Buren	White	Woodruff
Yell			

If all other eligibility requirements are met, eligibility for Medicaid will begin on the same date the 190-day notice is sent.

# MEDICAL SERVICES POLICY MANUAL, SECTION G MARKUP

## G-100 Verification Standards

### **G-140 Alien Status Verification Requirements**

If the individual does not provide necessary documentation of alien status for the person requesting Medicaid coverage, the individual will be eligible for emergency services only following the 90-day reasonable opportunity period.

**NOTE:** INS does not require children under age 14 to have documentation of their alien status. Therefore, if the adult who is applying for benefits has a documented legal alien status and attests to the child's legal status, the adult's statement is sufficient proof of the child's alien status.

INS requires children aged 14 through 17 to have documentation, but they are not required to carry it on their persons. The Immigration and Nationality Act (INA) requires all aliens 18 or older to carry INS documentation on their persons at all times.

### **G-141 Reasonable Opportunity for Verifying Alien Status**

MS Manual 0211/01/176

When alien status cannot be verified through an electronic source, Systematic Alien Verification for Entitlement (SAVE) or initial documentation provided by the individual, the agency will provide the applicant a "90-day reasonable opportunity period" to provide the necessary documents to verify alien status. (Refer to Appendix C).

A notice will be sent to the applicant advising that verification of alien status must be provided within 90 days. The due date must be included on the notice. The reasonable opportunity begins on the date the notice is received by the individual. The date the notice is received is considered to be five (5) days from the date on the notice (day one is the date of the notice).

The Medicaid begin date will be the first day of the month of application if all other eligibility requirements are met.

**NOTE:** If the individual clearly shows that the notice was not received on the 5<sup>th</sup> day, the 90 days will start from the date the notice was actually received.

If the needed verification for an individual is not provided within the reasonable opportunity period, then benefits for that individual will be terminated. Timely and adequate notice must be provided. Other eligible members for whom alien status is verified will remain eligible.

When the recipient tries in good faith to present satisfactory documentation, but is unable to obtain the necessary documents and needs assistance (e.g. homeless, mentally impaired, or

## MEDICAL SERVICES POLICY MANUAL, SECTION G MARKUP

### G-100 Verification Standards



physically incapacitated), and lacks someone who can act on their behalf, the caseworker should assist the recipient with obtaining the documentation of alien status.

### G-150 Income Verification

MS Manual 11/18/15

Income verification for MAGI groups will occur in the following manner:

If a MAGI household attests to income over the MAGI income limit the system will accept the self-attestation and find the household ineligible due to income. The household will receive the appropriate notice and be referred to the Federally Facilitated Health Insurance Marketplace (FFM).

If the MAGI household has income (attested or previously verified) under the MAGI limit, the system will determine if a member of the MAGI household is on an open SNAP or TEA benefit case. If one MAGI household member is found on an open SNAP or TEA Cash case, the MAGI household income is considered verified.

If a member in the MAGI household is not found on an open SNAP or TEA Cash case, the system will continue the reasonable compatibility process and check available electronic data sources.

If the household attests to income under the MAGI limit (to include zero income) and the electronic data sources return no record of income or income less than the MAGI limit, the system will consider the MAGI household to meet reasonable compatibility and no further income verification is needed.

If the electronic data sources return an amount over the MAGI limit, the system will trigger a pending verification notice to the household for income verification.

For all other eligibility groups, sources for verification of income are ARFinds, verified information from the SNAP record and documentation provided by the individual. If the income reported by the applicant exceeds the income limit, it is not necessary to check the verification sources. The applicant's statement of income may be accepted without further verification.

