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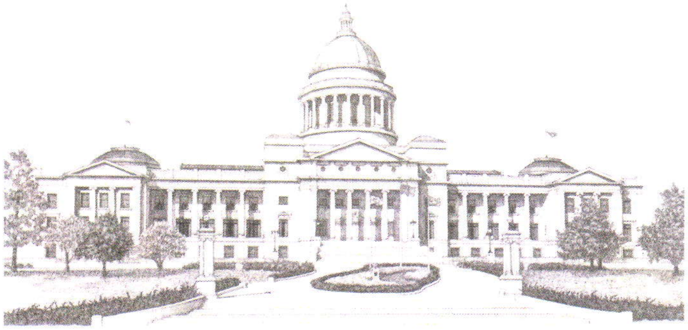

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State
Mark Martin
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Little Rock, Arkansas 72201-1094
(501) 682-5070
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For Office Use Only:

Effective Date ____________ Code Number ____________

Name of Agency: Department of Human Services

Department: County Operations

Contact: Larry Crutchfield E-mail: larry.crutchfield@dhs.arkansas.gov Phone: 501-682-8257

Statutory Authority for Promulgating Rules: Arkansas Code Annotated 20-76-201

Rule Title: Medical Services Policy Manual Sections E-600 through E-670 and Appendix R

Intended Effective Date
(Check One)

- ☐ Emergency (ACA 25-15-204)
- ☑ 10 Days After Filing (ACA 25-15-204)
- ☐ Other ____________ **(Must be more than 10 days after filing date.)**

	Date
Legal Notice Published	07/13/2017
Final Date for Public Comment	08/11/2017
Reviewed by Legislative Council	
Adopted by State Agency	10/01/2017

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person	E-mail Address	Date
Becky Murphy	lbecky.murphy@dhs.arkansas.gov	

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Mary Franklin
Signature

(501) 682-8377 — **Phone Number**
mary.franklin@dhs.arkansas.gov — **E-mail Address**

Director
Title

9/18/17
Date

E-600 Achieving a Better Life Experience (ABLE) Program

MS Manual 10/01/17 **POMS SI 01130.740**

An Achieving a Better Life Experience (ABLE) account is a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses of the account's designated beneficiary. The designated beneficiary must be blind or disabled by a condition that began before the individual's 26th birthday.

An ABLE program can be established and maintained by a State or a State agency directly or by the State contracting with a private company. An eligible individual can open an ABLE account through the ABLE program in any State. The Arkansas ABLE program is established and maintained through a collaboration of the Department of Human Services, Arkansas Rehabilitative Services and the State Treasurer.

An eligible individual can be the designated beneficiary of only one ABLE account, which must be administered by a qualified ABLE program. A person with signature authority can establish and control an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. The person with signature authority must be the designated beneficiary's parent, legal guardian, or agent acting under power of attorney. The designated beneficiary is considered to be the owner of the ABLE account regardless of whether someone else has signature authority over it.

Upon the death of the designated beneficiary, funds remaining in the ABLE account, after payment of any outstanding, qualified disability expenses, will be used to reimburse the State(s) for Medicaid benefits that the designated beneficiary received.

E-610 ABLE Account Application Process

MS Manual 10/01/17

The Office of the Arkansas State Treasurer will administer the ABLE program for Arkansas residents and non-residents. The Office will:

- determine eligibility for ABLE accounts;
- process enrollments;
- process account maintenance transactions;
- maintain account payment and distribution history; and
- provide eligibility reports for Medicaid renewals.

Questions regarding the establishment of an ABLE account will be directed to the Office of the Arkansas State Treasurer, 1401 West Capitol Ave., Suite 275, Little Rock, AR 72201.

E-620 Eligibility Factors

MS Manual 10/01/17

The designated beneficiary is the eligible individual who established and owns the ABLE account. To be an eligible individual, the individual must be:

a. eligible for Supplemental Security Income (SSI) based on either disability or blindness that began before age 26; or

b. entitled to disability insurance benefits, childhood disability benefits, or disabled widow's or widower's benefits based on a Social Security determination of either disability or blindness that began before age 26; or

c. someone who has certified, or whose parent or guardian has certified, that he or she:

- has a medically determinable physical or mental impairment meeting certain statutorily specified criteria; or,
- is blind; and,
- the disability or blindness occurred before age 26.

Those applicants applying for benefits under option C above must provide with their ABLE application packet a copy of a statement signed by a physician that includes the individual's diagnosis relating to the individual's relevant physical or mental impairment/s.

E-630 Contributions

MS Manual 10/01/17

A contribution is the deposit of cash funds into an ABLE account. Any person can contribute to an ABLE account. A contributing "person" may be an individual, trust, estate, partnership, association, company, or corporation. However, the Internal Revenue Service (IRS) limits the total annual contributions that any ABLE account can receive from all sources to the amount of the per-donee gift-tax exclusion in effect for a given calendar year. The amount of the gift-tax exclusion can be found in IRS Publication 559. For 2017, the annual exclusion limit is $14,000 (Appendix R).

E-640 Withdrawal from ABLE Account

MS Manual 10/01/17

A distribution is the withdrawal or issuance of funds from an ABLE account. The designated beneficiary or the person with signature authority determines when he or she makes distributions. A distribution from an ABLE account is not income but is considered as a conversion of a resource from one form to another. Distributions are only to or for the benefit of the designated beneficiary.

Money withdrawn from an ABLE account will not be countable income for the designated beneficiary, regardless of whether the money received is for non-housing Qualified Disability Expenses (QDE), housing QDE, or non-qualified expenses.

E-650 Allowable Expenses

MS Manual 10/01/17

Qualified disability expenses (QDE) are expenses related to the designated beneficiary's disability or blindness and are for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to the following types of expenses:

1. Education
2. Housing which includes:
    a. mortgage (including property insurance required by the mortgage holder)
    b. real property taxes
    c. rent
    d. heating fuel
    e. gas
    f. electricity
    g. water
    h. sewer
    i. garbage removal
3. Transportation
4. Employment training and support
5. Assistive technology and personal support services
6. Health
7. Prevention and wellness
8. Financial management and administrative services

9. Legal fees
10. Expenses for oversight and monitoring of the ABLE account
11. Funeral and burial expenses
12. Basic living expenses.

E-660 Income Exclusions

MS Manual 10/01/17

Exclude all contributions to an ABLE account from the countable income of the designated beneficiary. (Re. MS E-630) This includes rollovers from another family member's ABLE account.

NOTE: A rollover is the distribution of all or some of the funds from one ABLE account to the ABLE account of a member of the designated beneficiary's family. For purposes of this type of rollover, a member of the designated beneficiary's family means siblings, step-siblings and half siblings.

However, do not deduct contributions from the countable income of the individual who makes the contribution.

EXAMPLE: Contribution Kristie Mae has $100 automatically deducted from her paycheck and deposited into her daughter Sharon's ABLE account. The $100 will not be considered income for Sharon but will still be included as a portion of Kristie Mae's income.

EXAMPLE: Rollover Linda is determined to no longer be disabled so she transfers all of the funds in her ABLE account to her step-brother Scott's ABLE account. These funds will not be considered as income to Scott.

The funds in an ABLE account can accrue interest, earn dividends, and otherwise appreciate in value. Earnings increase the account's balance. Interest accrued or dividends earned on the money in an ABLE account are excluded from the income of the designated beneficiary.

NOTE: Long Term Services and Supports transfer of resources rules apply to contributions made to an ABLE account (See MS policy section H-300-325).

E-670 Resource Exclusions

MS Manual 10/01/17

The amount of funds in an ABLE account that exceeds $100,000 will be counted as a resource. Only $100,000 of the balance of funds in an ABLE account can be excluded from the resources of the designated beneficiary.

Any distribution for a non-housing related Qualified Disability Expense (QDE) that has been retained beyond the month it was received will be excluded from the designated beneficiary's countable resources if:

- The designated beneficiary maintains, makes contributions to, or receives distributions from the ABLE account;
- The distribution is unspent;
- The distribution is identifiable (Excluded funds commingled with non-excluded funds must be identifiable); and
- The individual still intends to use the distribution for a non-housing related QDE.

EXAMPLE: Excluded Distribution Eric takes a distribution of $500 from his ABLE account in February 2017 to pay for a health related QDE. His health related expense is not due until May, so Eric deposits the distribution into his checking account in February. The distribution is not income in February. Eric maintains his ABLE account at all relevant times and the $500 distribution remains both unspent and identifiable until Eric pays his health related expense in May. Therefore, the $500 distribution will be excluded from Eric's countable resources in March, April and May.

NOTE: A distribution for a housing-related QDE or for an expense that is not a QDE will be counted as a resource if the beneficiary retains the distribution into the month following the month of receipt. Distributions for housing-related QDEs must be spent in the month of receipt. If the beneficiary spends the distribution within the month of receipt, there is no effect on eligibility.

If distribution for a non-housing related QDE that was retained into the following month is actually used for a non-qualified purpose or a housing related QDE, the amount of funds used for the non-qualified purpose or a housing related QDE will be considered a resource on the first day of the month in which the funds were spent. The caseworker will assume that the individual's intent to use the funds for a QDE changed as of the first of the month that the individual spent the funds. If the individual's intent to use the funds for a QDE changes at any other time, but the individual has not spent the funds, the retained funds will be counted as a resource the first of the following month.

EXAMPLE: Previously Excluded Distribution Used for a Non-QDE Sam takes a distribution of $25,000 from his ABLE account with the intent to modify a specially equipped van in May. He pays a $10,000 deposit on the van modifications. While waiting for the delivery of the van, Sam takes a trip to a casino in July where he loses $1,000 of his ABLE distribution while gambling. The $1,000 he lost gambling is countable resource in July. The other $14,000 Sam retains continues to be an excluded resource as long as it meets the requirements in this section.

EXAMPLE: Previously Excluded Distribution Used for a Housing Related QDE Jennifer takes a $7,000 distribution from her ABLE account in June to pay her college tuition, a qualified disability expense (QDE). Her tuition payment is due in September. However, she has to make a $750 advance rent payment for her college apartment in August. She uses $750 of the distribution she took in June to make the rent payment which is a housing related QDE. The $750 is a countable resource in August. The remaining $6,250 continues to be an excluded resource as long as it meets the requirements in this section.

EXAMPLE: Change of Intent on the Use of a Distribution Jennifer takes a $7,000 distribution from her ABLE account in June to pay her college tuition, a qualified disability expense (QDE). Her tuition payment is due in September. In August, Jennifer gets a job offer and decides not to return to school. Since she no longer intends to use it for tuition, the $7,000 becomes a countable resource in September unless Jennifer redesignates it for another QDE or returns the funds to her ABLE account prior to September.

A special rule applies when the balance of an SSI recipient's ABLE account exceeds $100,000 by an amount that causes the individual to be over the resource limit whether by those funds alone or with other resources. When this situation occurs, the Social Security Administration will place the recipient into a special SSI suspension period where:

- Social Security will suspend the recipient's SSI benefits without a time limit as long as the individual remains otherwise eligible;
- The individual retains continued eligibility for Medicaid; and
- The individual's eligibility does not terminate after 12 continuous months of suspension.

During the period SSI benefits are suspended, the designated beneficiary will be treated as if the individual continued to be receiving payment of the SSI benefits. The individual's regular SSI eligibility will be reinstated for any month in which the individual's ABLE account balance no longer causes the recipient to exceed the resource limit and the individual is otherwise eligible.

EXAMPLE: Excess Resources-Recipient is Suspended but Retains Medicaid Eligibility Paul is the designated beneficiary of an ABLE account with a balance of $101,000 on the first of the month. Paul's only other countable resource is a checking account with a balance of $1,500. Paul's countable resources are $2,500 and therefore exceed the SSI resource limit. However, since Paul's ABLE account balance is causing him to exceed the resource limit (i.e., his countable resources other than the ABLE account are less than $2,000), Social Security will suspend Paul's SSI eligibility and stop his cash benefits, but Paul will retain eligibility for Medicaid.

NOTE: The special suspension rule does not apply when the balance of an SSI recipient's ABLE account exceeds $100,000 by an amount that causes the recipient to exceed the SSI resource limit but the resources other than the ABLE account alone would make the individual ineligible for SSI due to excess resources.

EXAMPLE: Combination of Resources-Recipient Loses SSI Eligibility Christine is the designated beneficiary of an ABLE account with a balance of $101,000 on the first of the month. Christine also has a checking account with a balance of $3,000. Christine's countable resources are $4,000 and exceed the SSI resource limit. However, because her ABLE account balance is not the cause of her excess resources, the special rule does not apply and Christine is no longer SSI eligible due to excess resources. The Social Security Administration will suspend her SSI benefits and her Medicaid benefits will end as well.

EXAMPLE: Sharon takes a distribution of $500 from her ABLE account in May to pay her rent for June. She deposits the $500 into her checking account in May and then withdraws $500 in cash on June 3 and pays her landlord. This distribution is a housing-related QDE and a part of Sharon's checking account balance on June 1st, which makes it a countable resource for the month of June.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT David McMahon

TELEPHONE 501-396-6421 **FAX** ______ **EMAIL:** David.McMahon1@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 E-600 through E-660 and Appendix R

1. Does this proposed, amended, or repealed rule have a financial impact? Yes X 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 X 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 X 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 SFY 2018		**Next Fiscal Year SFY 2019**	
General Revenue	$ 603,843.	General Revenue	$ 820,338.
Federal Funds	$1,448,650.	Federal Funds	$1,995,790.
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	$2,052,493.	Total	$2,816,128.

(b) What is the additional cost of the state rule?

Current Fiscal Year		Next Fiscal Year	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total		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

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 proposed rule change will establish the Achieving a Better Life Experience (ABLE) program in Arkansas. The ABLE account is a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses of the account's designated beneficiary. ABLE account funds up to a $100,000 limit will be disregarded as a resource when determining Medicaid eligibility.

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

The ABLE account is a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses without losing their Medicaid eligibility. The proposed rule is required by federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

(3) a description of the factual evidence that:
    (a) justifies the agency's need for the proposed rule; and

The proposed rule is required by federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

Implementation of an ABLE account will allow an eligible individual can use to save funds for the disability-related expenses without losing their Medicaid eligibility and will allow the state to comply with federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

(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;

N/A

(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;

There were no alternatives proposed.

(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.

The Agency in compliance with ACA 25-15-204 will review the rule every 10 years.