ARKANSAS REGISTER

Proposed Rule Cover Sheet

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Name of Department Department of Human Services

Agency or Division Name Division of County Operations

Other Subdivision or Department, If Applicable

Previous Agency Name, If Applicable

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Name of Rule Medical Services Policy Manual Sections B-700 through B-730 Transitional Medicaid.

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B-700 Transitional Medicaid

MS Manual 12/01/20

The Family Support Act of 1988 (Public Law 100-485), requires that certain Aid to Families with Dependent Children (AFDC) families (Category 20) who lost eligibility April 1, 1990, or later, due to earned income must be given six (6) months of Initial Transitional Medicaid (TM) benefits without an application for such assistance. These families may also qualify for an Additional 6 Months Transitional Medicaid Extension.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 extended this requirement to certain Medicaid families following replacement of the AFDC program with the Temporary Assistance for Needy Families (TANF) program. In Arkansas, families who lost eligibility for Parents/Caretaker Relatives (PCR), formerly TEA Medicaid, due to earnings are eligible for this extension.

The Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act) extended this requirement to certain Medicaid families following replacement of the TEA Medicaid program with the Parents/Caretaker Relatives Medicaid (PCR) program.

B-705 Extent of Services

MS Manual 12/01/20

Individuals approved for Transitional Medicaid will be eligible for the full range of Medicaid services, including services under the Children's Health Services Program.

B-710 Eligibility Requirements

MS Manual 12/01/20

In addition to the standard Medicaid eligibility requirements of citizenship, enumeration and child support enforcement, the following requirements must be met in determining eligibility for the Initial 6 Months TM Extension Period:

1. The family must have become ineligible for PCR Medicaid due to increased wages or increased hours of employment.

2. The family must have received PCR Medicaid in at least 3 of the 6 months immediately preceding the first month of PCR Medicaid ineligibility. Retroactive months count for this purpose.

3. The family members must have been residents of Arkansas in the last month of PCR Medicaid eligibility and must continue to reside in Arkansas.

4. There must be a dependent child under age 18 in the home.

In addition to the eligibility criteria stated above, the following eligibility requirements must also be met in the Additional 6 Months TM Extension Period:

5. The family must have received TM in each month of the Initial 6 Months TM Extension Period.

6. There must continue to be a dependent child under age 18 in the home.

7. The parent (or non-parent specified relative) must have met the reporting requirements in the 1st and 4th months of the Additional TM Extension Period (Re: MS B-735 and MS B-750).

8. The parent or (non-parent specified relative) must continue to be employed and receive earnings in each month preceding the 2nd and 3rd report periods of the Additional TM Extension Period, unless good cause exists.

The average monthly gross earnings of the eligible members cannot exceed 185% of the Federal Poverty Level (Re. FPL Chart at Appendix F).

Resources, deprivation, and unearned income are not eligibility factors for TM.

B-715 Parents/Caretaker Relatives Medicaid Case Closure Due to Earnings

MS Manual 12/01/20

The PCR Medicaid case closure must be solely due to increased wages or increased hours of employment. If a PCR Medicaid family becomes ineligible due to earnings and for another reason in the same month, the family will be ineligible for Transitional Medicaid (TM).

The increased earnings must be of the child's parent (or non-parent specified relative) who was included in the PCR Medicaid case as an eligible member in the last month of eligibility.

The Initial 6 Months TM Extension will begin with the first month following the last month of PCR Medicaid eligibility. Individuals included in the budget group in the last month of PCR Medicaid eligibility will be entitled to the Initial 6 Months TM Extension.

B-720 Received Parents/Caretaker Relatives Medicaid in 3 of the last 6 Months

MS Manual 12/01/20

The family must have received PCR Medicaid in at least 3 of the 6 months immediately preceding the first month of PCR Medicaid ineligibility in order to qualify for TM. Eligibility for retroactive PCR Medicaid can count toward the 3 months. This requirement must always be met.

The family will not be eligible for Transitional Medicaid if it is determined that the family was ineligible for PCR Medicaid at any time during the 6 months immediately preceding PCR Medicaid ineligibility due to fraud.

B-725 Residence

MS Manual 12/01/20

The family members must be residents of Arkansas at the time they became ineligible for PCR Medicaid and must continue to reside in Arkansas throughout the Transitional Medicaid Period.

B-730 Dependent Child

MS Manual 12/01/20

"Dependent Child" is defined, for TM purposes, as a child who is under age 18 who was living in the home in the last month of PCR Medicaid eligibility, and whose presence in the home helped establish PCR Medicaid eligibility. As a condition of TM eligibility, there must be a dependent child in the home in each month of TM. Eligibility for TM will terminate at the end of the first month in which the family ceases to include a dependent child. If the only dependent child leaves home and later returns after the TM case has been closed, the TM case may not be reopened, even if a portion of the 12-month TM period remains.

B-735 Reporting Requirements in the Initial 6 Months TM Extension Period (First Six Months)

MS Manual 12/01/20

First Report

At the end of the 3rd month of the Initial 6 Months Extension Period, a notice and report form will be sent to the family to be returned by the 5th day of the 4th month. The parent (or non-parent specified relative) must report the household composition, the amount of gross earnings

received, and other circumstances which existed in the first 3 months of the Initial 6 Months TM Period. The option for an Additional 6 Months Extension Period of TM which will be, in part, dependent upon the timely return of the report form.

NOTE: If a report form is received untimely after the specified 10-day notice period, in order for the report requirement to be met, the client must establish good cause.

B-740 Determining Initial Eligibility When There Was an Untimely Report of Earnings

MS Manual 12/01/20

In the event the agency is not informed by a PCR Medicaid recipient of increased earnings in a "timely" manner, eligibility for Transitional Medicaid will be determined from the month the family actually became ineligible for PCR Medicaid.

If the agency is informed of a PCR Medicaid family's increase in earnings as late as the 5th day of the 4th month of PCR Medicaid ineligibility, eligibility will be determined for TM in each of the months succeeding the last month of PCR Medicaid eligibility. If the eligibility requirements in the Initial 4 Months TM Extension Period (MS B-710 #1-4) are not met, no additional benefits will be authorized. If the eligibility requirements in the Initial 4 Months Extension Period (MS B-710 #1-4) are met, continuing TM benefits will be authorized.

If the earned income is reported or discovered after the 5th day of the 4th month of PCR Medicaid ineligibility, the family will not be entitled to receive any Additional TM benefits.

B-745 Six Months TM Extension Period (Second Six Months)

MS Manual 12/01/20

In addition to continuing to meet each eligibility factor listed in MS B-710 #1-4, the eligibility criteria specified in MS B-710 #5-8 must also be met for the Additional 6 Months of TM.

B-750 Reporting Requirements in the Additional 6 months Extension Period (Second Six Months)

MS Manual 12/01/20

Second Report

At the end of the 6th month of the Initial 6 Months Extension Period, a notice and report form will be sent to those families who met the eligibility factors in the Initial 6 Months Extension Period. This report should be returned by the 5th day of the 1st month of the Additional 6

Months TM Extension Period (the 7th month of TM). The parent (or non-parent specified relative) must again report the household composition, the amount of gross earnings received, and other circumstances which existed in the last 3 months of the Initial TM Extension Period.

If a complete report form is not returned timely, a second notice will be sent to advise the client that the report form must be returned in 10 days or the case will be closed.

Third Report

At the end of the 3rd month of the Additional 6 Months Extension Period (the 9th month of TM), if the case remains open, a notice and report form will be sent to the family to be returned by the 5th day of the 4th month of the Additional Extension Period (the 10th month of TM).

If a complete report form is not returned timely, a second notice will be sent to advise the client that the report form must be returned in 10 days or the case will be closed.

B-755 Employment Requirement

MS Manual 12/01/20

In order for extended benefits to continue in the second 6-month period, the parent (or non-parent specified relative) must continue to be employed and receive earnings in each month preceding the 2nd and 3rd reports unless good cause exists.

B-760 The 185% Earned Income Test and Computation of Average Monthly Gross Earnings

MS Manual 12/01/20

The family's average monthly gross earnings cannot exceed 185% of the Federal Poverty Level (Re. FPL Chart at Appendix F).

B-765 Changes in the Transitional Medicaid Period

MS Manual 12/01/20

Minor children entering the household, who were not in the household at the time the determination for Transitional Medicaid was made will not be added to the case. If an excluded child has earnings, they will not be considered in computing the family's average gross monthly earnings. Eligibility for this child will be determined in another category.

Minor children, who were in the home and included in the income determination for the PCR Medicaid case during the last month of PCR Medicaid eligibility, who later leave the home, will

be dropped after a 10-day notice is given. If he/she subsequently reenters the home while the family is receiving TM, he/she will be added to the Transitional Medicaid case. Any earnings that this child may have will be considered in computing the family's average gross monthly earnings.

The return of an absent parent to the home during Transitional Medicaid is not, in itself, a reason for closure. The absent parent who returns, if he/she was not in the budget group at the time of the PCR Medicaid case closure, will not be eligible for Transitional Medicaid and will not be added to the case. Any earnings of the returning parent, however, will be used in computing the family's average gross monthly earnings.

If the only child in the home becomes eligible for SSI, the parent(s) (or non-parent specified relative) will remain eligible for Transitional Medicaid as long as the SSI child is under age 18. The adult(s) must continue to meet all other eligibility requirements in order to remain eligible for Transitional Medicaid.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT Brian Jones

TELEPHONE (501) 537-2064 **FAX** (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 B-700 through B-730 Transitional Medicaid

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	769,605	General Revenue	1,312,876
Federal Funds	1,916,625	Federal Funds	3,292,090
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	

Total	2,686,230	Total	4,604,966

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

Current Fiscal Year		**Next Fiscal Year**	
General Revenue	$ 0	General Revenue	$ 0
Federal Funds	$ 0	Federal Funds	$ 0
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	$ 0	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**
$ 769,605	$ 1,312,876

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;

- Some low-income families are eligible for Medicaid under section 1931 of the Social Security Act. When these families become ineligible for Medicaid due to earnings, extended Medicaid coverage is required by 42 U.S.C. § 1396r-6.

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

- The agency seeks to resolve the problem that our current rules do not include the Transitional Medicaid Program. This rule is required by 42 U.S.C. § 1396r-6.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

- Extended Medicaid services are mandatory under 42 U.S.C. § 1396r-6. The agency is required by federal regulations to offer this program.

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

- 42 U.S.C. § 1396r-6 allows states the option of using a 12 month initial Transitional Medicaid eligibility period rather than an initial 6 month eligibility period with an additional 6 months granted upon redetermination. Our current eligibility system is designed to provide 12 month eligibility periods for our MAGI categories. Using the two 6 month eligibility periods would require costly updates and system development. The 12 month eligibility period will allow us to automate the program using our current system rules.

(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 less costly alternatives.

(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;

- The proposed rule will be posted for public comment with the initial filing of this document.

(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

- Existing rules have had no impact on the purposed rule change.

(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.

- Our agency is in constant contact with CMS to ensure that mandated changes are implemented as required. If a change is made to the federal statute governing the proposed rule, we will act immediately to make sure that we are achieving the statutory objectives, and meeting the costs objectives.

Statement of Necessity and Rule Summary

Medical Services Policy Manual B-700 Transitional Medicaid

Statement of Necessity

Federal law requires Medicaid programs to provide coverage for Transitional Medicaid (TM). This rule must be promulgated for DHS to ensure coverage for TM, which is required by 42 U.S.C. § 1396-r. The TM program is for families who were previously receiving Parent/Caretaker Relative Medicaid coverage and lost it due to increased wages or increased hours of employment. The federal statute requires States to grant an initial 6-month period of eligibility under the TM program. An additional 6 months of eligibility may be granted after undergoing a review determination. This proposed rule outlines the program, the services available, eligibility, and reporting requirements.

The federal statute requiring the TM program, 42 U.S.C. § 1396r-6, previously contained a sunset provision, and as a result DHS allowed its TM program policy to lapse in 2014. After the implementation of the Affordable Care Act, it was unclear whether Congress would reauthorize the program as they had done in the past. In addition, the Centers for Medicare and Medicaid Services (CMS) expressed doubt in their communications with the States that the TM program would continue. However, CMS has now confirmed to DHS that the TM program is and will remain a federal requirement.

Rule Summary

Effective December 1, 2020, the Transitional Medicaid (TM) program will provide a temporary extension of Medicaid eligibility when a family was previously receiving Parent/Caretaker Relative Medicaid coverage and lost it due to increased wages or increased hours of employment. Medical Services Policy Section B-700 has been created to update the TM Program procedure to follow Modified Adjusted Gross Income rules. The section includes extent of services and eligibility, as well as residence, employment, income, and reporting requirements for the initial 6-month period and the extension of the additional 6-month period.

NOTICE OF RULE MAKING

The Director of the Division of Medical Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-76-201, 20-77-107, and 25-10-129.

Effective December 1, 2020:

Federal law, 42 U.S.C. § 1396-r, requires Medicaid programs to provide coverage for Transitional Medicaid (TM), which is a temporary extension of Medicaid eligibility when a family was previously receiving Parent/Caretaker Relative Medicaid coverage and lost it due to increased wages or increased hours of employment. The federal statute requires States to grant an initial 6-month period of eligibility, and a possible additional 6 months of eligibility after a review determination. Medical Services Policy Section B-700 has been created to update the TM Program procedure to follow Modified Adjusted Gross Income rules. The section includes extent of services and eligibility, as well as residence, employment, income, and reporting requirements for the initial 6-month period and the extension of the additional 6-month period.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the Medicaid website at https://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than **September 12, 2020**. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6266.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. 4501960528

Mary Franklin, Director
Division of County Operations