

ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of County Operations

Contact Mac Golden E-mail Mac.E.Golden@dhs.arkansas.gov Phone 501-563-7634

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

Rule Title: Medical Services Policy Sections D-210 and D-224

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.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

N/A

N/A

02/23/2021

03/02/2021

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

Renita Whitley

Renita.Whitley@dhs.arkansas.gov

02/24/2021

Contact Person

E-mail Address

Date

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.)

Signature

501-682-8377

Phone Number

Mary.Franklin@dhs.arkansas.gov

E-mail Address

Director

Title

02/24/2021

Date

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of County Operations

PERSON COMPLETING THIS STATEMENT Jason Callan and Brian Jones

TELEPHONE 501-537-2064 **FAX** 501-682-8155 **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 Sections D-210 and D-224

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 Does this proposed, amended, or repealed rule have a financial impact?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	<u>\$ 1,874,802</u>
Federal Funds	<u>\$ 4,669,008</u>
Cash Funds	<u></u>
Special Revenue	<u></u>

Next Fiscal Year

General Revenue	<u>\$ 3,731,280</u>
Federal Funds	<u>\$ 9,356,340</u>
Cash Funds	<u></u>
Special Revenue	<u></u>

Other (Identify) _____
 Total \$ 6,543,810

Other (Identify) _____
 Total \$ 13,087,620

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

Current Fiscal Year

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

Next Fiscal Year

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

\$ 1,874,802

Next Fiscal Year

\$ 3,731,280

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; **To comply with consolidated appropriations ACT 2021, 8 U.S.C. 1612**
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; **To cover qualified Aliens and determine citizenship**
- (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; **the policy outlines factors that are used to determine citizenship/qualified alien status for applicants**
- (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; **None**
- (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; **None at this Time**
- (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 **Clarification to CMS policy required 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. **The Agency monitors State and Federal rules and policies for opportunities to reduce and control cost.**

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-210 Citizenship

D-210 Citizenship

MS Manual 03/02/2021

48 U.S.C. 1806e

Consider any person born in the United States to be a citizen. People born abroad are considered U.S. citizens when at least one of the parents is a U.S. citizen. Also, consider a person who is a U.S. national the same as a U.S. citizen. A U.S. national is a person who is born in one of the U.S. territories. The U.S. territories include:

- Puerto Rico
- Guam
- The Virgin Islands
- The Northern Mariana Islands
- American Samoa
- The Swains Island

People who are not citizens or nationals can become citizens through the process of naturalization.

Citizenship must be verified for all Medicaid applicants declaring to be U.S. citizens or nationals. Refer to [MS G-130](#) for verification requirement.

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-224 Aliens Exempt from Five-Year Bar

D-224 Aliens Exempt from Five-Year Bar

MS Manual 03/02/2021

431 of PRWORA

Aliens with the following statuses are potentially eligible for Medicaid from the date the status is obtained:

- **Refugees** admitted under section 207 of the Immigration and Nationality Act (INA).
- **Iraqi and Afghan Special Immigrants** admitted as lawfully permanent residents but treated as refugees.
- Aliens granted **asylum** under section 208 of the INA.
- Aliens lawfully living in United States in accordance with the **Compacts of Free Association**. This only applies to: Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau ([116HR133SA-RCP-116-68](#)).
- Aliens whose **deportation or removal is withheld** under section 243(h) or section 241(b)(3) of the INA.
- **Cuban** or **Haitian** entrants under section 501(e) of the Refugee Education Assistance Act of 1980.
- **Cuban** or **Haitian** entrants in the Haitian Family Reunification Program.
- **Amerasian** immigrants.
- **Canadian born American Indians** who have treaty rights to cross the U.S. borders with Canada and Mexico.
- Aliens lawfully living in the United States on 8/22/96 who were receiving AABD Medicaid at that time may continue to receive Medicaid benefits. This applies only to AABD categories.
- Aliens lawfully living in the United States on 8/22/96 who subsequently become blind or disabled may receive Medicaid benefits in the future.
- Aliens lawfully admitted for permanent residence who are **veterans** honorably discharged for reasons other than alienage, and their spouses, surviving un-remarried spouses, and unmarried dependent children. This includes alien spouses, surviving un-remarried spouses, and unmarried dependent children of veterans who are U.S. citizens or deceased veterans.
- Aliens lawfully admitted for permanent residence who are **active-duty personnel of**

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-224 Aliens Exempt from Five-Year Bar

the United States Armed Forces and their spouses, surviving un-remarried spouses, and unmarried dependent children. This includes alien spouses, surviving un-remarried spouses, and unmarried dependent children of active duty personnel who are U.S. citizens or deceased active duty personnel. Active duty excludes temporary full-time duty for training purposes performed by members of the National Guard or Reserves.

- Pregnant Women and Children who are lawfully present. This includes but is not limited to pregnant women and children in the following statuses:
 - 1) A qualified alien as defined in 8 U.S.C. 1641 (b) and (c)
 - 2) An alien in a valid non-immigration status, as defined in 8 U.S.C. 1101 (a)(15) or otherwise under the immigration laws as defined in 8 U.S.C. 1101 (a) (17);
 - 3) An alien who has been paroled into the United States in accordance with 8 U.S.C. 1182 (d)(5) for less than 1 year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;
 - 4) An alien who belongs to one of the following classes:
 - Granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a, respectively;
 - Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a, and individuals with pending application for TPS who have been granted employment authorization;
 - Granted employment authorization under 8 CFR 274a. 12c;
 - Family Unity beneficiaries in accordance with section 301 of Pub. L. 101-649, as amended;
 - Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;
 - Granted Deferred Action status;
 - Granted an administrative stay of removal under 8 C.F.R.241;
 - Beneficiary of approved visa petition who has a pending application for adjustment of status;

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-224 Aliens Exempt from Five-Year Bar

- 5) An alien with a pending application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who:
 - Has been granted employment authorization; or
 - Is under the age of 14 and has had an application pending for at least 180 days;
- 6) An alien who has been granted withholding of removal under the Convention Against Torture;
- 7) A child who has a pending application for Special Immigration Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);
- 8) Is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. 1806(e); or
- 9) Is lawfully present in American Samoa under the immigration laws of American Samoa.

EXCEPTION: An alien with deferred action under the USDHS's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered lawfully present with respect to any of the above categories.



NOTE: Documentation that is required to verify lawfully residing status is found at [Appendix C.](#)

STATEMENT OF EMERGENCY

The Director of the Division of County Operations (DCO) of the Department of Human Services announces an emergency rule under Arkansas Code § 25-15-204(c). The Consolidated Appropriations Act of 2021 (“the Act”), 8 U.S.C. § 1612, necessitates rule updates to establish Medicaid eligibility for migrants from the Compact of Free Association islands. The following further details the necessity for this emergency rule.

Background: After World War II, the United States of America assumed administration of the Trust Territory of the Pacific Islands, which includes three nations known as the Compact of Free Association islands. The group of islands include what became the sovereign nations of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Between 1946 to 1958, sixty-seven atmospheric nuclear weapons were tested in the Marshall Islands, leading to continuing medical issues for descendants of the residents.

Under the Compact of Free Association treaty, citizens of the three island nations may freely enter, reside, study and work in the United States, and many citizens have served honorably in the United States Armed Services. The Act restored Medicaid eligibility to the citizens of the island nations that had been removed in 1996.

Statement of Emergency: Pursuant to the concurrent resolution of the Ninety-Third General Assembly received by the Secretary of the Department of Human Services, and based on the above, an emergency exists to bring Arkansas into compliance with the Act to provide for the health, safety and welfare of migrants residing in the state. DCO amends MS D-210 by removing special rules previously in place regarding Marshall Islanders, thus deeming them qualified aliens for Medicaid. DCO updates the list of aliens exempt from the five-year bar contained in MS D-224 to include citizens of the Compact of Free Association lawfully residing in the United States. This emergency rule shall be effective March 2, 2021, with dates of service retroactive to December 27, 2020, pursuant to the mandates of the Act.

Statement of Necessity and Rule Summary

Medical Services Policy Sections D-210 and D-224

Statement of Necessity

Medical Services Policy is being updated to reflect a change due to the Consolidated Appropriations Act, 2021, 8 U.S.C. § 1612. The amendment states that any individual who lawfully resides in 1 of the 50 States or the District of Columbia in accordance with the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau shall be eligible for Medicaid.

What does Policy Sections D-210 and D-224 cover?

Policy MS D-210 outlines the factors that are used to determine citizenship/qualified alien status for applicants Medicaid applicants.

A few steps are used to consider citizenship determination:

- Birth county of the individual or parents,
- U.S. National status, and
- Special note regarding citizens under a Compact of Free Association with United States.

Policy MS D-224 outlines Aliens Exempt from Five-Year Bar:

Aliens with the following statuses are potentially eligible for Medicaid from the date the status is obtained:

Some of the statuses are:

- **Refugees** admitted under section 207 of the Immigration and Nationality Act (INA).
- **Iraqi and Afghan Special Immigrants** admitted as lawfully permanent residents but treated as refugees.

Aliens granted **asylum** under section 208 of the INA.

Rule Summary

The change to MS D-210 and 224 sections include:

- Removing the special note from policy D-210 regarding Marshall Islanders. Marshall Islanders have now been deemed qualified aliens, so the special rules do not apply.
- Adding information at D-224 aliens who are lawfully living in the United States in accordance with the Compacts of Free Association to be granted an exemption from the five-year bar.

<https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>