

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

MEDICAL SERVICES POLICY MANUAL, SECTION E

E-300 Sponsor Affidavits of Support and Deeming

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MS Manual ~~01/01/18~~??/??/??11/01/2021

PRWORA of 1996

Alien sponsor deeming established by the PRWORA ([Personal Responsibility and Work Opportunity Reconciliation Act of 1996](#)), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), P. L. 104-208, and the Balanced Budget Act of 1997 (BBA), P. L. 105-33, will apply to all Medicaid categories.

Alien sponsor deeming will be applied to those aliens who are Lawfully Admitted Permanent Residents (LAPRs) that have been in the United States for five years. Refer to [MS E-445](#) for exceptions to deeming for an alien's sponsor.

Aliens who seek admission to the U.S. as LAPRs must establish that they will not become a public charge (Re. [MS D-222](#)). Many aliens enter the country by having a sponsor who pledges to support them to establish that they will not become a public charge.

A sponsor is a person who signs an Affidavit of Support agreeing to support an alien as a condition of the alien's admission for permanent residence in the U.S. An alien may have more than one sponsor. There are two versions of the Affidavit of Support:

- *Affidavit of Support*, form I-134 (Now unenforceable); ~~or~~
- *Affidavit of Support*, form I-864 (Effective December 19, 1997); ~~or~~

The process of counting the sponsor's income and resources for the sponsored alien is called deeming. Deeming will not apply when the sponsor is:

- An organization such as a church or service club; ~~or~~
- An employer who does not sign an Affidavit of Support; ~~or~~
- The alien's eligible or ineligible spouse or parent whose income is otherwise considered in determining the alien's Medicaid eligibility.

A sponsored alien and the alien's spouse, if there is one, are responsible for providing information and documentation about the alien's sponsor and the sponsor's spouse. If the alien appears to be eligible for benefits but does not have the Affidavit of Support or does not know if there is a sponsor, instruct the alien to contact the United States Department of Homeland Security (USDHS) to obtain a copy of the Affidavit of Support. If the applicant requires

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assistance, the caseworker may request information from the USDHS by submitting Forms G-845 and G-845 Supplement.

The USDHS will certify whether an alien has a sponsor and if so, what kind of affidavit the sponsor signed. Do not deem income or resources from a sponsor that has signed the old version, I-134, Affidavit of Support, or I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody, as these affidavits are not considered enforceable.

Deeming instructions are shown below for individuals applying for Medicaid having an I-864, Affidavit of Support:

- Count all income of the sponsor and sponsor's spouse living in the same household as if they were income and resources of the alien.
- When determining the sponsored immigrant's deemed income and resources from the sponsor consider the same disregards to the sponsor's income and/or resources that the sponsor would receive if they were applying. Do not allow deductions from the sponsor's income or resources.
- Count the sponsor's income as the alien's unearned income and use it to determine the alien's eligibility.
- Do not count the sponsor's income when determining eligibility for the alien's eligible children.
- Count the household size of the alien according to MAGI or SSI rules. Do not include the sponsor in the alien's household size.

Deeming continues until one of the following conditions is met:

- The sponsored immigrant becomes a U.S.-naturalized citizen.
- The sponsored immigrant leaves the U.S. permanently achieves 40 qualifying work quarters, as defined by the Social Security Act (the Act).
- The sponsored immigrant or the sponsor dies.

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A sponsored alien and the alien's spouse, if there is one, are responsible for providing information and documentation about the alien's sponsor and the sponsor's spouse. If the alien appears to be eligible for benefits but does not have the Affidavit of Support or does not know if there is a sponsor, instruct the alien to contact the United States Department of Homeland Security (USDHS) to obtain a copy of the Affidavit of Support. If the applicant requires

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- When determining the sponsored immigrant's deemed income and resources from the sponsor consider the same disregards to the sponsor's income and/or resources that the sponsor would receive if they were applying.
- Count the sponsor's income as the alien's unearned income and use it to determine the alien's eligibility.
- Do not count the sponsor's income when determining eligibility for the alien's eligible children.
- Count the household size of the alien according to MAGI or SSI rules.

Deeming continues until one of the following conditions is met:

- The sponsored immigrant becomes a naturalized citizen.
- The sponsored immigrant achieves 40 qualifying work quarters, as defined by the Social Security Act (the Act).
- The sponsored immigrant or the sponsor dies.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____

DIVISION _____

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE NO. _____ **FAX NO.** _____ **EMAIL:** _____

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 _____

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 _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Other (Identify) _____

Total _____

Other (Identify) _____

Total _____

(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

\$ _____

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;
- (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.

Statement of Necessity and Rule Summary

Medical Services Policy Section E-300 Sponsor Deeming

Statement of Necessity

Medical Services Policy is updated to reflect a change in the sponsor affidavits of support and deeming policy. The change applies to deeming instructions and conditions. It has become necessary to update the business processes and information regarding the deeming process.

Policy MS E-300 outlines the factors that are used to determine alien sponsor deeming that apply to Medicaid categories.

A few steps are used in sponsor deeming and conditions:

- Count all income of the sponsor and sponsor's spouse living in the same household as if they were income and resources of the alien.
- States may apply approved income and resource disregards.
- Count the sponsor's income as the alien's unearned income and use it to determine the alien's eligibility.
- Do not count the sponsor's income when determining eligibility for the alien's eligible children.
- Count the household size of the alien according to MAGI or SSI rules.

Deeming continues until one of the following conditions is met:

- The sponsored immigrant becomes a naturalized citizen.
- The sponsored immigrant achieves 40 qualifying work quarters, as defined by the Social Security Act (the Act).
- The sponsored immigrant or the sponsor dies.

Rule Summary

The change to MS E-300 section includes adjusting the sponsor deeming instructions.

- 1.) Income and resource disregards may be applied for sponsor; and
- 2.) Household size is counted according to MAGI or SSI rules.

In addition, some changes to deeming conditions are:

- 1.) Updated wording to match CMS updates;
- 2.) Removed wording that did not match changes to CMS updates; and
- 3.) Added 40 qualified work quarters.

NOTICE OF RULE MAKING

The Director of the Division of County Operations 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 November 1, 2021:

The Director of the Division of County Operations (DCO) updates the Medical Services Policy Manual section E-300 to reflect a change in the sponsor affidavits of support and deeming as a result of guidance issued by the Centers for Medicare and Medicaid Services (CMS) regarding the Presidential Memorandum, "Memorandum on Enforcing the Legal Responsibilities of Sponsors of Aliens." DCO updates the deeming instructions and conditions, and the business processes and information regarding the deeming process.

DCO updates adjusts the sponsor deeming instructions to state that income and resource disregards may be applied for sponsor, and household size is counted according to modified adjusted gross income (MAGI) or supplemental security income (SSI) rules. Deeming condition updates include amending language to match CMS guidance and updates and adding forty (40) qualified work quarters as defined by the Social Security Act.

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://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. 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 July 24, 2021. 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 501-396-6428.

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