# ARKANSAS REGISTER

## Proposed Rule Cover Sheet

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Name of Department Department of Human Services

Agency or Division Name Division of Medical Services

Other Subdivision or Department, If Applicable N/A

Previous Agency Name, If Applicable N/A

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Name of Rule Electronic Visit Verification (EVV) for Home Health Services

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*TOC required*

## 145.000 Electronic Visit Verification (EVV) for In-Home Personal Care, Attendant Care, ~~and~~ Respite Services, and Home Health Services

### 145.100 Legal Basis and Scope of EVV Requirement ~~12-1-20~~1-1-24

In accordance with section 12006 of the 21st Century Cures Act (42 U.S.C. § 1396b(l)), the Arkansas Department of Human Services (DHS) is implementing an electronic visit verification (EVV) system for in-home personal care services (PCS), attendant care, ~~and~~ respite services, and home health services ~~-~~ paid by Medicaid.

An EVV system is a telephone ~~-~~, computer ~~-~~, or other technology-based system under which visits conducted as part of personal care services or home health care services are electronically verified with respect to:

A~~1~~. The type of service(s) performed;

B~~2~~. The individual receiving the service(s);

C~~3~~. The date of the service(s);

D4. The location of service delivery;

E~~5~~. The individual providing the service(s); and

F~~6~~. The time the service(s) begins and ends.

The EVV requirement establishes utilization standards for provider agencies to electronically verify home visits and verify that ~~clients~~ beneficiaries receive the services authorized for their support and for which Medicaid is being billed.

The EVV requirement applies to Medicaid PCS, attendant care, ~~and~~ respite care, and home health care provided during an in-home visit under the Medicaid State Plan, the Provider-Led Arkansas Shared Savings Entity (PASSE), the ARChoices Medicaid §1915(c) Home and Community-Based Services Waiver, or under any self-direction plan.

PCS, attendant care, ~~and~~ respite services, and home health services provided to more than one (1) person throughout a shift in 24-hour residential settings are not subject to the EVV requirement because they do not involve an "in~~-~~home" visit. This includes without limitation: PCS, attendant care, ~~and~~ respite services, and home health services provided in a group home, assisted living facility, hospital, nursing facility, or other congregate setting.

PCS, attendant care, ~~or~~ respite services, and home health services provided to a student in a public school are~~is~~ not subject to the EVV requirement because ~~it does~~ they do not involve an "in-home" visit.

Additional information regarding EVV is available from the DHS EVV Vendor. **View or print the DHS EVV Vendor contact information.**

### 145.200 EVV Participation Requirements ~~12-1-20~~1-1-24

To submit a claim for any service that is subject to the EVV requirement or pay based upon a self-directed plan of care subject to the EVV requirement, a provider must:

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A1. Submit and maintain on file with both DHS Provider Enrollment and the DHS EVV Vendor a contact e-mail address for the provider. The e-mail address must be ~~one~~ an address that is active and is controlled and regularly checked by the provider. The e-mail address must be a business address that is unique to the provider and must not be an employee's personal e-mail address or other shared address. The e-mail address submitted by a provider to DHS Provider Enrollment will be the e-mail address used by the DHS EVV Vendor to create the provider's account to access the EVV system;

B2. Obtain from DHS a Medicaid Practitioner Identification Number (PIN) for each and every caregiver employed or contracted by the provider to furnish care for which Medicaid PCS, attendant care, or respite care claims may be submitted;

C3. Submit, with every claim for a service subject to the EVV requirement, the PIN for the caregiver providing the service to the beneficiary. The PIN shall be listed in the field for the Rendering Provider ID number~~#~~;

D4. Use an EVV system that documents and verifies every in-home visit resulting in a claim for reimbursement. A provider must use the EVV system furnished by the DHS EVV Vendor or they must use a third-party EVV system that has been certified by the DHS EVV Vendor;

E5. Require caregivers, that are employed or contracted by the provider, to use EVV for all in-home Medicaid-paid PCS, attendant care, ~~or~~ respite care, and home health care and to train the caregivers on the use of the provider's chosen EVV system;

F6. If the provider uses the DHS EVV system, register the provider's caregivers with the EVV system. By registering a caregiver with the DHS EVV system, the provider is attesting that all applicable requirements, including without limitation training requirements, have been satisfied for that caregiver~~.~~ (A caregiver who is excluded or debarred from participation in Medicaid under any state or federal law is not eligible to register with the DHS EVV system);

G7. Create and maintain documentation to justify any manual modifications, adjustments, or exceptions made by the provider in the EVV system after a caregiver has entered or failed to enter any required information;

H8. Comply with EVV requirements established by the Centers for Medicare & Medicaid Services (CMS);

I9. Comply with applicable federal and state laws regarding confidentiality of information about ~~clients~~ beneficiaries receiving services; and

J10. Ensure that DHS may review documentation generated by an EVV system or obtain a copy of that documentation at no charge.

### 145.300 EVV Claims Requirements

~~12-1-20~~1-1-24

EVV is required for the following procedure codes and modifiers when the Place of Service is coded as the beneficiary's home (POS code 12):

| Procedure Code | Modifier | Service Description |
|---|---|---|
| T1019 | | Personal Care for a (non-RCF) Beneficiary Under 21 |
| T1019 | U3 | Personal Care for a non-RCF Beneficiary Aged 21 or Older |
| S5125 | U2 | Agency Attendant Care Traditional |
| S5150 | | Respite Care – In-Home |

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| Procedure Code | Modifier | Service Description |
|---|---|---|
| T1021 | TD | Home Health RN Visit, per visit |
| T1021 | TE | Home Health LPN Visit, per visit |
| T1021 | | Home Health Aide Visit |
| S9131 | UB | Home Health Physical Therapy by a Qualified Physical Therapy Assistant |
| S9131 | | Home Health Physical Therapy by a Qualified Licensed Physical Therapist |

A claim for any of these procedure codes and modifiers may be rejected or denied, or subject to recoupment, if delivery of the service was not verified by EVV or if there is any inconsistency among or between:

A~~1~~. The data submitted in the claim;

B~~2~~. The data recorded by EVV for the claimed service;

C~~3~~. The data in the approved prior authorization or plan of care applicable to the claimed service; or

D~~4~~. Address or other eligibility data maintained in the Medicaid Management Information System (MMIS) or other eligibility system maintained by DHS.

A claim for any of these procedure codes and modifiers is subject to the EVV requirement regardless of how the claim is submitted, including third-party EVV vendors, through a PASSE claims system, or through a self-direction plan.

For PCS, attendant care, respite and Home Health services delivered in a beneficiary's home, it is a fraudulent billing practice to list any Place of Service (POS) code other than POS code 12, unless the Provider Manual or other Rule explicitly permits the use of a different POS code.

A~~1~~. The EVV Requirement also applies to any equivalent services provided to a beneficiary through the Independent Choices program, or any other self-direction program made available under the state plan or ARChoices. Such equivalent services may be rejected or denied if delivery of the service was not verified by EVV or if there is any inconsistency among or between:

1. The data submitted in the claim;
2. The data recorded by EVV for the claimed service;
3. The data in the approved prior authorization or the plan of care that is applicable to the claimed service; or
4. Address or other eligibility data maintained in the Medicaid Management Information System (MMIS) or other eligibility system maintained by DHS.

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*TOC required*

## 261.100 Electronic Visit Verification (EVV) 1-1-24

Refer to Provider Manual Section 1, General Policy, subsection 145.000 for EVV requirements regarding attendant care and respite care services.

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*TOC required*

## 241.100 Electronic Visit Verification (EVV) 1-1-24

Refer to Provider Manual Section 1, General Policy, subsection 145.000 for EVV requirements regarding home health services.

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## 261.100 Electronic Visit Verification (EVV) 1-1-24

Refer to Provider Manual Section 1, General Policy, subsection 145.000 for EVV requirements regarding personal care services.

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# RULES SUBMITTED FOR REPEAL

## Rule #1:

DDS Policy 1027 – Incident Reporting Procedural Guidelines-

## Rule #2:

DDS Policy 1035 – Agency Definition of Disability/Eligibility for Services.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DDS DIRECTOR'S OFFICE POLICY MANUAL

| Policy Type | Subject of Policy | Policy No. |
|---|---|---|
| Administrative | Incident Reporting Procedural Guidelines | 1027 |

Procedural Guidelines for DHS Policy 3002-I, Incident Reporting.

1. The employee(s) or volunteer(s) first having knowledge of a reportable incident shall immediately report to the on-site administrator (specific chain of reporting will be according to procedures developed at the program site).

2. The employee(s) or volunteer(s) utilizing Attachment #1 will immediately document the incident details and provide the form to the on-site administrator.

3. Within one (1) hour of determination of an applicable incident, the on-site administrator will make verbal/fax notification to the following individuals:

   A. DDS Director/Designee
   682-8665

   NOTIFY IN ALL INCIDENTS

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   B. DHS Advocate: Marsha Smith
   682-8650

   NOTIFY IN ALL INCIDENTS

   C. DDS Licensure
   682-8697

   NOTIFY IN ALL INCIDENTS IN COMMUNITY PROGRAMS

Replacement Notation: This procedural guideline replaces DDS Commissioner's Policy #1027 effective December 14, 1981 and January 8, 1987.

Effective Date: December 1, 1993 Sheet 1 of 4

References: DHS Policy 3002-I plus attachments.

Administrative Rules & Regulations Sub Committee of the Arkansas Legislative Council : November 4, 1993.

| Policy Type | Subject of Policy | Policy No. |
|---|---|---|
| Administrative | Incident Reporting Procedural Guidelines | 1027 |

4. Additional notifications will be made to the following individuals/offices when specific incident(s) occur:

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X-Notification

| Policy Type | Subject of Policy | Policy No. |
|---|---|---|
| Administrative | Incident Reporting Procedural Guidelines | 1027 |

Attachment 2 shall be utilized for documenting notification and made a part of incident/investigative files.

5. The on-site administrator will initiate and ensure prompt investigation, when required and unless otherwise directed by outside agencies (i.e., Law Enforcement, Coroner, State Medical Examiner, Prosecuting Attorney). Internal investigation will be conducted according to DDS Procedural Guidelines for Investigation if the incident is at a state operated institution/program.

6. The on-site administrator will be the primary point of contact with external sources unless otherwise determined.

7. The on-site administrator will submit a written report (summary to-date or final report) of the incident/investigation within three (3) days of the initial reporting to all those initially notified, and any external authority so requesting.

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8. The on-site administrator will submit a final report/investigative file of any reported incident, within time frames established by applicable Policy, depending on the specific incident. All final reports will be forwarded to the appropriate Supervisor. The DDS Director shall provide report copies to all those initially notified, External Authorities and/or others as necessary/requested.

9. The on-site administrator is responsible for the development of on-site procedures, in the absence of Departmental/Divisional Policy/Procedure, specific to the following items which comply with DHS Policy #3002-I and DDS Procedural Guidelines #1027 as well as those incidents not covered by #3002-I and #1027.

   A. Unusual Client Deaths and/or Serious Injuries
   B. Absence (Run-away) and Search Procedures
   C. Criminal Activity
   D. Maltreatment - Prevention, Reporting and Investigating
   E. Natural Disasters (Emergency Preparedness)
   F. Serious Accidents
   G. Disruption of Service

| Policy Type | Subject of Policy | Policy No. |
|---|---|---|
| Administrative | Incident Reporting Procedural Guidelines | 1027 |

10. On-site procedures shall include but not necessarily be limited to the following:

A. Reporting/Notification requirements
B. Staff/Volunteer Responsibilities
C. Documentation
D. Training Requirements for Staff
E. Specific tasks/assignments (who does what, when) of staff
F. Applicability to DHS Policy #3002-I

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| NOTIFICATION LISTING REQUIREMENTS PER INCIDENT | | | | | | |
|---|---|---|---|---|---|---|
| | | | | | | |
| FIRE DEPARTMENT | X | | | | | |
| LOCAL LAW ENFORCEMENT | | X | | X | X | |
| STATE POLICE: 224-9370 | | | | | | |
| Chief Operator-Communications Center | | X | | X | X | |
| LOCAL PROSECUTING ATTORNEY | | | | | | |
| STATE MEDICAL EXAMINER | | X | | | | |
| 227-5936 | | | | | | |
| COUNTY CORONER | | X | | | | |
| DEBBY NYE, CHIEF COUNSEL | | | | | | |
| Office: 682-8934 | | X | | X | X | X |
| Home: 835-7282 | X | | X | | | X |
| INDIVIDUAL UNDER 18 | | | | | | |
| (CHILD PROTECTIVE SERVICES) | | | | | | |
| 1-800-482-5964 or 324-9013/9016 | | X | X | X | | |

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|---|---|---|---|---|---|
| **and** LOCAL DIVISION OF | | | | | |
| CHILDREN AND FAMILY SERVICES: | X | X | X | | |
| | | X | | | |
| INDIVIDUAL OVER 18 | | | | | |
| (ADULT PROTECTIVE SERVICES) | | | | | |
| 1-800-482-8049 or 682-2441 | X | X | X | | |
| | | X | | | |
| OFFICE OF LONG TERM CARE | X | X | X | X | X |
| X | X | X | | | |
| 682-8487 | | | | | |
| OFFICE OF EMERGENCY SERVICES | | | | | |
| Office: | | | | | |
| X | | | | | |
| Home: | | | | | |
| ARKANSAS DEPARTMENT OF HEALTH | | | | | |
| | X | | | | |
| 661-2316 | | | | | |
| DIRECTOR, COTTAGE LIFE/TEAM | X | X | X | | |
| LEADER | | | | | |
| NURSING SERVICES ADMIN. | X | X | X | | |
| SOCIAL SERVICES | X | X | X | | |
| X | X | X | X | | |
| DIRECTOR, HAB & TRAINING | X | | | | |
| PHYSICIAN | X | X | X | | |
| PARENT/GUARDIAN (NEXT OF KIN) | X | X | X | | |
| X | X | X | X | | |
| OTHER: | | | | | |
| | | | | | |
| OTHER: | | | | | |

X = Notification

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| NOTIFICATION LISTING | REQUIREMENTS PER INCIDENT | | | | | | |
|---|---|---|---|---|---|---|---|
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| | | | | | | | |
| DDS Director | | | | | | | |
| Office: 682-8665 | X | X | X | X | X | X | X |
| Pearl Herman, DHS Advocate | | | | | | | |
| Office: 682-8650 | X | X | X | X | X | X | X |
| DDS LICENSURE INVOLVING COMMUNITY Office: 682-8697 | NOTIFY IN ALL INSTANCES PROGRAMS | | | | | | |
| PHYSICIAN/HOSPITAL | | | | | | | |
| FIRE DEPARTMENT | | | | | | X | |
| LOCAL LAW ENFORCEMENT | X | | X | X | | | |
| STATE POLICE: 324-9370 | | | | | | | |
| Chief Operator-Communications Center | X | | | X | X | | |
| LOCAL PROSECUTING ATTORNEY | | | | | | | |
| STATE MEDICAL EXAMINER | X | | | | | | |
| 227-5936 | | | | | | | |
| COUNTY CORONER | X | | | | | | |
| DEBBY NYE, CHIEF COUNSEL | | | | | | | |
| Office: 682-8934 | X | | X | X | X | X | X |
| Home: 835-7282 | | | | | | | |
| INDIVIDUAL UNDER 18 | | | | | | | |
| (CHILD PROTECTIVE SERVICES) | | | | | | | |
| 1-800-482-5964 or 324-9013/9016 | X | X | X | | | | |

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **and** LOCAL DIVISION OF | | | | | | | |
| CHILDREN AND FAMILY SERVICES: | X | X | X | | | | |
| INDIVIDUAL OVER 18 | | | | | | | |
| (ADULT PROTECTIVE SERVICES) | | | | | | | |
| 1-800-482-8049 or 682-2441 | X | X | X | | | | |
| OFFICE OF LONG TERM CARE | X | X | X | X | X | X | X |
| 682-8487 | | | | | | | |
| OFFICE OF EMERGENCY SERVICES | | | | | | | |
| Office: | | | | | | X | |
| Home: | | | | | | | |
| ARKANSAS DEPARTMENT OF HEALTH | | | | | | | X |
| 661-2316 | | | | | | | |
| DIRECTOR, COTTAGE LIFE/TEAM | X | X | X | | | | |
| LEADER | | | | | | | |
| NURSING SERVICES ADMIN. | X | X | X | | | | |
| SOCIAL SERVICE | X | X | X | | | X | X |
| DIRECTOR, HAB & TRAINING | X | | | | | | |
| PHYSICIAN | X | X | X | | | | |
| PARENT/GUARDIAN (NEXT OF KIN) | X | X | X | | | X | X |
| OTHER: | | | | | | | |

X = Notification

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| TIME NOTIFIED | COMMENTS AND NOTES |
| --- | --- |

# REPEAL-EO 23-02

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DDS DIRECTOR'S OFFICE POLICY MANUAL

| Policy Type | Subject of Policy | Policy No. |
|---|---|---|
| Administrative | Agency Definition of Disability/Eligibility for Services | 1035 |

1. Purpose. This policy has been prepared to set minimum parameters for determining eligibility to receive services from Developmental Disabilities Services (DDS).

2. Scope. All individuals and their families applying for services offered by DDS.

3. Definitions. For purposes of this policy, Primary Disability/Condition, Primary Diagnosis, and Other Disabilities are defined as follows:

   A. Primary Disability - That condition which renders the most serious impairment and/or condition which has the greatest impact on an individual's ability to function, as outlined in Arkansas Statute Ann. 20-48-101.

   B. Primary Diagnosis - A medical designation, determined by a physician, usually denoting etiology of disabling condition.

   C. Other Disabilities - Any condition(s) which accompanies the primary disability, and further hinders the development of an individual.

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4. Eligibility Criteria.

   A. Diagnosis of developmental disability under definition cited in Arkansas Code Ann. § 20-48-101.

      1) Is attributable to intellectual disability, cerebral palsy, spina bifida, Down syndrome, epilepsy or autism spectrum disorder.

         a. Intellectual Disability - As established by scores of intelligence which fall two or more standard deviations below the mean of a standardized test of intelligence administered by a legally qualified professional; Infants/Preschool, 0-5 years - developmental scales, administered by qualified personnel authorized in the manual accompanying the instrument used, which indicate impairment of general functioning similar to that of developmentally disabled persons;

         b. Cerebral Palsy - As established by the results of a medical examination provided by a licensed physician;

         c. Spina bifida – As established by the results of a medical examination provided by a licensed physician.

         d. Down syndrome – As established by the diagnosis of a licensed physician.

e. Epilepsy - As established by the results of a neurological and/or licensed physician;

f. Autism Spectrum Disorder - As established by the results of a team evaluation including at least a licensed physician and a licensed psychologist and a licensed Speech Pathologist;

NOTE: Each of these four conditions is sufficient for determination of eligibility independent of each other. This means that a person who is intellectually disabled does not have to have a diagnosis of autism spectrum disorder, epilepsy, spina bifida, down syndrome, or cerebral palsy. Conversely, a person who has autism spectrum disorder, cerebral palsy, epilepsy, spina bifida, or Down syndrome does not have to have an intellectual disability to receive services.

2) Is attributable to any other condition of a person found to be closely related to intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to those of persons with intellectual disability or requires treatment and services similar to those required for such persons. This determination must be based on the results of a team evaluation including at least a licensed Physician and a licensed Psychologist.

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a) In the case of individuals being evaluated for service, eligibility determination shall be based upon establishment of intelligence scores which fall two or more standard deviations below the mean of a standardized test of intelligence OR, is attributable to any other condition found to be closely related to an intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to those of persons with an intellectual disability, or requires treatment and services similar to those required for such persons.

b) Persons age 5 and over will be eligible for services if their I.Q. scores fall two or more standard deviations below the mean of a standardized test.

c) For persons ages 3 to 5, eligibility is based on an assessment that reflects functioning on a level two or more standard deviations from the mean in two or more areas as determined by a standardized test.

d.) For infants and toddlers 0-36 months, eligibility for DDS Services will be indicated by a 25% delay in two or more areas based on an assessment instrument which yields scores in months. The areas to be assessed include: cognition; communication; social/emotion; motor; and adaptive.

3) Is attributable to dyslexia resulting from intellectual disability, cerebral palsy, epilepsy spina bifida, Down syndrome or autism spectrum disorder as established by the results of a team evaluation including at least a licensed Physician and a licensed Psychologist.

NOTE: In the case of individuals being evaluated for service, eligibility shall be based upon their condition closely related to an intellectual disability by virtue of their adaptive behavior functioning.

B. The disability must originate prior to the date the person attains the age of twenty - two (22).

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NOTE: When age becomes a factor in eligibility determination under the Arkansas Law, such a case will be evaluated on its own merit as to whether the condition resulting from the disability was present before age twenty-two (22). In such cases, the determining authority will be the Assistant Director of Client Services and/or the Director for Developmental Disabilities Services.

| Policy Type | Subject of Policy | Policy No. |
|---|---|---|
| Administrative | Agency Definition of Disability/Eligibility for Services | 1035 |

C. The disability has continued or can be expected to continue indefinitely.

D. The disability constitutes a substantial handicap to the person's ability to function without appropriate support services including, but not limited to, daily living and social activities, medical services, physical therapy, speech therapy, occupational therapy, job training and employment.

5. Services. Given the availability of funds and subject to budget restrictions, DDS will provide services to eligible persons.

6. Appeal. Should the individual and parent/guardian disagree with the decision made, they retain the right of appeal following DDS Policy #1076.

Replacement Notation: This policy replaces DDS Commissioner's Office Policy 1035, Eligibility for Services, effective June 29, 1981; May 10, 1982; and October 7, 1983 and DDS Deputy Director's Policy #1035, January 8, 1985, December 1, 1993.

REPEAL-EO 23-02

Effective Date:

Sheet 1 of 4

References: Arkansas Code Ann. 20-48-101, DDS Policy #1075, and DDS Policy #1020

Administrative Rules & Regulations Sub Committee of the Arkansas Legislative Council: January 16, 2018

| Policy Type | Subject of Policy | Policy No. |
|---|---|---|
| Administrative | Agency Definition of Disability/Eligibility for Services | 1035 |

ATTACHMENT 1
DDS Administrative Policy No. 1035 – Agency Definition of Disability
Eligibility for Services

1. Referral is to include a memorandum by DDS Counselor with reason(s) for referral, why DDS eligibility is not clear, what are the reasons for dispute, and the referring person's own recommendation.

2. Adaptive Behavior Scale (within the last year).

3. Current Medical status (within the last year).

4. Psychological evaluation (within the last year) if eligibility request is based on psychological reasons.

5. Results of special evaluations relevant to eligibility determination.

6. Documentation by Service Coordinator of client observation within the last three (3) months.

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7. Social History completed within the last 90 days by DDS Counselor.

8. The most recent Individual Education Plan if person is school age.

9. For individuals who are not school age, program plan of current or past services providers, if any.

# FINANCIAL IMPACT STATEMENT

## PLEASE ANSWER ALL QUESTIONS COMPLETELY.

**DEPARTMENT** Department of Human Services
**BOARD/COMMISSION** Division of Medical Services
**PERSON COMPLETING THIS STATEMENT** Jason Callan
**TELEPHONE NO.** (501) 320-6540 **EMAIL** Jason.Callan@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

**TITLE OF THIS RULE** Electronic Visit Verification (EVV) for Home Health Services

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 no, please explain:

   (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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

   (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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 | $(341,176) | General Revenue | $(782,500) |
| Federal Funds | $153,886 | Federal Funds | $(593,568) |
| Cash Funds | | Cash Funds | |
| Special Revenue | | Special Revenue | |
| Other (Identify) | | Other (Identify) | |
| Total | -$ 187,289.00 | Total | -$ 1,376,068.00 |

(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, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

| **Current Fiscal Year** | **Next Fiscal Year** |
|---|---|
| $ | $ |

6. What is the total estimated cost by fiscal year to a state, county, or 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** |
|---|---|
| $ -341,176.00 | $ -782,500.00 |

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
# Electronic Visit Verification (EVV) for Home Health Services

**Why is this change necessary? Please provide the circumstances that necessitate the change.**

The 21st Century Cures Act, signed into law in 2016 and codified at 42 U.S.C. § 1396b(l), required state agencies to implement a system of Electronic Visit Verification (EVV) for home health care services that are provided and reimbursed under Medicaid. The EVV mandate was designed to enhance the quality and accuracy of care services. EVV uses electronic means to verify home health care service visits by providers.

All claims submitted by providers require electronic visit verification. The information collected during these visits includes:

- The date of service;
- The start time and end time for service;
- The type of health care service;
- The location of the service; and
- Information about the service provider.

The Division of Medical Services previously promulgated rules implementing EVV for personal care and attendant care effective December 1, 2020. Two years later, the Centers for Medicare and Medicaid Services (CMS) approved the Arkansas EVV Good Faith Effort Exemption request. The implementation start date for home health services is January 1, 2024. The Division of Medical Services (DMS) revises several provider manuals to comply with the upcoming implementation of the federal mandate.

**What is the change? Please provide a summary of the change.**

DMS revises the Arkansas Medicaid Provider Manuals as follows:

Section I – General Policy

- Table of Contents 145.000 – added, "…and Home Health Services".
- Section 145.000 – added reference to home health services.
- Section 145.100 – added reference to home health services throughout the section.
- Section 145.200 – added reference to home health care.
- Section 145.300 – updated procedure codes referencing home health.

ARChoices in Homecare Home and Community-Based 2176 Waiver

- Update Table of Contents for new section - 261.100 Electronic Visit Verification (EVV).
- Added a new section – 261.100 Electronic Visit Verification (EVV). Refers reader to Section I for EVV requirements regarding attendant care and respite care.

Home Health

- Update Table of Contents for new section - 241.100 Electronic Visit Verification (EVV).
- Added a new section – 241.100 Electronic Visit Verification (EVV). Refers reader to Section I for EVV requirements regarding home health services.

Personal Care

- Update Table of Contents for new section - 261.100 Electronic Visit Verification (EVV).
- Added a new section – 261.100 Electronic Visit Verification (EVV). Refers reader to Section I for EVV requirements regarding personal care services.

Repeals pursuant to the Governor's Executive Order 23-02:

1. DDS Policy 1027 – Incident Reporting Procedural Guidelines, and
2. DDS Policy 1035 – Agency Definition of Disability/Eligibility for Services.

# NOTICE OF RULE MAKING

The Department of Human Services (DHS) 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.

The Director of the Division of Medical Services amends Section I of the Arkansas Medicaid Provider Manual, and applicable sections of Sections 261.100 of the ARChoices in Homecare Home and Community Based 2176 Waiver provider manual, Home Health provider manual, and the Personal Care provider manual. These updates comply with the 21st Century Cures Act. The Act requires state agencies to implement a system of Electronic Visit Verification (EVV) for home health care services that are provided and reimbursed under Medicaid. The proposed effective date of the rule is January 1, 2024. The proposed rule estimates a financial impact savings of ($187,289.00) ($153,886.00 of which is federal funds) for state fiscal year (SYF) 2024 and ($1,376,068.00) (($593,568) of which is federal funds) for SYF 2025.

Pursuant to the Governor's Executive Order 23-02, DHS repeals the following two rules as part of this promulgation: (1) DDS Policy 1027 – Incident Reporting Procedural Guidelines, and (2) DDS Policy 1035 – Agency Definition of Disability/Eligibility for Services.

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 at ar.gov/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 October 21,2023. 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.

A public hearing by remote access only through a Zoom webinar will be held on October 4th at 11:00 a.m. and public comments may be submitted at the hearing. Individuals can access this public hearing at https://us02web.zoom.us/j/86180128017. The webinar ID is 86180128017. If you would like the electronic link, "one-tap" mobile information, listening only dial-in phone numbers, or international phone numbers, please contact ORP at ORP@dhs.arkansas.gov.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at (501) 320-6428.

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. 4502172997

Elizabeth Pitman, Director
Division of Medical Services