

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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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 _____

TOC required**250.460 Annual Disproportionate Share Hospital (DSH) Audit****9-1-24**

In addition to any other audits which may occur, independent certified audits of the Disproportionate Share Hospital (DSH) payments shall be conducted annually in accordance with 42 CFR 455.301 and 42 CFR 455.304. Reporting of the audit shall follow the requirements of 42 CFR 447.299. In accordance with 42 CFR 455.304(e), any overpayments of DSH funds shall be redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit, in the following manner:

- A. The amount of the DSH payment made to the acute care hospital will be recouped by the State of Arkansas to the extent necessary to reduce the DSH payment to an allowable amount.
- B. Amounts recouped from acute care hospitals with payments in excess of the audited hospital specific DSH limits will be placed into an acute care hospital redistribution pool. Redistribution will be made to remaining acute care hospitals that do not exceed their hospital specific DSH limit. The allocation will be made based on these remaining acute care hospitals' available uncompensated care. No acute care hospital shall exceed its hospital specific DSH limit after redistribution.
- C. Additionally, DSH funds not otherwise paid to qualifying acute hospitals shall be paid, subject to the uncompensated care cost limits and annual DSH allotment, to the Arkansas State Operated Teaching Hospital.

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -
INPATIENT HOSPITAL SERVICES

Revised: 12-18-2023

3a. Annual Disproportionate Share Hospital (DSH) Audit

In addition to any other audits which may occur, independent certified audits of the DSH payments shall be conducted annually in accordance with 42 CFR 455.301 and 42 CFR 455.304. Reporting of the audit shall follow the guidelines stated in 42 CFR 447.299. In accordance with 42 CFR 455.304(e), any overpayments of DSH funds shall be redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit in the following manner:

- (a) The amount of the DSH payment made to the acute care hospital will be recouped by the State of Arkansas to the extent necessary to reduce the DSH payment to an allowable amount.
- (b) Amounts recouped from acute care hospitals with payments in excess of the audited hospital specific DSH limits, will be placed into an acute care hospital redistribution pool. Redistribution will be made to remaining acute care hospitals that do not exceed their hospital specific DSH limit. The allocation will be made based on these remaining acute care hospitals available uncompensated care. No acute care hospital shall exceed its hospital specific DSH limit after redistribution.
- (c) Additionally, DSH funds not otherwise paid to qualifying acute hospitals shall be paid, subject to the uncompensated care cost limits and annual DSH allotment, to the Arkansas State Operated Teaching Hospital.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

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 _____

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

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 _____

(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, 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

\$ _____

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.

FINANCIAL IMPACT STATEMENT ADDENDUM

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;

Redistribution of overpayment DSH funding is necessary for the state to best utilize funding that becomes available following the certified audit once recoupment has occurred.

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

A change to the Medicaid state plan and relevant Medicaid provider manual is necessary for the State to be able to redistribute overpayments of DSH funding after the annual independent certified audit of DSH payments has been completed and original payments up to the acute care hospital specific DSH limits have been established. Overpayments will be recouped, placed into an acute care hospital redistribution pool, and redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit. Additionally, DSH overpayment funds not otherwise paid to qualifying acute hospitals shall be paid, subject to the uncompensated care cost limits and annual DSH allotment, to the Arkansas State Operated Teaching Hospital.

- (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;

N/A

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

N/A

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

N/A

- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

- (a) the rule is achieving the statutory objectives;
- (b) the benefits of the rule continue to justify its costs; and
- (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

The Agency monitors State and Federal rules and policies for opportunities to reduce and control cost.

Statement of Necessity and Rule Summary Disproportionate Share Hospital (DSH) Audit

Statement of Necessity

The Division of Medical Services (DMS) amends its Disproportionate Share Hospital (DSH) payment methodology to allow funds to be redistributed to other eligible hospitals upon completion of an annual, independent, certified audit of DSH payments in accordance with federal regulations. Redistribution of overpayment DSH funding is necessary for the state to best utilize funding that becomes available once a certified audit and recoupment has occurred. Any overpayments of DSH funds shall be redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit.

Summary of Changes

To establish the above redistribution methods, DMS issues a state plan amendment (SPA) and adds a new section, 250.460, to the Hospital Provider Manual. The language of these two additions state:

In addition to any other audits which may occur, independent certified audits of the DSH payments shall be conducted annually in accordance with 42 CFR 455.301 and 42 CFR 455.304. Reporting of the audit shall follow the guidelines stated in 42 CFR 447.299. In accordance with 42 CFR 455.304(e), any overpayments of DSH funds shall be redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit, in the following manner:

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NOTICE OF RULEMAKING

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: §§ 25-10-129, 20-76-201, and 20-77-107.

The Division of Medical Services (DMS) amends its Disproportionate Share Hospital (DSH) payment methodology to allow funds to be redistributed to other eligible hospitals upon completion of an annual, independent, certified audit of DSH payments in accordance with 42 CFR 447.299, 455.301, 455.304. Redistribution of overpayment DSH funding is necessary for the state to best utilize funding that becomes available once a certified audit and recoupment has occurred. Any overpayments of DSH funds shall be redistributed to other eligible hospitals within the state, provided each acute care hospital remains below their hospital specific DSH limit. To establish the above redistribution methods, DMS issues a state plan amendment (SPA) and adds a new section to the Hospital Provider Manual to be effective September 1, 2024. DHS projects an annual cost of \$10,948,978.00 (federal share \$7,883,264.00; state share \$3,065,714).

The proposed rule is available for review at the Department of Human Services (DHS) Office of Policy and Rules, 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](https://www.ark.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 **July 14, 2024**. 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 will be held by remote access through Zoom. Public comments may be submitted at the hearing. The details for attending the Zoom hearing appear at [ar.gov/dhszoom](https://www.ark.gov/dhszoom).

If you need this material in a different format, such as large print, contact the Office of Policy and Rules 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. 4502201653

Elizabeth Pitman, Director
Division of Medical Services