

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 _____

SECTION 4 – GENERAL PROGRAM ADMINISTRATION

4.5 Medicaid Recovery Audit Contractor Program

Citation

Section 1902(a)(42)(B)(i) of
the Social Security Act

~~X~~

The State established a program under which it contracts with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State plan and under any waiver of the State plan.

X

The state is seeking an exception to establishing such program for the following reasons:

Section 1902(a)(42)(B)(ii)(I)
of the Act

- The majority of Medicaid covered working-aged adults in Arkansas are covered through ARHOME, which is a private option plan for the expansion population, and a small portion of Arkansans are covered in its PASSE managed care program for specialized populations. Combined with the existing program integrity operation discussed next, a RAC program is not likely to be financially feasible in the state.
- Arkansas has a robust and effective program integrity operation; therefore, a RAC is not necessary. Arkansas has numerous program integrity measures in place to combat fraud, waste, and abuse in our state's Medicaid program, including:
 - The Office of Medicaid Inspector General (OMIG) housed within the Arkansas Department of Inspector General, independent of the state Medicaid agency, serves as the state's Medicaid program integrity unit performing the following functions:
 - Prevention, detection, and investigation of fraud, waste, and abuse (FWA) within the Arkansas Medicaid program
 - Audits of Medicaid providers
 - Referral of appropriate cases for criminal prosecution
 - Recovery of improperly expended Medicaid funds;
 - OMIG uses advanced program integrity data analytics proven effective in identifying FWA;
 - Federal Unified Program Integrity Contractor;
 - The state Medicaid agency housed within the Department of Human Services (DHS) requires pre and post payment review for 1667

individual Medicaid claims and prior authorization for 7154 individual procedure codes;

- o DHS contracts with multiple vendors to perform retrospective review of clinical, hospital, and specialty population claims;
- o The DHS Office of Payment Integrity reviews Medicaid claims and program policy to identify program policy improvements that will reduce the occurrence of FWA.

~~X~~

The State/Medicaid agency contracts the type(s) listed in section 1902(a)(42)(B)(ii)(I) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute.

Place a check mark to provide assurance of the following:

Section 1902(a)(42)(B)(ii)(I)
of the Act

— The State will make payments to the RAC(s) only from amounts recovered.

— The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.

~~The State is seeking an exception to the contingency fee methodology described in Section 1902(a)(42)(B)(ii)(I) of the Act. (See attached Arkansas legislation.)~~

Section 1902
(a)(42)(B)(ii)(II)(aa)
of the Act

— The following payment methodology shall be used to determine State payments to Medicaid RACs for identification and recovery of overpayments (percentage has not been determined):

— The State attests that the contingency fee rate paid to the Medicaid RAC will not exceed the highest rate paid to Medicare RACs, as published in the Federal Register.

— The State attests that the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will only submit for FFP up to the amount equivalent to that published rate.

— The contingency fee rate paid to the Medicaid RAC that will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will submit a justification for that rate and will submit for FFP for the full amount of the contingency fee.

~~The State will develop a Request for Proposal in order to secure a recovery audit contractor through the procurement process. The RFP will include a fixed fee reimbursement~~

~~methodology rather than the contingency fee methodology.~~

MARKUP

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.

Statement of Necessity and Rule Summary Recovery Audit Contractor Exemption SPA

Statement of Necessity

The Centers for Medicare and Medicaid Services (CMS) requested that the Arkansas Department of Human Services submit a State Plan Amendment (SPA) requesting an exemption of the requirement to contract with a Recovery Audit Contractor (RAC).

Summary

The Division of Medical Services shall submit a SPA requesting a RAC exemption pursuant to guidance provided by CMS.

- SPA pages 36-1 Section 4 General Program Administration

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 proposed effective date of the rule is March 1, 2026.

The Director of the Division of Medical Services (DMS) amends the Arkansas Medicaid State Plan upon request of the Centers for Medicare and Medicaid Services (CMS). The amendment requests an exemption of the requirement to contract with a Recovery Audit Contractor (RAC). There is no fiscal impact.

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. 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 December 10, 2026. 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 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. 4502292178

Elizabeth Pitman, Director
Division of Medical Services