

EXHIBIT L

DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS

SUBJECT: Medical Services Policy Manual Sections E-600 through E-670 and Appendix R

DESCRIPTION: E-600 through E-670 are new sections of policy that implement the Achieving a Better Life Experience (ABLE) Program in Arkansas. An ABLE account is a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses of the account's designated beneficiary. \$100,000 of the balance of funds in an ABLE account can be excluded from the resources of the designated beneficiary when determining eligibility for Medicaid.

Appendix R has been revised to include the ABLE Account Annual Contribution/Exclusion Limit.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on August 11, 2017. The Department received no public comments.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions to which Mr. Mills, DHS/DCO Program Administrator, responded:

(1) Are these the only rules that will be promulgated for the ABLE program?

RESPONSE: I believe there will be other rule changes promulgated by the State Treasurer's Office regarding implementing and maintaining the actual ABLE accounts. Emma Willis of the State Treasurer's Office can provide clarification on this issue.

(2) Under Arkansas Code Annotated § 20-3-105(c), the ABLE Program Committee is charged with adopting the necessary rules, with the Committee being made up of DHS, the State Treasurer, and Arkansas Rehabilitation Services. Was the Committee consulted on these rules? **RESPONSE:** As previously stated, I am a member of the ABLE Program Committee and the Committee was consulted and is aware of these rules.

(3) Is DHS pursuing promulgation on the Committee's behalf? **RESPONSE:** DHS is pursuing promulgation of the Medicaid policy portion of the ABLE account rules on the Committee's behalf.

The agency states that CMS approval is not required for this rule. The proposed effective date is October 1, 2017.

FINANCIAL IMPACT: For the current fiscal year 2018, the cost to implement the rule is \$2,052,493 (\$603,843 in general revenue and \$1,448,650 in federal funds); and \$2,816,128 for the next fiscal year 2019 (\$820,338 in general revenue and \$1,995,790 in federal funds).

Since 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, the Department provided the following information:

(1) a statement of the rule's basis and purpose:

The proposed rule change will establish the Achieving a Better Life Experience (ABLE) program in Arkansas. The ABLE account is a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses of the account's designated beneficiary. ABLE account funds up to a \$100,000 limit will be disregarded as a resource when determining Medicaid eligibility.

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

The ABLE account is a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses without losing their Medicaid eligibility. The proposed rule is required by federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule: and

The proposed rule is required by federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs:

Implementation of an ABLE account will allow an eligible individual to save funds for disability-related expenses without losing their Medicaid eligibility and will allow the state to comply with federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

(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:

There were no alternatives proposed.

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(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 in compliance with ACA 25-15-204 will review the rule every 10 years.

LEGAL AUTHORIZATION: The instant rules establish the Achieving a Better Life Experience (“ABLE”) program in Arkansas as required to comply with **Act 1238 of 2015**, Pub. L. No. 113-295(529A), and SI 01130.740. Arkansas Code Annotated § 20-3-105(c) provides that the ABLE Program Committee shall adopt rules necessary to administer the ABLE Program Act (“Act”), codified at Ark. Code Ann. §§ 20-3-101 through 20-3-113, and to ensure compliance with the ABLE Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295 and federal regulations under the act. *See also* Ark. Code Ann. § 20-3-105(a) (providing that the Act shall be administered by the ABLE Program Committee, composed of the director of the Department of Human Services, the director of Arkansas Rehabilitation Services of the Department of Career Education and Workforce Development, and the Treasurer of State, or their respective designees); Ark. Code Ann. § 20-3-105(d)(2) (also providing that the Committee shall adopt rules for the general administration of the program). Rules under the Act shall ensure that: (a) a rollover from an ABLE account does not apply to an amount paid or distributed from the ABLE account to the extent that, not later than the sixtieth day after the date of the payment or distribution, the amount received is paid into another ABLE account for the benefit of the same designated beneficiary or an eligible individual who is a member of the family of the designated beneficiary, but this limitation does not apply to a transfer if the transfer occurs within twelve (12) months after the date of a previous transfer under this subchapter for the benefit of the designated beneficiary; (b) a person may make contributions for a taxable year for the benefit of an individual who is an eligible individual for the taxable year to an ABLE account that is established to meet the qualified disability expenses of the designated beneficiary of the account; (c) a designated beneficiary is limited to one (1) ABLE account; (d) an ABLE account may be established only for a designated beneficiary who is a resident of Arkansas or a resident of a contracting state; and (e) other requirements of this chapter shall be met. *See* Ark. Code Ann. § 20-3-106.

EXHIBIT L

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Human Services
 DIVISION County Operations
 DIVISION DIRECTOR Mary Franklin
 CONTACT PERSON Larry Crutchfield
 ADDRESS PO Box 1437, Slot S332, Little Rock, AR 72203
 PHONE NO. 501-682-8257 FAX NO. 501-682-1597 E-MAIL Larry.crutchfield@dhs.arkansas.gov
 NAME OF PRESENTER AT COMMITTEE MEETING Dave Mills
 PRESENTER E-MAIL Dave.mills@dhs.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 One Capitol Mall, 5th Floor
 Little Rock, AR 72201

1. What is the short title of this rule? Medical Services Policy Manual Sections E-600 through E-670 and Appendix R

2. What is the subject of the proposed rule? The proposed rule change will establish the Achieving a Better Life Experience (ABLE) program in Arkansas.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
 Act 1238; Public Law 113-295(529A) and
 If yes, please provide the federal rule, regulation, and/or statute citation. SI 01130.740

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
 Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative

Procedure Act?

Yes No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation.

The regulation enacts the Achieving a Better Life Experience (ABLE) account as a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses of the account's designated beneficiary. ABLE account funds up to a \$100,000 limit will be disregarded as a resource when determining Medicaid eligibility.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code 20-3-105(b)

7. What is the purpose of this proposed rule? Why is it necessary? The purpose of this rule is to establish the Achieving a Better Life Experience (ABLE) program in Arkansas.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<http://humanservices.arkansas.gov/Pages/LegalNotices.aspx>

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 11, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

October 1, 2017

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See Attachment

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). See Attachments

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules?

Please provide their position (for or against) if known. Medicaid associations, interested providers and advocacy organizations. Their positions for or against are not known at this time.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT David McMahon

TELEPHONE 501-396-6421 **FAX** _____ **EMAIL:** David.McMahon1@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 Manual Sections E-600 through E-660 and Appendix R

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes X 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 X 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 X 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?

<u>Current Fiscal Year SFY 2018</u>	
General Revenue	<u>\$ 603,843</u>
Federal Funds	<u>\$1,448,650</u>
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	<u>\$2,052,493</u>

<u>Next Fiscal Year SFY 2019</u>	
General Revenue	<u>\$ 820,338</u>
Federal Funds	<u>\$1,995,790</u>
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	<u>\$2,816,128</u>

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

Current Fiscal Year

Next Fiscal Year

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

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;

The proposed rule change will establish the Achieving a Better Life Experience (ABLE) program in Arkansas. The ABLE account is a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses of the account's designated beneficiary. ABLE account funds up to a \$100,000 limit will be disregarded as a resource when determining Medicaid eligibility.

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

The ABLE account is a tax-advantaged account that an eligible individual can use to save funds for the disability-related expenses without losing their Medicaid eligibility. The proposed rule is required by federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

The proposed rule is required by federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

Implementation of an ABLE account will allow an eligible individual can use to save funds for the disability-related expenses without losing their Medicaid eligibility and will allow the state to comply with federal statutes Public Law 113-295(529A) and SI 01130.740, as well as, Arkansas Code 20-3-105(b).

- (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;

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- (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;

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- (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 in compliance with ACA 25-15-204 will review the rule every 10 years.