



Division of Medical Services

P.O. Box 1437, Slot S295, Little Rock, AR 72203-1437

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MEMORANDUM

TO: Interested Persons and Providers

FROM: Elizabeth Pitman, Director, Division of Medical Services

DATE: October 8th, 2021

SUBJ: Pharmacy 2-21 and Medicaid State Plan Amendment (SPA) 2021-0009, based on Act 758

As a part of the Arkansas Administrative Procedure Act process, attached for your review and comment are proposed rule revisions.

Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov 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 have any comments, please submit those comments in writing, no later than November 8th, 2021 .

NOTICE OF RULE MAKING

The Director of the Division of Medical 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: 20-77-107, 25-10-129, and 20-76-201.

Effective January 1, 2022:

The Director of the Division of Medical Services (DMS) revises Section II of the Pharmacy Provider Manual. The 93rd General Assembly enacted Act 758 allowing six (6) prescription refills per month. Act 758 also included additional medications that do not count against the monthly prescription benefit cap. These medications are prescriptions for high blood pressure, hypercholesterolemia, blood modifiers, diabetes, and respiratory inhalers.

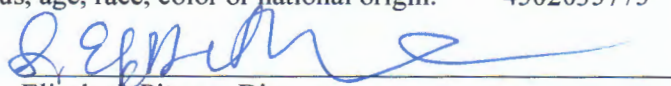
DMS amends Section II of the Pharmacy Provider Manual and the Medicaid State Plan to replace the term beneficiary with client. DMS changes sections that limited clients to three prescription refills per month to reflect the allowance of six (6) refills. DMS also adds prescriptions for treatment of high blood pressure, treatment of hypercholesterolemia, treatment of diabetes, blood modifier medications, and inhalers to treat respiratory illness to the list of medications that do not count against the monthly prescription cap. DMS adds that Living Choices Assisted Living Program clients are eligible for up to nine (9) medically necessary prescriptions per month. DMS adds that the client is responsible for paying for their own medications for the remainder of the month when the client has received the maximum monthly benefit or the maximum monthly extended benefit and deletes the "Extension of Benefits" section. Lastly, DMS deletes language requiring a new, original prescription to continue drug therapy beyond five refills or six months and adds that refills shall be in accordance with federal and state laws.

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 <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 November 8th, 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.

A public hearing by remote access only through a Zoom webinar will be held on October 20th, 2021 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/87044183305>. The webinar ID is 870 4418 3305. 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 501-396-6428.

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. 4502035775


Elizabeth Pitman, Director
Division of Medical Services

TOC not required

213.100 Monthly Prescription Limits

9-4-201-1-
21

- A. Each prescription for all Medicaid-eligible ~~beneficiaries~~clients may be filled for up to a maximum ~~34-day~~thirty-one-day supply. -Maintenance medications for chronic illnesses must be prescribed and dispensed in quantities sufficient (not to exceed the maximum ~~34~~thirty-one-day supply per prescription) to effect optimum economy in dispensing. For drugs that are specially packaged for therapy exceeding thirty-one (31) days, the days' supply limit (other than thirty-one (31)), as approved by the ~~A~~agency, will be allowed for claims processing. -Contact the Pharmacy Help Desk to inquire about specific days' supply limits on specially packaged dosage units.

[View or print the contact information for the DHS contracted Pharmacy vendor.](#)

- B. Each Medicaid-eligible ~~beneficiary~~client ~~age~~ twenty-one (21) years of age and older is limited to ~~three-six~~ (36) Medicaid-paid prescriptions per calendar month.

Each prescription filled counts toward the monthly prescription limit except for the following:

1. Family planning items. ~~This includes, but is not limited to~~Including without limitation, birth control pills, contraceptive foams, contraceptive sponges, suppositories, jellies, prophylactics, and diaphragms~~;~~;
 2. Prescriptions for Medicaid-eligible long-term care facility residents.~~(Prescriptions~~(must be for Medicaid-covered drugs);
 3. Prescriptions for Medicaid-eligible ~~beneficiaries~~clients under ~~age~~ twenty-one (21) years of age in the Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program. ~~(Prescriptions~~(must be for Medicaid-covered drugs);
 4. Prescriptions for opioid use disorder treatment when used according to SAMHSA guidelines~~;~~;
 5. Prescriptions for tobacco cessation products~~;~~;
 6. Prescriptions for the treatment of high blood pressure;
 7. Prescriptions for the treatment of hypercholesterolemia;
 8. Blood modifier medications;
 9. Prescriptions for the treatment of diabetes; and
 10. Inhalers to treat respiratory illness.
- C. Living Choices Assisted Living Program clients are eligible for up to nine (9) medically necessary prescriptions per month.
- D. After the client has received the maximum monthly benefit or the maximum monthly extended benefit, they will be responsible for paying for their own medications for the remainder of the month.

213.110 Extension of Benefits

3-14-15

~~The Arkansas Medicaid Program will consider extensions of the prescription drug monthly benefit limit up to a maximum of six (6) prescriptions per calendar month for beneficiaries age 21 and older for medically necessary maintenance medications. Discretion and ethical standards~~

~~are to be used when applying for an extension of the prescription drug benefit. This is especially true when the drugs considered for the extension are controlled medications. If a provider suspects an abuse of the extension of the prescription drug benefit, the Arkansas Medicaid Pharmacy Program should be contacted. The Pharmacy Program may elect to terminate extensions that are not consistently being used for appropriate maintenance therapy.~~

~~Living Choices Assisted Living Program beneficiaries are eligible for up to nine (9) medically necessary prescriptions per month.~~

~~After the beneficiary has received the maximum monthly benefit or the maximum monthly extended benefit, he or she will be responsible for paying for his or her own medications for the remainder of the month.~~

213.200 Prescription Refill Limit

~~2-1-461-1-21~~

Refills are reimbursable under the Arkansas Medicaid Pharmacy Program only if they are specifically authorized on the original prescription or if authorized by the prescribing provider at a later date and recorded by the pharmacist on the original prescription when refilled. ~~Refills shall be in accordance with federal and state laws. In no event is any prescription to be refilled more than five (5) times or beyond six (6) months after the date of the original issue, whichever comes first. Renewals or continuation of drug therapy beyond five refills or six months requires a new, original prescription.~~

Pharmacies will have a maximum of fourteen (14) days to reverse original prescriptions and refills that were not provided to the beneficiary/client.

215.000 Child Health Services/Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program

~~40-13-031-1-21~~

Medicaid provides a Child Health Services (EPSDT) Program to detect, diagnose, and treat medical problems in Medicaid beneficiary/clients ~~under the age of twenty-one (21) years of age.~~ Prescriptions for Medicaid beneficiary/clients ~~under age twenty-one (21) years of age~~ in the Child Health Services (EPSDT) Program are not subject to a monthly prescription limit.

As with all other Medicaid prescriptions, ~~the following will also apply to~~ Medicaid beneficiary/clients ~~under age twenty-one (21) years of age~~ in the Child Health Services (EPSDT) Program:

~~A. E~~ May have each prescription ~~may be~~ filled for a maximum ~~31~~ thirty-one-day supply.

~~B. No refills are reimbursable after the five (5) refills or the six-month period specified in Section 213.200 of this manual.~~

216.201 Prescription Benefits for Hospice Patients in Long-Term Care Facilities

~~40-13-031-1-21~~

Medicaid beneficiary/clients who have elected to receive hospice services in LTC facilities may only use their prescription drug benefits to treat conditions not directly related to their terminal illness. ~~Please refer to section 213.100 for monthly prescription limits. These beneficiaries are only allowed three (3) prescriptions per month. If additional prescriptions are needed, an extension of drug benefits may be requested for up to a total of six (6) maintenance medications per month. Drugs related to the terminal illness must be furnished by the hospice.~~

216.202 Regulations Governing Cycle-Fill and Pharmacy Notification for Long-Term Care Facilities

~~40-1-461-1-21~~

Only oral solid medications may be cycle-filled. However, if an oral solid medication meets one (1) of the categories below, then that oral solid medication **may not** be cycle-filled.

- A. PRN or “as needed” medications;
- B. Controlled drugs (CII – CV);
- C. Refrigerated medications;
- D. Antibiotics; or
- E. Anti-infectives.

When a facility notifies a pharmacy in writing of any change of condition that affects the medication status of a resident, the pharmacy shall immediately amend the filling of the prescription to conform to the changed medication requirement of the resident.

For purposes of this section, *change of condition* includes death, discharge, or transfer of a resident, as well as medical changes of condition that necessitate a change to the medication prescribed or the dosage given.

~~Per Section 213.200, the six (6) month prescription renewal is required for LTC eligible beneficiaries residing in LTC facilities. However, for those drugs that can be cycle filled as stated above, the five (5) refill limit does not apply.~~

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM
STATE ARKANSAS

ATTACHMENT 3.1-B
Page 4g

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED
1, 2022

Revised: August 1, 2020January

MEDICALLY NEEDY

12. Prescribed drugs, dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist

a. Prescribed Drugs

- (1) Each recipient age **twenty-one** (21) or older may have up to six (6) prescriptions each month under the program. ~~The first three (3) prescriptions do not require prior authorization. The three (3) additional prescriptions must be prior authorized.~~ Family Planning, tobacco cessation, oral prescription drugs for opioid use disorder when prescribed by an X-DEA waived provider as part of a Medication Assisted Treatment plan, ~~and~~ EPSDT, high blood pressure, hypercholesterolemia, blood modifiers, diabetes and respiratory illness inhaler prescriptions do not count against the prescription limit.
- (2) Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.
- (3) The Medicaid agency provides coverage, to the same extent that it provides coverage for all Medicaid recipients, for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses – with the exception of those covered by Part D plans as supplemental benefits through enhanced alternative coverage as provided in 42 C.F.R. §423.104 (f) (1) (ii) (A) – to full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit – Part D.

The following excluded drugs, set forth on the [Arkansas Medicaid Pharmacy Vendor's Website](#), are covered:

- a. select agents when used for weight gain:
Androgenic Agents;
 - b. select agents when used for the symptomatic relief of cough and colds:
Antitussives; Antitussive-Decongestants; **and** Antitussive-Expectorants;
 - c. select prescription vitamins and mineral products, except prenatal vitamins and fluoride:
B 12; Folic Acid; and Vitamin K;
 - d. select nonprescription drugs:
Antiarthritics; Antibacterials and Antiseptics; Antitussives; Antitussives-Expectorants; Analgesics; Antipyretics; Antacids; Antihistamines; Antihistamine-Decongestants; Antiemetic/Vertigo Agents; Gastrointestinal Agents; Hematinics; Laxatives; Ophthalmic Agents; Sympathomimetics; Topical Antibiotics; Topical Antifungals; Topical Antiparasitics; and Vaginal Antifungals; **and**
 - e. non-prescription products for smoking cessation.
- (4) The State will reimburse only for the drugs of pharmaceutical manufacturers who have entered into and have in effect a rebate agreement in compliance with Section 1927 of the Social Security Act, unless the exceptions in Section 1902(a)(54), 1927(a)(3), or 1927(d) apply. The State permits coverage of participating manufacturers' drugs, even though it may be using a formulary or other restrictions. Utilization controls will include prior authorization and may include drug utilization reviews. Any prior authorization program instituted after July 1, 1991, will provide for a 24-hour turnaround from receipt of the request for prior authorization. The prior authorization program also provides for at least a 72-hour supply of drugs in emergency situations.

TN: 201-001309

Supersedes TN: 1320-002713

Approved:

Effective: 081/01/202

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM
STATE ARKANSAS

ATTACHMENT 3.1-A
Page 5a

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED
1, 2022

Revised: August 1, 2020-January

CATEGORICALLY NEEDY

12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist

a. Prescribed Drugs

- (1) Each recipient age twenty-one (21) or older may have up to six (6) prescriptions each month under the program. ~~The first three (3) prescriptions do not require prior authorization. The three (3) additional prescriptions must be prior authorized.~~ Family Planning, tobacco cessation, oral prescription drugs for opioid use disorder prescribed by an X-DEA waived provider as part of a Medication Assisted Treatment plan, ~~and~~ EPSDT, high blood pressure, hypercholesterolemia, blood modifiers, diabetes and respiratory illness inhaler prescriptions do not count against the prescription limit.
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- (3) The Medicaid agency provides coverage, to the same extent that it provides coverage for all Medicaid recipients, for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses – with the exception of those covered by Part D plans as supplemental benefits through enhanced alternative coverage as provided in 42 C.F.R. §423.104 (f) (1) (ii) (A) – to full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit – Part D.

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 - c. select prescription vitamins and mineral products, except prenatal vitamins and fluoride:
B 12; Folic Acid; and Vitamin K;
 - d. select nonprescription drugs:
Antiarthritics; Antibacterials and Antiseptics; Antitussives; Antitussives-Expectorants; Analgesics; Antipyretics; Antacids; Antihistamines; Antihistamine-Decongestants; Antiemetic/Vertigo Agents; Gastrointestinal Agents; Hematinics; Laxatives; Ophthalmic Agents; Sympathomimetics; Topical Antibiotics; Topical Antifungals; Topical Antiparasitics; and Vaginal Antifungals; and
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TN: ~~201~~-001309

Supersedes TN: ~~1320~~-270013

Approved:

Effective: ~~081~~/01/202