

Ark. Admin. Code 006.09.4. METHOD OF DISTRIBUTION OF AMERICAN RESCUE PLAN ACT FUNDS FOR COVID-19 TESTING.

Pursuant to the authority vested in the Secretary of the Department of Finance and Administration, by Ark. Code Ann. §§ 25-8-102(a) and 11-5-118(g) (Act 1115 of the 2021 Regular Session, 93rd General Assembly), the Secretary of the Department of Finance and Administration, with the approval of the Governor, does hereby promulgate the following Rule.

1. Definitions.

(A) "American Rescue Plan Act" means the American Rescue Plan Act of 2021, Pub. L. No. 117-2.

(B) "Certify" means to attest affirmatively, based on information and belief formed after reasonable inquiry, to the truth, accuracy, and completeness, under penalty of perjury.

(C) "Claimant" means an employer or employee that makes a claim for reimbursement of the cost of COVID-19 testing not covered by an employee's health benefit plan.

(D) "COVID-19" means the respiratory illness that is caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and its variants.

(E) "Disbursing Officer" means the Secretary of the Department of Finance and Administration or the Secretary's designee.

(F) "Employee" means a person who is subject to an employer-required or employer-mandated COVID-19 vaccination or immunization, whose health benefit plan does not cover the cost of COVID-19 testing, and who wishes to continue employment by claiming an exemption under one of the options of the specific exemption process provided for by Ark. Code Ann. § 11-5-118 (Act 1115 of the 2021 Regular Session, 93rd General Assembly).

(G) "Employer" means an entity that requires or is mandated to require vaccination or immunization for COVID-19 for the entity's employees and is required to provide the exemption process under Ark. Code Ann. § 11-5-118 (Act 1115 of the 2021 Regular Session, 93rd General Assembly).

(H) "State Fiscal Recovery Funds" means federal funding authorized within the American Rescue Plan Act of 2021, Pub. L. No. 117-2, Section 602(b) of the Social Security Act as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021). The Department of Finance and Administration (the "Department") received these funds for distribution to eligible projects on behalf of the State.

2. COVID-19 TESTING PROGRAM

(A) The Department created the COVID-19 Testing Program (the "Program") in order to comply with Ark. Code Ann. § 11-5-118 (Act 1115 of the 2021 Regular Session, 93rd General Assembly). If made available, SFRF funds will be provided to employers and employees to cover the cost of COVID-19 testing.

(B) Under the Program, an employer or employee may submit a claim for reimbursement of the cost of COVID-19 testing and an employer may submit a request for funding to disburse to employees for reimbursement of the cost of COVID-19 testing.

(C) If SFRF funds are made available, the Program covers the cost of COVID-19 testing not covered by an employee's health benefit plan for an employee who wishes to continue employment by claiming an exemption under one of the options of the specific exemption process provided for by Ark. Code Ann. § 11-5-118 (Act 1115 of the 2021 Regular Session, 93rd General Assembly). No administrative costs are eligible costs under the Program.

(D) Before an employer may receive SFRF funds, the employer must provide the Department with an executed Subrecipient Agreement and establish itself as a state vendor through the Department or its successor.

(E) An employer that receives SFRF funds is a Subrecipient and is subject to the compliance and reporting responsibilities required by the American Rescue Plan Act. The COVID-19 Testing Program Subrecipient Agreement is an addendum to this rule.

(F) Before an employee may receive SFRF funds, the employee must establish himself or herself as a state vendor through the Department or its successor.

(G) If an employer or employee has not been established as a state vendor, payment for a reimbursement claim or an employer's request for funding will be delayed.

(H) SFRF funds received under the Program are subject to repayment to the Department for the following reasons: SFRF funds are used for an ineligible purpose; the Department determines an employer has received an excess of funding based upon analysis of the monthly reports; in the event of separation of employees; or as provided by the COVID-19 Testing Program Subrecipient Agreement.

3. EMPLOYER THAT REQUIRES OR IS MANDATED TO REQUIRE VACCINATION OR IMMUNIZATION FOR COVID-19

(A) An employer that requires or is mandated to require vaccination or immunization for COVID-19 for the employer's employees shall notify in writing the employer's employees by providing a certified copy of the employer's mandatory vaccination or immunization requirement or policy and the exemption options available under Ark. Code Ann. § 11-5-118 (Act 1115 of the 2021 Regular Session, 93rd General Assembly).

4. SUBMISSION OF CLAIMS FOR REIMBURSEMENT OF COSTS OF COVID-19 TESTING

(A) An employer and employee shall submit a claim for reimbursement to cover the cost of COVID-19 testing not covered by the employee's health benefit plan on the form(s) provided by the Department for that purpose. The employer or employee shall denote on the form(s) whether the employer or the employee is the Claimant to be reimbursed.

(B) In addition to the properly completed form(s), the Claimant shall provide the original, or a digitally scanned copy, of the invoice, receipt, or other document(s) evidencing that the test was conducted, the name of each employee tested, the cost of COVID-19 testing, the name of the manufacturer of each COVID-19 test, the United States Food and Drug Administration ("FDA") emergency use authorization number for each test, and a paycheck stub for the most recent pay period for each employee tested, and with all documents submitted in legible format.

(C) By both signing the form(s), the employer and employee shall certify that the information provided on the form(s) and all documents submitted with their reimbursement claim are true, accurate, and complete.

(D) Upon receipt of the documents as described in 4(B) and the properly completed form(s), the Disbursing Officer shall issue SFRF funds, if made available, to the Claimant within thirty (30) days.

5. OPTION FOR DISTRIBUTION OF FUNDS TO AN EMPLOYER

(A) An employer that chooses to receive funds for disbursement to employees to cover the cost of COVID-19 testing not covered by the employee's health benefit plan shall submit a request for funding on the form(s) provided by the Department for that purpose.

(B) In addition to providing the properly completed form(s), an employer shall provide a proposed testing roster on the form(s) provided by the Department for that purpose.

(C) The Department will determine the amount of funds to be provided to an employer, for disbursement to employees to cover the cost of testing, based upon the information provided on the form(s) and the proposed testing roster.

(D) An employer that receives funds to distribute to employees for COVID-19 testing shall report on a monthly basis to the Department on the form(s) provided by the Department for that purpose. In addition to providing the properly completed form(s), an employer shall provide the original, or a digitally scanned copy, of invoices, receipts, or other documents evidencing that each test was conducted, name of each employee tested, the cost of COVID-19 testing, the name of the manufacturer of each COVID-19 test, the FDA emergency use authorization number for each test, and a paycheck stub for the most recent pay period for each employee tested with all documents submitted in in legible format.

(E) An employer that receives funds to distribute to employees for COVID-19 testing shall provide on a monthly basis an updated proposed testing roster, a completed testing roster, and an employee separation roster on the form(s) provided by the Department for that purpose.

(F) By signing the form(s), the employer shall certify that the information provided on the form(s) and all documents submitted with the form(s) are true, accurate, and complete.

(G) Upon receipt of the properly completed forms as described in 5(A) & 5(B), the Disbursing Officer shall issue SFRF funds, if made available, to the employer within thirty (30) days.

This Rule shall expire on July 31, 2023 unless Ark. Code Ann. § 11-5-118 (Act 1115 of the 2021 Regular Session, 93rd General Assembly) is extended by the General Assembly.

Source: Arkansas Code Annotated § 11-5-118(g) (Act 1115 of the 2021 Regular Session, 93rd General Assembly).


Larry W. Waither, Secretary
Arkansas Department of Finance and Administration

Date: January 18, 2022