

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: SPA# 2020-0003 EIDT/ADDT Rate Increase

DESCRIPTION:

Statement of Necessity

A revision to the Arkansas Medicaid State Plan is necessary to increase rates for day habilitation services in the Adult Developmental Day Treatment (ADDT) and Early Intervention Day Treatment (EIDT) Medicaid programs based upon a rate review recommendation and Arkansas minimum wage increase.

Rule Summary

Day habilitation service rates in Adult Developmental Day Treatment (ADDT) and Early Intervention Day Treatment (EIDT) will increase by eleven percent (11%) based upon a rate review of the service. The previous rate had not been increased since 2008. The State Plan Amendment to support this change will be retroactive to January 1, 2020 upon Centers for Medicare and Medicaid Services (CMS) approval. As a result of the increase, the following state plan pages are being revised:

- Attachment 3.1-A, page 4a: Categorically Needy
- Attachment 3.1-B, page 4b: Medically Needy
- Attachment 4.19-B, page 1f: Methods and Standards for Establishing Payment Rates
- Attachment 4.19-B, page 3a: Methods and Standards for Establishing Payment Rates.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired April 26, 2020. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: The rule summary mentions that this rule change requires some level of CMS approval. What is the status on that approval? **RESPONSE:** The state plan amendment was submitted to CMS March 27, 2020. CMS has until June 25, 2020, to approve or deny it. We are currently responding to CMS questions.

QUESTION #2: Was the word “than” correctly added to Section 4.b(3)(1) and to the third paragraph of Section 9(1)? Those sections both now read, “...[R]ates are established per the most current Blue Cross/Blue Shield Fee Schedule amount less **than** 2.5% and then multiplied by 66%.” I am unfamiliar with insurance fee schedules, but the math in

that sentence seems odd with the change. **RESPONSE:** The word “than” was added in error during the editing process. We have removed the word from the attached. Thank you for bringing that to our attention.

The proposed effective date is July 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the additional cost to implement the rule is \$9,422,873 for the current fiscal year (\$2,714,730 in general revenue and \$6,708,143 in federal funds) and \$18,845,745 for the next fiscal year (\$5,357,845 in general revenue and \$13,487,900 in federal funds). The estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$2,714,730 for the current fiscal year and \$5,357,845 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule’s basis and purpose;

As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.

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

As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.

(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;

As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.

(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:
There are no less costly alternatives.

(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;

None at this time.

(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
None.

(7) an agency plan for review of the rule no less than every ten 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

Executive Order 19-02 requires provider rates to be reviewed no less frequently than every four years.

LEGAL AUTHORIZATION: The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law in order to receive federal funding. Ark. Code Ann. § 25-10-129(b).

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

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Janet Mann
CONTACT PERSON Alexandra Rouse
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437
PHONE NO. 501-508-8875 **FAX NO.** 501-404-4619 **E-MAIL** Alexandra.Rouse@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Janet Mann
PRESENTER E-MAIL Janet.Mann@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:

Jessica C. Sutton
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? SPA #2020-0003 EIDT/ADDT Rate Increase

2. What is the subject of the proposed rule? SPA #2020-0003 EIDT/ADDT Rate Increase

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

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. _____

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."**

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

7. What is the purpose of this proposed rule? Why is it necessary? See Attached.

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).
<https://medicaid.mmis.arkansas.gov/general/comment/comment.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.)
April 26, 2020

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
July 1, 2020

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 Attached.

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

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. Providers, in favor.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT Lynn Burton

TELEPHONE (501) 682-1857 **FAX** (501) 682-8155 **EMAIL:** Lynn.burton@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 SPA #2020-0003 EIDT/ADDT Rate Increase

- 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 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?

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

Next Fiscal Year

General Revenue	\$2,714,730
Federal Funds	\$6,708,143
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$9,422,873

General Revenue	\$5,357,845
Federal Funds	\$13,487,900
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$18,845,745

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

\$ 2,714,730

\$ 5,357,845

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; **As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.**
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; **As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.**
- (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; **As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs.**
- (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; **There are no less costly alternatives.**
- (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; **None at this time.**
- (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 **None**
- (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. **Executive Order 19-02 requires provider rates to be reviewed no less frequently than every four years.**

NOTICE OF RULE MAKING

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

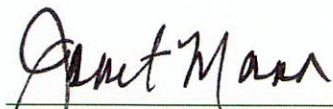
Effective January 1, 2020:

The Arkansas Department of Human Services, Division of Medical Services (DHS/DMS), intends to revise the Arkansas Medicaid State Plan to increase rates for Early Intervention Day Treatment (EIDT) and Adult Developmental Day Treatment (ADDT) services in the Medicaid program based upon a rate review recommendation. As required by Executive Order 19-02, the rate review process for Day Habilitation was completed in July 2019. The review resulted in a recommended increase of 11% for day habilitation services provided in EIDT and ADDT programs. The financial impact will be \$9,422,873 for State Fiscal Year (SFY) 2020; and \$18,845,745 for SFY 2021.

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 on the Medicaid website at <https://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx>. 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 April 26, 2020. 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 Rules Promulgation at 501-320-6266.

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. **4501888131**



Janet Mann, Director
Division of Medical Services

Statement of Necessity and Rule Summary

SPA #2020-0003 EIDT/ADDT Rate Increase

Statement of Necessity

A revision to the Arkansas Medicaid State Plan is necessary to increase rates for day habilitation services in the Adult Developmental Day Treatment (ADDT) and Early Intervention Day Treatment (EIDT) Medicaid programs based upon a rate review recommendation and Arkansas minimum wage increases.

Rule Summary

Day habilitation service rates in Adult Developmental Day Treatment (ADDT) and Early Intervention Day Treatment (EIDT) will increase by eleven percent (11%) based upon a rate review of the service. The previous rate had not been increased since 2008. The State Plan Amendment to support this change will be retroactive to January 1, 2020 upon Centers for Medicare and Medicaid Services (CMS) approval. As a result of the increase, the following state plan pages are being revised.

- Attachment 3.1 A, page 4a: Categorically Needy
- Attachment 3.1-B, page 4b: Medically Needy
- Attachment 4.19-B, page 1f: Methods and Standards For Establishing Payment Rates
- Attachment 4.19 -B, page 3a: Methods and Standards For Establishing Payment Rates