

EXHIBIT J

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Outpatient Behavioral Health Services Update 1-17, Inpatient Psychiatric Services for Persons under Age 21 Update 1-17 and Residential Community Reintegration Program Certification

DESCRIPTION: Effective October 1, 2017, Arkansas Medicaid proposes to move the Residential Community Reintegration Program service from the Inpatient Psychiatric manual to the Outpatient Behavioral Health Services manual and to establish certification requirements for the Residential Community Reintegration Program. This service was previously approved in the Behavioral Health Transformation package that was filed with the Secretary of State's Office on December 27, 2016, and given rule number 016.06.16-024. The proposed rule is necessary to comply with CMS approval of the new OBHS services.

PUBLIC COMMENT: A public hearing was held on August 8, 2017. The public comment period expired on August 11, 2017. The Department provided the following summary of the public comments that it received:

Cookie Higgins, Centers for Youth and Families

Comment: There is no DHS application form for the Residential Community Reintegration program posted.

Response: The form mirrors the existing programmatic application forms (i.e. Therapeutic Communities, Partial Hospitalization) and requires information to be entered in a similar manner in order to begin application for certification as a Residential Community Reintegration program and has been added to the packet for promulgation.

Comment: Please verify that the documentation required for this per diem service is only one summary note a day.

Response: The daily note required in the beneficiary's medical record must document the services provided to that individual during the day and the progress or lack of progress towards meeting goals identified in the beneficiary's treatment plan. The required documentation in the provider manual is described as "Daily description of activities and interventions that coincide with master treatment plan and meet or exceed minimum service requirements.

Comment: If documentation is completed by a mental health paraprofessional, is a signature by a mental health professional also required?

Response: Documentation must be signed by the supervising professional as well as reviewed by a physician.

Comment: Section 168.000, In-service (5) of Certification Policy – Please add mandatory Child Maltreatment reporting, 2010 Arkansas Code Annotated Title 12 – Subtitle 2, Chapter 18.

Response: This will be added to this section of the Certification requirements for in-service training.

Comment: Section 171.000, Facility Environment (j) – Recommend removing the requirement for actual hours of operation to be posted at all public entrances. Residential Community Reintegration Programs are 24/7 facilities. They are always in operation.

Response: This requirement will be removed from the Certification requirements for Facility Environment. This section will now read “The Residential Community Reintegration Program’s telephone number(s) shall be posted at all public entrances.”

Comment: SPA 010-Attached 3.1A.doc and SPA 010-Attach-1b.doc – Both of these documents state that the “Residential Community Reintegration Programs shall be certified by the Department of Human Services as a Therapeutic Communities provider.” Shouldn’t that read “certified by the Department of Human Services as a Residential Community Reintegration Program”?

Response: Yes, this oversight has been corrected.

Comment: Section 254.003, OBHS manual – Residential Community Reintegration Program – Please consider adding other Places of Services. Location 14 is group home location. As youth stabilize and transition into the community/school, etc., they could receive services in other locations – 12, Patient’s Home; 03 – School; 99 – Other Locations (which would be specifically identified on a progress note). Services could also be provided in 11 – Office (Outpatient Behavioral Health Provider: Facility Service Site).

Response: The Residential Community Reintegration Program is a residential service to be provided to beneficiaries who are identified by the Independent Assessment as eligible for Tier III services. The per diem payment is for the beneficiary to receive services at a location where the beneficiary is being provided 24/7 care. Once beneficiaries stabilize and transition into the community, other services are available for those beneficiaries with the Behavioral Health program as reimbursed by Medicaid.

Comment: We request RSPMI providers be allowed reimbursement for Residential Community Reintegration services until June 2018 while they complete their transition to a Behavioral Healthcare Agency under OBHS regs (similar to PH and Therapeutic Communities).

Response: Providers will be allowed to be certified as and be provided reimbursement for the Residential Community Reintegration program prior to making the switch to full reimbursement under the Outpatient Behavioral Health Services Program, as allowed for Partial Hospitalization and Therapeutic Communities.

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Julie Meyer, PFH

Comment: OBHS Rate Process Concerns, including:

- Data utilized to determine rates for OBHS program are from 2012
- The OBHS program became effective on July 1, 2017, three years after rates were published and five years beyond the data utilized.
- The OBHS Medicaid Manual and necessary certification policies were promulgated, but the rates for the OBHS program were not subject to a process that included public comment or legislative review.

Response: The approved reimbursement rates for the Outpatient Behavioral Health Services program are based upon the 2014 Public Consulting Group (PCG) Rate study. The rates were shared with all stakeholders and anyone who requested a copy of the proposed rates during the promulgation of the Outpatient Behavioral Health Transformation that was approved by the Arkansas Legislature in December of 2016. Once the related underlying rule or methodology is promulgated and effective, the rates are also effective and posted to the “fee schedules” section on the Medicaid site.

Comment: OBHS Rate Concerns:

- The rates for therapeutic services provided by a licensed clinician are a significant reduction from the current RSPMI rates.
- Therapeutic services provided by licensed clinicians are the foundation for the care of individuals with mental health conditions; lower rates diminish the value of these services.
- These lower rates will be effective during the timeframe that DHS plans to collect data to determine the Global Payment for the PASSEs.
- Inadequate rates could set the PASSEs up to fail due to an inaccurate Global Payment.

Response: The approved reimbursement rates for the Outpatient Behavioral Health Services program are based upon the 2014 Public Consulting Group (PCG) Rate study. All rates for Global Payment for the PASSE must be actuarially sound to comply with Federal Manage Care Waiver rules. The Centers for Medicare and Medicaid Services (CMS) must also approve of the methodology and determination of the DHS global payment to a PASSE.

The agency states that the state plan page will require CMS approval; as of August 23, 2017, that approval is pending. The proposed effective date is October 1, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-76-201, the Department of Human Services (“Department”) shall administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it. *See Ark. Code Ann. § 20-76-201(1).* The Department shall also make rules and regulations and take actions as are necessary or desirable to carry out the provisions of Title 20, Chapter 76, Public Assistance Generally, of the Arkansas Code. *See Ark. Code Ann. § 20-76-201(12).*

Exhibit J

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

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Dawn Stehle
CONTACT PERSON Robert Nix
ADDRESS P.O. Box 1437, Slot S295, Little Rock, AR 72203
PHONE NO. 501-686-9871 FAX NO. 501-404-4619 E-MAIL robbie.nix@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Paula Stone
PRESENTER E-MAIL paul.stone@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? Outpatient Behavioral Health Services Update 1-17, Inpatient Psychiatric Services for Persons Under Age 21 Update 1-17 and Residential Community Reintegration Program Certification
2. What is the subject of the proposed rule? To move the Residential Community Reintegration Program service from the Inpatient Psychiatric manual to the Outpatient Behavioral Health Services manual and to establish certification requirements for the Residential Community Reintegration Program.
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."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Statute 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary? To move the Residential Community Reintegration Program service from the Inpatient Psychiatric manual to the Outpatient Behavioral Health Services manual and to establish certification requirements for the Residential Community Reintegration Program.

The proposed rule is necessary to comply with CMS approval of the new OBHS services.

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://www.medicaid.state.ar.us/InternetSolution/general/comment/comment.aspx>

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

If yes, please complete the following:

Date: August 8, 2017

Time: 4:30 p.m.

Arkansas Enterprises for the
Developmentally Disabled
105 East Roosevelt Road

Place: Little Rock, AR 72206

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. Do you expect this rule to be controversial? Yes No

If yes, please explain.

13. 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.

Medical associations, interested providers and advocacy organizations. Their positions for or against is not known at this time.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Medical Services
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **FAX NO.** _____ **EMAIL:** _____

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 Outpatient Behavioral Health Services Update 1-17, Inpatient Psychiatric Services for Persons Under Age 21 Update 1-17 and Residential Community Reintegration Program Certification

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) _____

Next Fiscal Year

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

Total \$0 _____

Total \$0 _____

(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) _____

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

Total \$0 _____

Total \$0 _____

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

\$ 0 _____

\$ 0 _____

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

\$ \$0 _____

\$ \$0 _____

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.

**Summary for
Outpatient Behavioral Health Services Update 1-17;
Inpatient Psychiatric Services for Persons under Age 21 Update 1-17 and
Residential Community Reintegration Program Certification**

Effective October 1, 2017, Arkansas Medicaid proposes to move the Residential Community Reintegration Program service from the Inpatient Psychiatric manual to the Outpatient Behavioral Health Services manual and to establish certification requirements for the Residential Community Reintegration Program. This service was previously approved in the Behavioral Health Transformation package that was filed with the Secretary of State's Office on December 27, 2016 and given rule number 016.06.16-024.

