

**ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

Thursday, December 14, 2023

10:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. Call to Order**
- B. Reports from the Executive Subcommittee Concerning Emergency Rules**
- C. Reports from ALC Subcommittees Concerning the Review of Rules**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**
 - 1. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT
(Dan Honey)**
 - a. SUBJECT: Establishment of Audit Process Concerning Qualified Payment Amounts for No Surprises Act**

DESCRIPTION: Pursuant to Act 580 of 2023, the State Insurance Department shall develop a state audit process to ensure compliance with the requirements in the No Surprises Act of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, related to the calculation of a qualified payment amount. In accordance with this law, this proposed rule fulfills this requirement sets forth the process and procedure by which the Commissioner will develop the audit process consistent with and included in the already required examination of insurers as contemplated by Ark. Code Ann. § 23-61-201 et seq. Further authority for this rule is granted the Arkansas Insurance Commissioner (“Commissioner”) under Ark. Code Ann. § 23-61-108(a)(1) and by Ark. Code Ann. § 23-61-108(b)(1) to promulgate rules necessary for the effective regulation of the business of insurance and as required for this State to be in compliance with federal laws. The Rule establishes an audit process as required by Act 580 of 2023. The proposed rule:

 - 1. Requires the Commissioner to develop audit process to ensure that a health benefit plan or health carrier correctly calculates the qualified payment amount established under the No Surprises Act;
 - 2. Requires federal qualified health payment amount methodologies to be included in all health policy forms for review and approval by the Commissioner;

3. Requires the audit process required pursuant to the rule to be consistent with and included in the already required examination of insurers as contemplated by Ark. Code Ann. § 23-61-201; and
4. Requires the resulting examination report concerning potential violations of the NSA as it relates to the qualified payment amount calculation methodology be reported to federal department of Health and Human Services.

PUBLIC COMMENT: A public hearing was held on November 14, 2023. The public comment period expired on November 14, 2023. The agency indicated that it received no comments.

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

QUESTION: Act 580 of 2023 provides that SID “shall develop a state audit process to ensure compliance with the requirements in the No Surprises Act of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, related to the calculation of a qualified payment amount.” It further provides that the department “shall promulgate rules to implement and administer this section.”

(a) Do the proposed rules contain the audit process anticipated by Act 580? If so, could you please point me to the sections that contain the state audit process?

(b) If not, will the process be promulgated in a forthcoming rule?

RESPONSE: No, the audit process will be developed internally and will track closely with regular market conduct guidelines.

FOLLOW-UP: I understand that the process will be developed internally, but does the agency plan to promulgate a rule containing the process?

RESPONSE: We don’t think a rule is necessary for the audit process. We prefer not to put that in Rule as it provides us with more flexibility. Proposed Rule 69 merely authorizes us to do so as required by the statute.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that the proposed rule does not have a financial impact.

LEGAL AUTHORIZATION: The Insurance Commissioner, in consultation with the Secretary of the Department of Commerce, may make reasonable rules necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code. *See* Ark. Code Ann. § 23-61-108(a). Additionally, the Commissioner has authority to coordinate regulatory activities and administration with other states and their appropriate regulatory officials and with the federal government with

respect to the regulation of insurance. *See* Ark. Code Ann. § 23-61-108(b)(2).

The proposed rule implements Act 580 of 2023, sponsored by Representative Lee Johnson, which encouraged the development of a state audit process concerning qualified payment amounts and authorized the State Insurance Department to develop a state audit process concerning qualified payment amounts.

2. **DEPARTMENT OF CORRECTIONS, ARKANSAS SENTENCING COMMISSION (Tawnie Rowell)**

a. **SUBJECT: Sentencing Standards Grid and Seriousness Reference Table**

DESCRIPTION: Pursuant to Arkansas Code Annotated § 16-90-803, the Arkansas Sentencing Standards Seriousness Reference Table (the “Table”) represents the vertical axis of the Sentencing Standards Grid. The horizontal axis of the grid is represented by the offender’s prior criminal history. Offenses are ranked with a seriousness level between one and ten, with ten being the most serious.

In many cases, the seriousness ranking of an offense determines the percentage of an offender’s sentence which must be served prior to become eligible for transfer to community supervision. This proposed amendment will add the rankings of offenses created or modified by the 94th General Assembly to the Table. The rule also makes technical corrections and clarifications.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on October 23, 2023. The commission received no comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The commission indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Sentencing Commission shall periodically review and may revise the voluntary sentencing standards. Any revision of the standards shall be in compliance with provisions applicable to rulemaking contained in the Arkansas Administrative Procedure Act. *See* Ark. Code Ann. § 16-90-802(d)(2). The proposed amendments implement the following Acts of the 2023 Regular Session:

Act 35 of 2023, which was sponsored by Representative Brian Evans, prohibited a registered sex offender from purchasing, owning, possessing, using, or operating an unmanned aircraft for private use.

Act 264 of 2023, which was sponsored by Representative Mike Holcomb, amended the law concerning records maintained by scrap metal recyclers and created offenses for theft of a catalytic converter and unauthorized possession of a catalytic converter.

Act 327 of 2023, which was sponsored by Representative Charlene Fite, amended the law concerning: human trafficking and related offenses, fines for human trafficking, the Human Trafficking Victim Support Fund, and the Safe Harbor Fund for Sexually Exploited Children.

Act 372 of 2023, which was sponsored by Senator Dan Sullivan, amended the law concerning libraries and obscene materials, created the offense of furnishing a harmful item to a minor, and amended the law concerning obscene materials loaned by a library.

Act 419 of 2023, which was sponsored by Representative Jimmy Gazaway, amended the Arkansas Criminal Code and added an underground storage facility to the definition of critical infrastructure.

Act 420 of 2023, which was sponsored by Representative RJ Hawk, amended the law concerning abuse of an athletic contest official.

Act 508 of 2023, which was sponsored by Representative Jimmy Gazaway, created the offense of operating a chop shop and created the offense of dealing in stolen or forged motor vehicle parts.

Act 584 of 2023, which was sponsored by Representative Jimmy Gazaway, created the Fentanyl Enforcement and Accountability Act of 2023 and declared an emergency.

Act 585 of 2023, which was sponsored by Representative Carlton Wing, created the criminal offense of disarming an officer.

Act 590 of 2023, which was sponsored by Representative Matthew Shepherd, concerned the sale of event tickets, created the Event Ticketing and Resale Consumer Protection Act, and declared an emergency.

Act 636 of 2023, which was sponsored by Senator Blake Johnson and amended the law concerning ownership and possession of real property.

Act 659 of 2023, which was sponsored by Senator Ben Gilmore, created the Protect Arkansas Act; amended Arkansas law concerning sentencing

and parole; amended Arkansas law concerning certain criminal offenses; amended Arkansas law concerning the Parole Board; and created the Legislative Recidivism Reduction Task Force.

Act 687 of 2023, which was sponsored by Senator Clint Penzo, amended the law regarding child labor; increased the amount of civil penalties for violations; extended the time for assessments of civil penalties by the Director of the Division of Labor; established criminal penalties; established penalties for hindering investigations; and clarified the law regarding workers' compensation related to child labor resulting from Initiated Act 4 of 1948.

Act 722 of 2023, which was sponsored by Representative Jimmy Gazaway, created the offense of sexual solicitation of a minor; amended the law concerning the Human Trafficking Victim Support Fund; and amended the law concerning the Safe harbor Fund for Sexually Exploited Children.

Act 734 of 2023, which was sponsored by Senator Dwight Tosh, amended Arkansas law concerning the offense of fleeing by means of a vehicle or conveyance.

Act 739 of 2023, which was sponsored by Representative Jimmy Gazaway, created the offense of knowingly exposing another person to fentanyl.

Act 762 of 2023, which was sponsored by Senator Alan Clark, concerned vehicles, boats, or farming equipment with a removed, damaged, mutilated, or defaced serial number or vehicle identification number.

Act 783 of 2023, which was sponsored by Senator Missy Irvin, created the Vulnerable Person Protection Act and expanded protection of certain types of vulnerable persons in this state by establishing additional criminal penalties.

Act 849 of 2023, which was sponsored by Representative Jimmy Gazaway, amended the law concerning aggravated assault and domestic battery.

3. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION** (Andrés Rhodes, Courtney Salas-Ford)

a. **SUBJECT:** Rules Governing Special Education, Sec. 10.00 Mediation and Hearings

DESCRIPTION: The Division of Elementary and Secondary Education proposes amendments to its Rules Governing Special Education, specifically to Section 10.00 – Mediation and Hearings. This section is being amended as a result of federal monitoring by the U.S. Department of Education, Office of Special Education Programs (OSEP). During its monitoring, OSEP noted that section 10.01.20.1 is not permitted by IDEA and must be removed from the state’s rules. In addition to the aforementioned section, DESE is proposing to remove other language not specifically provided for in IDEA. The proposed revision to 10.01.20 is necessary to comply with OSEP’s directive and not be found in violation of IDEA.

The section specifically noted allowed for an extension of time to complete an expedited due process hearing that is not permitted by IDEA. Pursuant to IDEA, an expedited due process hearing must occur within 20 school days of the date the complaint requesting the hearing is filed and the hearing officer must make a determination within 10 school days after the hearing; no extension of either timeframe is permitted. In addition to the required change, DESE is proposing to remove other language not specifically provided for in IDEA as a result of a comprehensive review of this section of the rules. These proposed changes do not substantially affect the rights of any party to participate in mediation or a due process hearing. Some of the language being removed is addressed in other rules or provisions of law or is standard legal practice. These changes include: correcting references to the “Office of Special Education”; removing references to outdated forms; replacing “regulations” with “rules”; requiring written verification of the resolution meeting; removing the requirement for a separate “meeting to encourage mediation”, which is typically done through communication and not a formal meeting; and removing the unenforceable and potentially misinterpreted statement that “in general, a hearing should last no longer than three (3) days”.

PUBLIC COMMENT: A public hearing was held on November 15, 2022. The public comment period expired on November 28, 2022. The Division has indicated that it received no public comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The Division states that the proposed rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-41-207(c), the State Board of Education shall make the necessary rules in keeping with the provisions of the Children with Disabilities Act of 1973, and shall employ the necessary personnel for the proper administration of that Act if funds are made available for this purpose. Further rulemaking authority can be found at Ark. Code Ann. § 6-41-216(c)(1), which provides that the State Board of Education shall prescribe rules governing hearings and appeals, with respect to decisions pertaining to change in the educational status of a child.

b. SUBJECT: Rules Governing School Safety

DESCRIPTION: The Department Education's Division of Elementary and Secondary Education proposes its Rules Governing School Safety. These rules will govern the requirements for public school districts and open enrollment public charter schools to complete the comprehensive school safety assessment and how compliance will be verified.

These rules also govern the requirements for public school districts and open enrollment public charter schools that accept school resource officers (SROs) and the training requirements for SROs and school staff.

To promote student safety and security, districts and charters shall support mental health by ensuring all school personnel, including contractors, that interact with students receive training in youth mental health awareness.

Districts and charters will also be required to have a plan to increase the presence of uniformed law enforcement officers in schools, implement a reporting system, for district safety and security teams, train school nurses and staff in emergency medical response, establish a common communication plan, establish direct communication with local law enforcement, review and update cybersecurity policies and procedures, and ensure all school doors remain locked but do not impede egress during school hours.

Lastly, these rules govern the responsibility of principals to report student criminal acts and the eligibility and disbursement of school safety grant funds.

The proposed new rules incorporate the provisions of Acts 622 and 648 of 2021 and Act 237 of 2023.

Per the agency, the Department received several public comments which generally either required non-substantive rule changes or substantive

changes that would be beyond the agency's rulemaking authority. Based on those comments, no substantive rule changes were made.

PUBLIC COMMENT: A public hearing was held on September 21, 2023. The public comment period expired on September 29, 2023. The division provided the following summary of comments it received and responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association

Comment: In section 3.01, I would recommend changing it to read "at least once every three years" so to note that districts can conduct the assessment more frequently if they so choose. **Division Response:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association

Comment: In section 3.02, to more closely match with other language in the Rules, I would recommend changing this to read "A public school district shall conduct a lockdown drill for a possible threat on campus at each school in the public school district at least annually." **Division Response:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association

Comment: In section 3.05, to more closely align with the other requirements, I would recommend adding "at least" before "one". **Division Response:** Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Arkansas School Boards Association

Comment: In section 4.08, the reference should be to sections 4.06 and 4.07 instead of sections 4.03 and 4.04. **Division Response:** Comment considered. A non-substantive change was made.

Commenter Name: Jon Laffoon

Comment: The \$50 million dollar grant has gone to physical safety measures in many districts and is greatly appreciated across the state, but was not enough for each district to start and sustain SROs/CSSOs and add officers in places we already have programs. Districts need school safety funds to meet the recommendations of hiring additional SROs and CSSOs in all schools. We need sustainable funding to permanently put additional officers in place. The [school safety grant] is expended or being encumbered on projects such as locks, night locks, bollards etc. as written

in the priorities in the grant. A possible solution is a matrix fund per district based on numbers, or additional funding in LEARNS for safety officers. **Division Response:** Comment considered. No changes made. The school safety grant is a one-time funding mechanism. Schools were advised of this and making the funding mechanism recurring would be beyond the scope of rulemaking.

Commenter Name: Christy Smith

Comment: In section 3.01, if a school building has any construction completed during the three years between the three-year safety assessment cycle, a new assessment should be conducted to determine any safety ramifications of the new construction. **Division Response:** Comment considered. No changes made. The statute is limited to a three-year safety assessment cycle. Adding language to mandate more assessments beyond that cycle would go beyond the scope of the agency's rulemaking authority. Additionally, new construction must meet all standards and requirements under Division of Public School Academic Facilities and Transportation rules as well as in state law.

Commenter Name: Christy Smith

Comment: In section 5.02, add language to ensure that school safety experts review architectural plans prior to construction and after the completion of the project. **Division Response:** Comment considered. No changes made. New construction must meet all standards and requirements under Division of Public School Academic Facilities and Transportation rules as well as in state law.

Commenter Name: Christy Smith

Comment: In section 8.01, add language to require that if a person who commits or threatens to commit an act of violence is a student, the parents of that student be notified that the report has been made. **Division Response:** Comment considered. No changes made. This requirement already exists in state law, in Arkansas's anti-bullying statute, Arkansas Code 6-18-514.

Commenter Name: Shane Patrick

Comment: My first concern is that 7.01.6.2 is essentially mandating that the school District move to an AWIN radio system. Law enforcement across the state has moved to that system and it is not compatible with any other type system that school districts currently have. The cost of a handheld AWIN radio is \$3500.00. It would cost Districts hundreds of thousands of dollars to switch over to the AWIN system. The other issue

with AWIN is that law enforcement departments across the state are finding that the AWIN systems are not working in large buildings, such as school buildings. The Siloam Springs Police Department had to add a \$60,000 booster unit so that their AWIN radios would work inside Siloam Springs High School. Districts across the state would struggle, if not find it impossible to pay for the AWIN radio system to replace their current system. This wording needs to be reworked so that it states that law enforcement can have access to the school's radio frequencies. **Division Response:** Comment considered. The list in 7.01.6.2 is a non-exclusive list of options for public school districts to choose from to meet the requirement in 7.01.6. However, to clarify the intent of the language, a non-substantive change was made.

Commenter Name: Jim Warnok

Comment: [The language in 3.02] should specify a calendar window toward the beginning of the school year when this drill should occur. A drill first done in May is of little value for the safety of students and staff throughout the school year. “Lockdown drill” implies a sheltering in place behind locked or barricaded doors which might be appropriate in some scenarios but not in others. “Intruder Drill” or something similar might be more appropriate and avoid sounding like a single strategy when threats often require varied responses. Possible strategies might include Lockdown, Evacuation, or Counter/Fight, etc. **Division Response:** Comment considered. A non-substantive change was made. The intent of the rule is to require schools to do a lockdown drill, regardless of what the district chooses to call it.

Commenter Name: Jim Warnok

Comment: [The language in 3.03] should specify a calendar window for the first tornado drill so that schools don’t experience a weather emergency prior to having their first drill of the school year. **Division Response:** Comment considered. A non-substantive change was made.

Commenter Name: Jim Warnok

Comment: Monthly fire drills are a long-time school tradition, but I think excessive. Three or four fire drills per year would be adequate and less disruptive. Doing a quick search, it appears the last fire related death in an Arkansas school was in 1959 and due to gross negligence. Unfortunately, there have been more deaths related to intruders or school shootings and storms in more recent times. We should require drills based on the actions that will make the biggest difference to school safety. **Division Response:** Comment considered. No changes made. The monthly fire drill

requirement is in state law, at Arkansas Code 20-22-1011. Amending this requirement goes beyond the agency's rulemaking authority.

Commenter Name: Jim Warnok

Comment: Requiring staff "to complete mental health awareness training" is vague and could mean almost anything or nothing of substance. An area as significant as student mental health should include specific actions required and funded by the Department of Education.

Division Response: Comment considered. No changes made. The language is intended to give public schools flexibility so that they can find the curriculum that fits their needs.

Commenter Name: Jim Warnok

Comment: The [language "each public school district, open- enrollment charter school, and private school with at least fifty (50) students"] should be included in all statements related to school safety actions such as drills, mental health actions and other areas mentioned above. A school should not be eligible for grants without complying with all requirements included in these rules. I'm not seeing clarification that private schools must have voucher students before being eligible for school safety funding. A private school's available grant funding should be based on the percentage of their students receiving state vouchers. **Division Response:** Comment considered. No changes made. State law set the requirements for safety grants. Setting additional requirements beyond what the statute allows goes beyond the agency's rulemaking authority. Additionally, the school safety grant program was available for private school participation prior to the Educational Freedom Account program.

Commenter Name: Jim Warnok

Comment: [The language "Expenses for a safety measure not included in the recommendations of the Commission, shall only be eligible for reimbursement upon approval from the Commissioner of Education"] appears to give free reign to the Commissioner of Education to approve any measures he deems appropriate. This places too much power and responsibility on one person. If a district is denied special approval and has a related incident, it places the Commissioner in a position of being personally liable or at the very least, responsible in the public's eyes. If he approves funding and it is later shown to be ineffective the Commissioner bears the brunt of criticism and possible liability. Others should be involved at the state level in making any decisions where funds are to be awarded to public or private schools for school safety. These "others" should include professionals with qualifications in school safety. **Division Response:** Comment considered. No changes made. All such expenses

are reviewed by the Department's school safety unit and a recommendation is made to the Commissioner.

Commenter Name: Rusty Johnson, Springdale Public School District

Comment: Interior doors should be locked when school is in session and students are in a classroom; hard corners should be established in every building. **Division Response:** Comment considered. No changes made. Legislation passed during the recent special session made the legislative intent clear. This change would be contrary to the legislative intent and beyond the scope of the agency's rulemaking authority.

Commenter Name: Tripp Walter, Arkansas Public School Resource Center

Comment: Shouldn't there be a specific number of hours of general safety awareness training required for school staff, as well? **Division Response:** Comment considered. No changes made. This requirement would go beyond the scope of the agency's rulemaking authority.

Commenter Name: Tripp Walter, Arkansas Public School Resource Center

Comment: Shouldn't there be a component of the training required by Section 4.02 tied to the completion of the comprehensive school safety assessment, utilizing DESE's broad authority in the area of school safety? **Division Response:** Comment considered. No changes made. The duty to complete the comprehensive school safety assessment lies with the school district administration, not with the school resource officer.

Commenter Name: Tripp Walter, Arkansas Public School Resource Center

Comment: In section 4.08 add the words "from an approved provider" between the words "educator" and "under". **Division Response:** Comment considered. A non-substantive change was made.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Did the Division consult with the Attorney General concerning the development of these rules, pursuant to Ark. Code Ann. § 6-17-113(e)?
RESPONSE: Yes.

2. Section 2.06.2 – In what context would a superintendent function as the "other educational entity" contemplated in the definition for

superintendent provided in these rules? **RESPONSE:** The definition was written to include the chief executive of a public charter school.

3. Section 3.07 – Should the collaboration contemplated in this section, which concerns the regular verification that emergency response drills were completed, include fire departments and medical professionals?

RESPONSE: The language “emergency management officials” was intended to include fire departments and medical professionals.

4. Section 7.01.8 – This section requires the closing and locking of all exterior and interior doors during school hours, except for transition times. What is the division’s reasoning for requiring that both exterior and interior doors be locked? **RESPONSE:** This language was amended to mirror legislation passed during the special legislative session.

5. Section 7.01.8.1 – This section concerns rights enumerated under both the Arkansas Fire Prevention Code and the Americans with Disabilities Act, that protect any person from being impeded from building egress. Does the division anticipate that these protections will conflict with section 7.01.8, which require the closing and locking of all interior and exterior doors during school hours? **RESPONSE:** This language was amended to mirror legislation passed during the special legislative session.

6. Section 8.00 – This section, which concerns the duty to report, appears to track Ark. Code Ann. § 6-17-113. Is there a reason why the term “firearm” is not defined in these rules, as it appears in this section of the Arkansas Code? **RESPONSE:** “Firearm” means the same as in the Arkansas Code; the Division felt that a definition here would be redundant.

7. Section 8.03.1 – This section concerns the proof required to be found guilty of failure to report a violent act. Among other proof, one must have “had personal knowledge that an act of violence or any crime involving a deadly weapon has been committed or threatened.” However, section 8.01, which concerns the duty to report, provides that such duty arises when a person either has personal knowledge “or has received information leading to a reasonable belief” that such an act has been committed or threatened. Is there a reason why section 8.03.1 does not include the “reasonable belief” language that appears in section 8.01? **RESPONSE:** Section 8.01, including the “reasonable belief” language addresses when the initial duty to report attaches. The referenced language in section 8.03.1 addresses the burden of proof for criminal liability for a purposeful failure to report. The duty to report is broader than the criminal penalty, which is why all three elements must be met to establish criminal liability. Once the duty to report has attached, to be criminally liable, an individual must have personal knowledge of a violent act and made a conscious

choice to ignore their duty to report that violent act where a reasonable person would have reported. Additionally, the “reasonable belief” language in 8.01 is encompassed in the reasonable person standard in 8.03.1.2 as one of the elements.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-10-128(c)(3), as amended by Act 622 of 2021, the Division shall promulgate rules specifying how the adoption of a memorandum of understanding or policies and procedures governing a school resource officer shall be verified. Further authority for the rulemaking can be found at Ark. Code Ann. § 6-15-1303(a)(4), as amended by Act 237 of 2023, § 8, which provides that the Division shall promulgate rules specifying how the completion of a comprehensive school safety assessment and confirmation of collaboration with local law enforcement and emergency management officials shall be verified. Additionally, the Division shall promulgate rules describing how the completion of annual lockdown drills and confirmation of collaboration with local law enforcement, medical professionals, fire department and emergency management officials shall be verified. *See* Ark. Code Ann. § 6-15-1303(b)(3), as amended by Act 237 of 2023, § 8. The Division shall further promulgate rules describing how public school compliance with Ark. Code Ann. § 6-15-1303(c)(1) and (2), as amended by Act 648, § 2, concerning the provision of current floor plans and pertinent emergency contact information to appropriate first responders, will be verified. *See* Ark. Code Ann. § 6-15-1303(c)(4), as amended by Act 648, § 2. Further, the State Board of Education shall promulgate rules to ensure uniform compliance with the requirements of Ark. Code Ann. § 6-17-113, concerning the duty to report and investigate student criminal acts, and shall consult with the Office of the Attorney General concerning the development of the rules. *See* Ark. Code Ann. § 6-17-113(e).

4. DEPARTMENT OF FINANCE AND ADMINISTRATION, OFFICE OF INTERGOVERNMENTAL SERVICES (Doris Smith)

a. SUBJECT: Pregnancy Help Organizations Grant Program

DESCRIPTION: Pursuant to the authority vested in the Secretary of the Department of Finance and Administration (DFA) by Ark. Code Ann. §§ 25-8-102(a) and Act 622 of the 2023 General Session, 94th General Assembly, the Secretary of the Department of Finance and Administration, with the approval of the Governor, will administer the

Pregnancy Help Organizations Grant program by making subgrants to organizations that provide services to pregnant women with the purpose of encouraging them to give birth to their unborn.

The proposed rule:

- Defines the meaning of Pregnancy Help Organizations in reference to organizations eligible to receive grant funds.
- Establishes requirement for applicants to submit a grant plan to DFA for approval prior to receiving a sub-grant.

The approved grant plan will govern the organization's use of its sub-grant.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on November 13, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total cost to implement this rule is \$1,000,000 in general revenue for the current fiscal year and \$0 for the next fiscal year. The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is \$1,000,000 for the current fiscal year and \$0 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;

The basis and purpose of the rule is to promulgate procedures to administer the Pregnancy Resource Grant Program in accordance with Act 622 of the 2023 Regular Session, 94th General Assembly. DFA is responding to the requirement of the General Assembly to administer the grant program.

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

Act 622 of the 2023 Regular Session, 94th General Assembly, establishes the Pregnancy Help Organization Grant Program to allow for sub-grants to Pregnancy Help Organizations within the State of Arkansas. DFA is responding to the requirement of the General Assembly to promulgate rules to administer the grant program.

(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;

DFA is responding to the requirement of the General Assembly to promulgate procedures to administer the Pregnancy Resource Grant Program in accordance with Act 622.

(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 known, 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;

Not applicable.

(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

Not applicable.

(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.

DFA will review the necessity and sufficiency of the rule at least annually.

LEGAL AUTHORIZATION: This rule implements Act 622 of 2023. The Act, sponsored by Senator Scott Flippo, made an appropriation for pregnancy help organization grants for the Department of Finance and Administration – Disbursing Officer for the fiscal year ending June 30, 2024. Special language contained within the Act required the Department to “promulgate rules to implement the disbursement of the grant moneys from the Pregnancy Help Organization Grant Sub-Fund in the Miscellaneous Agencies Fund Account.” *See* Act 622, § 2.

5. **DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF ACUPUNCTURE AND RELATED TECHNIQUES (Matt Gilmore, Russell Burns)**

a. **SUBJECT:** Rules of the Arkansas State Board of Acupuncture & Related Techniques

DESCRIPTION: Pursuant to Act 137 of 2023, the proposed rule amends the board’s current rule regarding military licensure to allow the board to accept relevant and applicable uniformed service education, training, national certification, or service-issued credential toward licensure qualifications or requirements when considering an application for initial licensure of an individual listed in Ark. Code Ann. § 17-4-104. The following change is proposed: TITLE III(G). Military Licensure – Insert paragraph (f) to comply with Act 137 of 2023.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on September 26, 2023. The agency received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The State Board of Acupuncture and Related Techniques is authorized to adopt rules consistent with the law as may be necessary to enable the board to carry into effect the provisions of Title 17, Chapter 102 of the Arkansas Code concerning acupuncturists. *See* Ark. Code Ann. § 17-102-206(b)(5)(A). The proposed amendment implements Act 137 of 2023, sponsored by Senator Ricky Hill, which amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; added consideration of national certifications toward initial occupational licensure and extend the application to spouses; and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial

occupational licensure. *See* § Ark. Code Ann. 17-4-107, *as amended by* Act 137 of 2023.

6. **DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF PHYSICAL THERAPY (Matt Gilmore, Nancy Worthen)**

a. **SUBJECT: Arkansas State Board of Physical Therapy Rule**

DESCRIPTION: The proposed rule implements Act 137 of 2023 to add consideration of national certifications toward initial occupational licensure and extend the application to spouses. The following change is proposed:

SECTION IV-C: Methods of Licensure

- Insert Paragraph 7 to comply with Act 137 of 2023 regarding accepting relevant and applicable uniformed service education, training, national certification, or service-issued credential toward licensure qualifications or requirements.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on October 10, 2023. The agency received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-93-202(b)(1), the Arkansas State Board of Physical Therapy, in addition to its other powers and duties set forth in the Arkansas Physical Therapy Act (“Act”), Ark. Code Ann. §§ 17-93-101 to -505, shall adopt reasonable rules and require the payment of license fees adequate to carry out the purposes of the Act. The proposed amendment implements Act 137 of 2023, sponsored by Senator Ricky Hill, which amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; added consideration of national certifications toward initial occupational licensure and extend the application to spouses; and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial occupational licensure. *See* Ark. Code Ann. § 17-4-107, *as amended by* Act 137 of 2023.

7. **DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH (Chuck Thompson, Craig Smith, items a-b; Jaime Turpin, item a; Jacob Smith, item b)**

a. **SUBJECT: Rules Pertaining to the Arkansas Prescription Drug Monitoring Program**

DESCRIPTION: The agency provided the following summary of proposed amendments to the Rules Pertaining to the Arkansas Prescription Drug Monitoring Program:

- Under Section III (19) corrected definition of “Qualified law enforcement agency” to reflect the definition in statute. (Page 6)
- Inserted language under Section IV(g)(5) to allow dispensers to obtain a waiver from reporting for instances where the dispenser does not dispense controlled substances. (Page 10)
- As mandated by Act 67 of 2023, language was added in Section V(c) adding an obstetrician/gynecologist and member of the Arkansas Opioid Recovery Partnership to the PDMP Advisory Committee. (Page 12)
- Under Section VI(b)(2)(F)(ii) corrected statute numbering. (Page 13)
- As mandated by Act 67 of 2023, language was added in Section VI(b)(2) to relocate language for Medical Examiner access removed from Section VII(2)(b)(5). (Page 13 and Page 16)
- Under Section V(1)(D) added the word “Monitoring”. (Page 15)
- As mandated by Act 67 of 2023, language was added in Section VII(2)(b) for data to be released for mortality reviews. (Page 16)
- Under Section VII(2)(d), added “or” to reflect language in statute. (Page 16)
- As mandated by Act 1208 of 2015, language was added in Section XIV concerning prescribers with a prescription drug violation. (Page 19)

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on November 14, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: “The State Board of Health shall adopt rules to implement” the Prescription Drug Monitoring Program Act. Ark. Code Ann. § 20-7-613.

This rule implements Act 67 of 2023. The Act, sponsored by Representative Lee Johnson, amended the Prescription Drug Monitoring Program Advisory Committee and amended the confidentiality of and the providing of information by the Prescription Drug Monitoring Program.

b. **SUBJECT: Rules Pertaining to Youth Injury Mitigation and Information Courses for Athletics Personnel and Coaches**

DESCRIPTION: These proposed new rules are being promulgated under specific requirements of Act 642 of 2023, which directs the Department of Health to establish rules for approving courses related to the Act. The Act and the rule articulate that any association that sponsors or conducts sports training or high-risk youth athletic activities for children aged 14 and younger shall require all coaches and athletics personnel to complete specific courses. The association shall maintain a record of individual course completion for as long as that individual serves as athletic personnel or coach for the association.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on November 14, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: “The Department of Health shall adopt rules to implement, enforce, and administer” the Coach Safely Act. Ark. Code Ann. § 6-18-721(k).

This rule implements Act 642 of 2023. The Act, sponsored by Senator Greg Leding, created the Coach Safely Act and required youth injury mitigation and information courses for athletics personnel and coaches.

8. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF AGING, ADULT, AND BEHAVIORAL HEALTH SERVICES (Jay Hill, Melissa Weatherton, Mitch Rouse)**

a. **SUBJECT: Appendix K Extension Amendments for Limited Items**

DESCRIPTION: The Director of the Division of Aging, Adult and Behavioral Services amends the ARChoices in Homecare and Living Choices Waivers to extend the date of the Workforce Stabilization Incentive Program to March 31, 2025. The plan implements the approved

American Rescue Plan Act (ARP) spending plan. For the Living Choices Waiver, the current rates expire on November 10, 2023. DHS seeks to amend the base waiver to continue the current per person per day rate of \$81.59, with an additional 5% differential for rural facilities which totals \$85.67. The continuation of the foregoing rates within the proposed amendments reflects an average of \$83.63.

PUBLIC COMMENT: A public hearing was held on this rule on October 11, 2023. The public comment period expired on October 30, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

9. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS** (Mary Franklin, Mitch Rouse, items a-c; Jay Hill, item c)

- a. **SUBJECT:** Arkansas Community Services Block Grant Rule Manual FY 2024 and 2025 Update & **REPEALS:** DDS Policy 1013 – Confidentiality; DDS Policy 1024 – Education Compliance Community Programs

DESCRIPTION:

Statement of Necessity

The Community Services Block Grant (CSBG) Act (42 U.S.C. § 9901 et seq.) was created, “[T]o provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient...” The CSBG Act mandates certain aspects of how state CSBG offices will operate in carrying out their defined roles as

administrators of CSBG but leaves significant authority and flexibility in the hands of the states. This responsibility, which is fulfilled by each state individually, can more easily be met when the state establishes clear rules for implementation of the Act.

The CSBG plan must be renewed every two years. As part of the renewal cycle, the Division of County Operations also updates the CSBG Rule Manual for FY 2024 and FY 2025.

Rule Summary

The Community Services Block Grant Rule Manual is revised as follows:

- Updated the Cover Page to reflect FY 2024 and 2025; updated formatting of the manual; revised language to ensure consistent terminology and dates throughout all sections.
- Updated the introductory sections to conform language to match that currently used by DHS on its website and elsewhere.
- Replaced all references to the DHS Office of Community Services (OCS) with current title, DHS Office of Program Planning and Community Grant Services (OPPCGS).
- Replaced all references to Food Stamps and Medicaid with current language of SNAP and Health Care.
- Created Section VII – Client Eligibility: Added explanation and details, or revised such, regarding client income eligibility determination for clients served with Community Services Block Grant Funds, including definition of income and income determination period, determination process, documentation, designation and re-designation, verification, group services, program supporting, residency requirements, performance reporting, monitoring, audit requirements, training, technical assistance, and other circumstances affecting eligibility based on relationships, past events, and ongoing situations including termination and reduction of funding.
- Where applicable, deleted old language now covered by Section VII or re-titled them.
- Added references and summaries to the CSBG Act.

Repeals pursuant to the Governor’s Executive Order 23-02:

- (1) DDS Policy 1013 - Confidentiality; and
- (2) DDS Policy 1024 – Education Compliance Community Programs.

PUBLIC COMMENT: A public hearing was held on this rule on October 4, 2023. The public comment period expired on October 21, 2023. The agency provided a summary of the public comments it received and its responses to those comments. Due to its length, the summary is attached separately.

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

Q. Markup page 51, first paragraph under “Documentation and Record Keeping.” This paragraph references 28 C.F.R. Parts 66 and 70; however, these regulations were repealed in 2014 (see 79 FR 76081). Is there an updated citation? **RESPONSE:** We corrected the CFR citation to 2 CFR 200.334, as well as updating the retention period to match the CFR. The requirement now is three years (formerly five years). See page 65 of the attached revised rule.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

The federal Community Services Block Grant Act, 42 U.S.C. § 9901 *et seq.*, provides funding for certain public assistance programs. In order to receive funds under the Act, a state must apply for a grant and submit a state plan that meets federal requirements, including use, distribution, and administration requirements. 42 U.S.C. § 9908(b).

- b. **SUBJECT: SNAP Provider Determination Update & REPEALS: PUB 30 – Resource Parent Handbook; DDS Policy 1087 – Criminal Record Check**

DESCRIPTION:

Statement of Necessity

The SNAP manual is updated to clarify and correspond with responsibilities stated in 7 CFR 273.7(c)(18)(i)(A). Employment and Training (E&T) providers, being in the best position to know the skills and qualifications likely to enable an individual to be successful in a program, determine if a participant is ill-suited for a particular E&T component.

Such a determination is referred to as a provider determination, and the below summary reflects SNAP manual changes related to provider determinations.

Rule Summary

The changes to the SNAP manual are:

- Changed the numbering of Section 3620 to 3622, and revised the section as follows:
 - Added that a provider determination is when an E&T provider determines that an E&T participant is not appropriate or is ill-suited for a particular E&T component. Only the E&T provider has the authority to determine if an individual is ill-suited for the E&T component from the time an individual is referred to an E&T component until completion of the component.
 - Added that if an E&T provider finds an individual is ill-suited for one (1) component offered by the E&T provider, the provider may switch the individual to another component and inform the agency of the new component without need for the agency to act further on the determination.
 - Deleted “if an E&T provider finds an individual is ill-suited for one component offered by the E&T provider, the provider may switch the individual to other component and inform the agency of the new component without need for the agency to act further on the determination. The E&T provider has the authority to determine if an individual is ill-suited for the E&T component from the time an individual is referred to an E&T component until completion of the component.”
- Created Section 3622.1 County Office Responsibilities:
 - Updates notification an individual receives from a provider determination.
 - The state agency must notify the client within ten (10) days of receiving the provider determination.
 - Updates the responsibilities of county offices when reassessing the individual for any mental or physical impairments.
 - Removes “if a mandatory E&T participant receives a provider determination, the individual will be notified that they are not being sanctioned as a result of the provider determination.

Revisions to grammar and formatting were updated where appropriate.

Repeals pursuant to the Governor’s Executive Order 23-02:

- (1) PUB 30 – Resource Parent Handbook; and
- (2) DDS Policy 1087 – Criminal Record Check.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on October 21, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

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

Per the agency, the total cost to implement this rule is \$240,000 for the current fiscal year (\$120,000 in general revenue and \$120,000 in federal funds) and \$0 for the next fiscal year. The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is \$120,000 for the current fiscal year and \$0 for the next fiscal year.

The agency provided the following explanation of this rule's financial impact:

USDA-FNS provides 50% of the funding to build out the rule. The state must match 50% using SGR. The rule implements provisions that require all Employment and Training (E&T) programs to provide case management services to E&T participants, in addition to one or more E&T components.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b). This rule implements 7 C.F.R. § 273.7(c), which concerns state agency responsibilities for Employment and Training programs related to the Supplemental Nutrition Assistance Program.

- c. **SUBJECT: Twelve Months Continuous Coverage of Children Under Age Nineteen (19) & REPEALS: DDS Policy 3004 – Maltreatment Prohibition, Prevention, Reporting, and Investigation; DDS Policy 3005 – Respite Care**

DESCRIPTION: The Director of the Division of County Operations amends Sections A-230 and 510 of the Medical Services Policy Manual. To comply with the passing of the Consolidated Appropriations Act, all children under 19 years of age that are eligible for either Medicaid or CHIP categories will now have 12 months continuous coverage from date of application or renewal. This will guarantee recipients 12 months

continuous coverage unless they turn 19 years of age, die, or move out of state. Medically Needy, Pregnant Woman Unborn, Foster Care Spenddown, and Transitional Medicaid categories are excluded from the 12 months continuous coverage eligibility. The Medical Services Policy Manual has been updated to reflect the 12 months continuous coverage.

Pursuant to the Governor's Executive Order 23-02, DHS repeals the following two rules as part of this promulgation:

- (1) DDS Policy 3004 – Maltreatment Prohibition, Prevention, Reporting, and Investigation; and
- (2) DDS Policy 3005 – Respite Care.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on November 12, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

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

Per the agency, the total estimated cost to implement this rule is \$21,822,281 for the current fiscal year (\$6,110,239 in general revenue and \$15,712,042 in federal funds) and \$43,644,562 for the next fiscal year (\$12,220,477 in general revenue and \$31,424,085 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is \$6,110,239 for the current fiscal year and \$12,220,477 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;

To comply with the passing of the Consolidated Appropriations Act, all children under 19 years of age that are eligible for either Medicaid or CHIP categories will now have 12 months continuous coverage from date of application or renewal. This will guarantee recipients 12 months continuous coverage unless they turn 19 years of age, die, or move out of state.

This will assist children to keep coverage for 12 months regardless of their HH's circumstances.

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

To comply with the passing of the Consolidated Appropriations Act, all children under 19 years of age that are eligible for either Medicaid or CHIP categories will now have 12 months continuous coverage from date of application or renewal. This will guarantee recipients 12 months continuous coverage unless they turn 19 years of age, die, or move out of state.

This will assist children to keep coverage for 12 months regardless of their HH's circumstances.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

Per CMS guidelines and to comply with the passing for the Consolidated Appropriations Act of 2023.

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

Children who have health insurance continuously are more likely to be in better health, guaranteeing ongoing coverage ensures children can receive preventive and primary care as well as treatment for any health issues that arise.

(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;

N/A

(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.

The Agency monitors State and Federal rules and policies for opportunities to reduce and control cost.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements § 5112 of the Consolidated Appropriations Act, 2023. Per the Act,

The state plan [for medical assistance] (or waiver of such State plan) shall provide that an individual who is under the age of 19 and who is determined to be eligible for benefits under a State plan (or waiver of such plan) approved under [42 U.S.C. § 1396a(a)(10)(A)] shall remain eligible for such benefits until the earlier of—

(A) the end of the 12-month period beginning on the date of such determination;

(B) the time that such individual attains the age of 19; or

(C) the date that such individual ceases to be a resident of such State.

42 U.S.C. § 1396a(e)(12), *as amended by* Consolidated Appropriations Act, 2023, § 5112.

10. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES** (Elizabeth Pitman, Mitch Rouse, items a-f; Janet Mann, items a-d; Jay Hill, items e-f; Paula Stone, item e; Melissa Weatherton, item f)

a. **SUBJECT:** Update to Third Party Liability Attestation in Arkansas Medicaid State Plan & REPEALS: DYS and DCFS Targeted Case Management Manual; Episodes of Care Manual

DESCRIPTION: The Department of Human Services amends the Medicaid state plan to comply with federal law. The Centers for Medicare and Medicaid Services (CMS) has requested that all states update their state plans to comply with regulations contained in the Bipartisan Budget Act of 2018 and Medicaid Services Investment and Accountability Act of 2019. States must address the following three (3) items: apply cost avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services; make payments without regard to potential third-party liability (TPL) for pediatric preventive services, unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for up to ninety (90) days; and state flexibility to make payments without regard to potential TPL for claims related to child support enforcement beneficiaries.

Pursuant to the Governor's Executive Order 23-02, DHS repeals the following two rules as part of this promulgation:

- (1) Episodes of Care Provider Manual, and
- (2) Division of Youth Services (DYS) and Division of Children and Family Services (DCFS) Targeted Case Management Manual.

The agency provided the following update to the summary on November 7, 2023:

The initial filing of the rule included one SPA page, 69-1, which is a template created by and mandated by CMS. As part of the final approval process, CMS mandated an additional SPA page, 4.22-B, be added and CMS provided the language for that page. The new page is added to the rule now for promulgation.

PUBLIC COMMENT: A public hearing was held on this rule on August 23, 2023. The public comment period expired on September 11, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

- b. **SUBJECT:** Electronic Visit Verification (EVV) for Home Health Services & **REPEALS:** DDS Policy 1027 – Incident Reporting Procedural Guidelines; DDS Policy 1035 – Agency Definition of Disability/Eligibility for Services

DESCRIPTION:

Statement of Necessity

The 21st Century Cures Act, signed into law in 2016 and codified at 42 U.S.C. § 1396b(l), required state agencies to implement a system of Electronic Visit Verification (EVV) for home health care services that are provided and reimbursed under Medicaid. The EVV mandate was designed to enhance the quality and accuracy of care services. EVV uses electronic means to verify home health care service visits by providers.

All claims submitted by providers require electronic visit verification. The information collected during these visits includes:

- The date of service;
- The start time and end time for service;
- The type of health care service;
- The location of the service; and
- Information about the service provider.

The Division of Medical Services previously promulgated rules implementing EVV for personal care and attendant care effective December 1, 2020. Two years later, the Centers for Medicare and Medicaid Services (CMS) approved the Arkansas EVV Good Faith Effort Exemption request. The implementation start date for home health services is January 1, 2024. The Division of Medical Services (DMS) revises several provider manuals to comply with the upcoming implementation of the federal mandate.

Rule Summary

DMS revises the Arkansas Medicaid Provider Manuals as follows:

Section I – General Policy

- Table of Contents 145.000 – added, “...and Home Health Services”.
- Section 145.000 – added reference to home health services.
- Section 145.100 – added reference to home health services throughout the section.
- Section 145.200 – added reference to home health care.
- Section 145.300 – updated procedure codes referencing home health.

ARChoices in Homecare Home and Community-Based 2176 Waiver

- Update Table of Contents for new section - 261.100 Electronic Visit Verification (EVV).
- Added a new section – 261.100 Electronic Visit Verification (EVV). Refers reader to Section I for EVV requirements regarding attendant care and respite care.

Home Health

- Update Table of Contents for new section - 241.100 Electronic Visit Verification (EVV).
- Added a new section – 241.100 Electronic Visit Verification (EVV). Refers reader to Section I for EVV requirements regarding home health services.

Personal Care

- Update Table of Contents for new section - 261.100 Electronic Visit Verification (EVV).
- Added a new section – 261.100 Electronic Visit Verification (EVV). Refers reader to Section I for EVV requirements regarding personal care services.

Repeals pursuant to the Governor’s Executive Order 23-02:

1. DDS Policy 1027 – Incident Reporting Procedural Guidelines, and
2. DDS Policy 1035 – Agency Definition of Disability/Eligibility for Services.

PUBLIC COMMENT: A public hearing was held on this rule on October 4, 2023. The public comment period expired on October 21, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

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

For the current fiscal year, the rule will result in increased spending of federal funds (\$153,886) but will save \$341,176 in general revenue, for an overall cost reduction of \$187,289. For the next fiscal year, the rule will result in savings of \$1,376,068 (\$782,500 in general revenue and \$593,568 in federal funds).

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements the federal 21st Century Cures Act, codified at 42 U.S.C. § 1396b(l), which reduced the federal medical assistance percentage for personal care services (beginning January 1, 2020) or home health care services requiring an in-home visit by a provider (beginning January 1, 2023) provided under a state plan or waiver unless a state requires the use of an electronic visit verification system for such services. *See* 42 U.S.C. § 1396b(l)(1).

- c. **SUBJECT: Hospital Reimbursement for Long Acting Reversible Contraceptives (LARCs) & REPEALS: DDS Policy 1088 – Burial Insurance; DDS Policy 2001 – Building and Contents Insurance Claims**

DESCRIPTION:

Statement of Necessity

The Long-Acting Reversible Contraceptive (LARC) rule is necessary to comply with Act 581 of 2023 which allows separate reimbursement of long-acting reversible contraceptives for hospitalized Medicaid beneficiaries immediately after birth of a child or during postpartum. Thus, it is necessary to update the appropriate Medicaid provider manuals and state plan to furnish information to providers regarding the rules required to claim reimbursement.

Rule Summary

Physician Manual: Section 292.551 is modified to include billing guidelines for Long-Acting Reversible Contraception (LARC) devices and

professional services immediately post-partum, while the beneficiary is in an inpatient setting.

Nurse Practitioner Manual: Section 214.330 is modified to include billing guidelines for Long-Acting Reversible Contraception (LARC) devices and professional services immediately post-partum, while the beneficiary is in an inpatient setting.

Certified Nurse Midwife Manual: Section 215.200 is modified to include billing guidelines for Long-Acting Reversible Contraception (LARC) devices and professional services immediately post-partum, while the beneficiary is in an inpatient setting.

Hospital Manual: Section 216.000 is modified to include billing guidelines for Long-Acting Reversible Contraception (LARC) devices and professional services immediately post-partum, while the beneficiary is in an inpatient setting.

Medicaid state plan: Amended attachment 4.19-A, Page 11ddd, to establish the reimbursement method for the LARC device and insertion when the beneficiary is a hospital inpatient.

Repeals pursuant to the Governor's Executive Order 23-02:

1. DDS Policy 1088 – Burial Insurance, and
2. DDS Policy 2001 – Building and Contents Insurance Claims.

PUBLIC COMMENT: A public hearing was held on this rule on October 4, 2023. The public comment period expired on October 22, 2023. The agency provided the following summary of the public comment it received and its response to that comment:

Commenter's Name: Ron Cantrell for Ada Sochanska, MPAS, PA-C, ARAPA President

COMMENT: The Arkansas Academy of Physician Assistants (ARAPA), on behalf of over 150 Physician Assistants (PAs) throughout Arkansas, appreciates the opportunity to provide comments on amendments associated with Arkansas Regulation 10427: Long Acting Reversible Contraceptives (LARCs). By including PAs in the updated sections, we will further encourage PAs to practice to their full extent and ensure that we are not excluding PAs from important rules or amendments pertaining to medical care.

The updates to Long Acting Reversible Contraceptives (LARCs) gives appropriate information to providers surrounding Medicaid provider manuals and State Plan regarding the rules required to claim reimbursement. However, as of this year, PAs have now been designated

both rendering and billing providers by Arkansas Medicaid as per Act 303 (2023) and therefore should be incorporated in further updates.

We would like to draw your attention to section II, Nurse Practitioner, Titled “214.330 Family Planning Coverage Information” and respectfully request the Department to have a section that would refer to PAs. Similar to the Nurse Practitioner Section but retitled to “Physician Assistant”.

By creating a section specific to PAs this would mimic the section as it is for “Nurse Practitioners” however, it would include specific language update within Section 214.330 C, to change the title from “Nurse Practitioners” to “Physician Assistants” and similarly in section D, update that to state “Physician Assistants”. Further in section D, this would include the addition of a bullet title “Nurse Practitioners” and to include them as providers that Physician Assistants would be able to refer patients to.

In light of these changes, ARAPA also requests updating the Nurse Practitioner Section II “214.330 Family Planning Coverage Information” section D to include Physician Assistants as referring providers. In addition, updating the Certified Nurse Midwife Section II “215.220 Family Planning Coverage Information” section D to include Physician Assistants as referring providers.

We thank you for your consideration.

RESPONSE: DMS is preparing a separate promulgation related to Act 303 which will include Medicaid manual revisions for physician assistants. We will review your comments as we draft those proposed rules and look forward to receiving further comments during the promulgation process.

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

Q. The rules state that providers are allowed to bill for LARC devices and professional services “while the beneficiary remains in an inpatient setting.” Where does the inpatient requirement come from? **RESPONSE:** I checked with the subject matter experts. It’s not a requirement; currently, the hospital cannot bill for LARC Insertion on an inpatient stay, because of per diem billing. They could however, bill as an outpatient claim if the patient returned for the insertion. This allows them to insert the LARC and bill us for it before the individual is discharged from the inpatient stay for delivery.

The proposed effective date is January 1, 2024.

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

Per the agency, the total cost to implement this rule is \$1,395,537 for the current fiscal year (\$139,554 in general revenue and \$1,255,984 in federal funds) and \$2,791,075 for the next fiscal year (\$279,107 in general revenue and \$2,511,967 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government as a result of this rule is \$139,554 for the current fiscal year and \$279,107 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;

Act 581 of 2023 requires Medicaid to allow separate reimbursement of long-acting reversible contraceptives for hospitalized Medicaid beneficiaries immediately after the birth of a child or during postpartum.

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

According to findings of Act 581 of 2023, long-acting reversible contraceptives are cost-prohibitive for providers of healthcare services when provided at the same time as other services rendered at time of birth or during the postpartum eligibility period.

(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;

Allowing separate reimbursement of LARCs removes barriers and provides access to effective family planning services for women of child-bearing age.

(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;

None.

(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.

(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 monitors State and Federal rules and policies for opportunities to reduce and control cost.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). See Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). “The [Arkansas Medicaid] Program shall reimburse a healthcare provider for providing long-acting reversible contraception immediately and during postpartum.” Ark. Code Ann. § 20-77-152(b)(1), *as created by Act 581 of 2023.*

This rule implements Act 581 of 2023. The Act, sponsored by Representative DeAnn Vaught, ensured that healthcare providers are properly reimbursed by the Arkansas Medicaid Program for providing long-acting reversible contraception immediately and during postpartum.

d. **SUBJECT: Rules for Life Choices Lifeline and Continuum of Care Program**

DESCRIPTION:

Statement of Necessity

Act 703 of 2023 transfers responsibility for administering the Life Choices Lifeline from the Department of Health to the Arkansas Department of Human Services (DHS). It also transfers to DHS resource access assistance offered under the “Every Mom Matters Act”. This new rule establishes the standards under which the program shall operate.

Rule Summary

DHS promulgates the standards for purpose, eligibility, administration, and outcomes reporting for the Life Choices Lifeline and the creation of a new program to assist qualifying residents of the state with community outreach, direct services, support, social services case management, care coordination, consultation, and referrals for identified services to meet their specific needs.

Eligibility requirements at the time of initial contact are:

- (1) A resident of the State who is a biological parent of an unborn child or adoptive parent of a child under two years of age;
- (2) A pregnant woman seeking to obtain an abortion in this State; or
- (3) A parent or legal guardian of a pregnant minor residing in the State.

PUBLIC COMMENT: A public hearing was held on this rule on November 1, 2023. The public comment period expired on November 12, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services “shall promulgate rules necessary to implement” Ark. Code Ann. § 20-8-1003, regarding the Continuum of Care Program. *See* Ark. Code Ann. § 20-8-1003(i), *as created by* Act 703 of 2023, § 3.

This rule implements Act 703 of 2023. The Act, sponsored by Senator Jim Dotson, created the Continuum of Care Program within the Department of Human Services and amended the Life Choices Lifeline

Program to clarify language and ensure proper administration of the Program.

e. **SUBJECT: Outpatient Behavioral Health Counseling Services and Rates**

DESCRIPTION:

Statement of Necessity

A study of outpatient behavioral health rates was conducted in 2022 that indicated rates needed to be rebalanced against Medicare. Also, during the COVID-19 public health emergency (PHE), individual counseling rates were raised upon approval by the Centers for Medicare and Medicaid Services. The rule proposed permanently increases the individual rates approved during the PHE, and rebalances rates as recommended in the rate study.

The Medicaid State Plan will be amended effective January 1, 2024, such that individual counseling rates will be calculated at eighty percent (80%) of the 2022 Medicare non-rural rate for the State of Arkansas, and group counseling rates will be calculated at one hundred percent (100%) of the 2022 Medicare nonrural rate for the State of Arkansas. The rate changes for Arkansas Medicaid reimbursed behavioral health counseling services were set using a state comparison methodology. The new process used a comparison to the Medicare rate. Thus, individual counseling rates that were below 80% of the Medicare rate were raised to 80% and the group and multi-group family therapy rate that were well above 100% of the Medicare rate were lowered to 100%.

Good quality, easily accessible counseling services utilized for early intervention can prevent beneficiaries' needs for higher cost, longer term home and community-based or institutional services. Medicaid removes the requirement for a primary care provider referral from Behavioral Counseling services. Removal of the referral requirement allows providers to provide needed services much more quickly.

Summary

Counseling Services Provider Manual:

- Typographical and grammatical changes were made throughout the manual.
- Section 202.000: Changes were made to identify certification and enrollment specifications for Independently Licensed Practitioners.

- Section 210.200: Added, “Non-independently licensed clinicians must serve as a rendering provider through a certified agency provider.”
- Section 211.300: Updated the DHS website hyperlink.
- Section 217.100: Deleted. PCP referral is no longer required.
- Section 227.000: Deleted. Prescription for Counseling Services no longer required.
- Section 228.132: Specifies review samples will include a sample from each enrolled provider.
- Section 255.000: Deleted. Removed Crisis Stabilization Intervention.
- Section 255.001: Removed PCP referral requirement.
- Section 255.003: Added extension of benefits available for Acute Crisis Unit services.
- Section 256.510: Corrected instructions for completion for fields 17, 17a, 17b.

Section I Provider Manual:

- Section 172.100: Added Outpatient counseling services under PCP referral exemptions for mental health services.

Medicaid State Plan:

- Page 4.19-B, 1rrr: Amend state plan to specify reimbursement methodology for specific outpatient behavioral health services under EPSDT authorized in the state plan.
- Page 4.19-B, 5aa: Amend state plan to specify reimbursement methodology for specific outpatient behavioral health services under Other services authorized in the state plan.
- Page 4.19-B, 5aaa: Reformatted and moves unchanged Acute Crisis Units to a new page under Other services authorized in the state plan for continuity of the plan.

PUBLIC COMMENT: A public hearing was held on this rule on November 1, 2023. The public comment period expired on November 12, 2023. The agency provided the following public comment summary:

Commenter’s Name: Heather Maino, LCSW

COMMENT: I am a long time mental health professional in the State of Arkansas and have spent most of my career working in Community Mental Health. I have seen many changes over the last 30 years, and I’m highly concerned about what I’m seeing proposed as rate cuts to Group Counseling services. In my current role, I don’t provide group counseling services, but I know enough about our Seriously Mentally Ill population in the State of Arkansas to know that our Rehab Day Programs across the State will be dramatically impacted by such cuts. These programs are a

lifeline of support and stability, keeping a large population of our SMI citizens living successfully within the community.

In my own experience, I know that Rehab Day programs rely on group counseling rates to subsidize the whole of their programming because revenue from the “Rehab Day Service” billing is not enough to sustain such efforts. While I know that this is a “Medicaid” decision - not a PASSE decision, I’m concerned that Arkansas PASSE’s will treat the Medicaid rate cut as the standard for their own contracting. They often treat the Medicaid rate as the “ceiling” not the “floor” for their own decision making and providers have little room for leveraging alternative rates with them.

If Rehab Day programs become unsustainable and cease operation, the cost of increased hospitalizations, increased emergency room visits, and increased demand of the legal system to care for mental health needs will rise exponentially. These systems are not equipped or expansive enough within our State to manage that burden.

I’m asking for sincere consideration to protect our SMI consumers. Please do not act hastily without adequate protections in place for them.

RESPONSE: Adult Day Rehabilitation is one of many services that are in place to maintain adults with Serious Mental Illness (SMI) in home and community settings and is a home and community based service (HCBS). These HCBS should be used in conjunction with professional services such as individual counseling and group counseling as interventions to provide appropriate treatment to individuals with SMI. Some of the HCBS can be provided in a group setting. The providers of these services will have continuing discussions with PASSEs to determine the best combination of professional and HCBS.

Commenter’s Name: Joel Landreneau, Executive Director, Arkansas Council for Behavior Health

COMMENT: I am Joel Landreneau. I am Executive Director of the Arkansas Council for Behavioral Health and the Council has some comment to make about the rule proposal. First, the Council notes that the stated goal of the rule amendments are to provide good quality, easily accessible counseling services to eliminate or reduce the need for higher cost institutional care, and the Council believes that some of the proposed changes accomplish that, and the Council believes that other changes run a completely counter to that stated goal. For one thing, the PCP referral requirement was never a good idea. So, it is obviously a good idea to get rid of it. The PCP referral was never anything more than a procedural hurdle that acted as a barrier to access to care. We at the Council had

asked for the removal of it for adults and were pleased to see that the Department has seemed fit to get rid of it for all behavioral health clients, and we believe that this is a positive change.

The individual and marital and family counseling rates were a concern to us as well. Back in May the Council had the pleasure of hosting an in person meeting with Secretary Putnam, and with Assistant Director Janet Mann and Paula Stone, and they at that time assured the Council that the Department was working on a complete overhaul of Medicaid rates and a search for service gaps. They called it the Medicaid sustainability review process. Our observation at this date, November 1st, 2023, is that that process has only barely begun, if it has begun. And the plan was to have the process completed by the end of the year. The promise there was to look at the service gaps and to plug those gaps with newly designed services to make sure that there was a seamless continuum of care. The Council doesn't believe that has happened. But at the very least, we were gratified to see the temporary disaster SPA rates for individual and marital and family being made permanent. That was a concern. With the NSRP not advancing at the initial pace of change, it was a concern that that might revert back to the old rates, and it is gratifying to see that that is not the case. However, we don't share our enthusiasm for the reduction in the group therapy rates. And here's why. It is true that group therapy rates are out of line with group therapy rates with Medicare, and the adjustment of it to 100% of Medicare does align it with Medicare. The problem with this approach is that it doesn't take into consideration the role the group therapy plays in our service continuum. It's been our observation that rates tend to get looked at in isolation for that particular service and there's no evidence that I can see that there's been a consideration for the role that the rate plays in the entire service continuum. We are concerned that there are chronically, mentally ill adults who need to be seen multiple times a week who attend day rehab programs for whom this group therapy rate is an integral part. And it's an integral part of making those services economical to provide. Our concern is that there are programs that simply won't continue that programming if this rate cut is put into effect.

Now, I understand that this is just a rate change for the behavioral services manual. This is tier one. The problem though, is that we know that the PASSEs tend to look at the Medicaid rate, not only as the floor, but also as the ceiling. And our concern is that there are tier 2 and tier 3 clients who will not be seen, because these programs won't be able to continue because the PASSEs will mirror the rate in the fee schedule that's proposed here. We believe that's gonna be a harm to those clients' long term and it's going to result in more institutional care because a lot of these people are hanging on a thread.

We've had this conversation with DHS before, and I think DHS has acknowledged that there is a service gap between the residential services in a level two therapeutic community and just being out on your own and that there's a middle ground where there's really nothing there for people and this fulfills that role. And we've talked about maybe a level 3 therapeutic community or act teams, or some other intervening force that's between residential and on your own. But without that in place it seems unwise to the Council to get rid of the stop gap measure, that you have to meet that need without proposing something and implementing something to take its place. We believe, therefore, that the group therapy rate is cut is premature without those services to be put into place, to fulfill the function it is currently fulfilling. And we would ask that DHS delay that rate or at the very least bear upon the PASSEs to not pass it on for the tier 2 and tier 3 clients. We think that access to care and the prevention of institutionalized care would require that we provide services in this space in the continuum without disrupting what's happening at the present time. Thank you.

RESPONSE: The state completed the rate study for outpatient counseling and proposed the new rate setting methodology using a percentage of Medicare in 2022. AR Medicaid raised the rates for individual and family counseling to 80% of Medicare in fall of 2022 through a disaster state plan amendment (SPA). At that time providers were informed that group counseling rates would use the same rate setting methodology with a decrease in group rates to 100% of the Medicare rate but did not submit the decrease using a disaster SPA. This rule makes permanent the increase and enacts the decrease. The providers of services for Medicaid beneficiaries with Serious Mental Illness will have continuing discussions with PASSEs to determine the best combination of professional and HCBS to support them in home and community settings.

Commenter's Name: Joel Landreneau, on behalf of the Arkansas Council for Behavior Health

COMMENT: On behalf of the Arkansas Council for Behavioral Health, I thank you for the opportunity to comment on the Department of Human Services' proposed rule, "Outpatient Behavioral Health Counseling Services and Rates (Rule 219).

The Arkansas Council's members applaud some of the changes contained in the proposed rule promulgation. First, the Council applauds the abrogation of the requirement to obtain a referral from a primary care physician in order to allow Medicaid beneficiaries to access outpatient behavioral health services. This procedural barrier to care was implemented in 2018, and it was never necessary, and it was never an effective cost containment measure. It was never anything more than a

barrier to care, another hoop through which beneficiaries must jump in order to access needed services, and one that very frequently delayed the onset of care delivery.

Similarly, the Council welcomes the State Plan Amendment that adopts the disaster SPA rates for individual and marital/family services into the permanent State Plan. The Council had been assured by DHS that the Department was working on a complete and comprehensive review of everything Medicaid, including rates in all provider types and an examination of service gaps in behavioral health so that no portion of the Medicaid program would be amended in isolation, but that any changes would be made as part of a complete assessment of the adequacy of the full-service continuum. The Council was concerned about the expiration of those temporary rate adjustments that were set to expire 12/31/23, and the Council welcomes their adoption into the permanent state plan.

The Council understands that plans change, and that DHS' plans to conduct a comprehensive review of Medicaid (which it dubbed the "Medicaid Sustainability Review Plan," or "MSRP") was overtaken by the demands DHS faced in accomplishing the completion of the Public Health Emergency unwind that was mandated by state law to be completed in six months. Consequently, it comes as no surprise to the Council that MSRP remains in its early stages, despite earlier aspirations to complete it by 12/31/23. That said, the Council reminds DHS that MSRP is not complete, and that by DHS' own admission, there are service gaps in its behavioral health service continuum which remain unaddressed. However, rather than complete MSRP and address these gaps, DHS once again addresses rates for specific services in isolation from the larger context of the adequacy of the service continuum and proposes in this rule promulgation to reduce the rate paid for group psychotherapy by an amount that will require certain providers to reassess whether or not continuation of certain adult day rehab programs for seriously mentally ill adults is even feasible.

Day Rehabilitative Services have always been a critical element in the serving of persons with serious mental illness across the state. Most, if not all, of these programs are operated by the Community Mental Health Centers who provide care to this population and help to manage their day-to-day symptoms. Without the structure of these programs, most of these members are at serious risk of decompensation, inpatient hospitalizations or arrests that force the jail staff and law enforcement to undertake the tasks of managing the symptoms of SMI adults without either the expertise or the resources to do so. While it is a critical component in the continuum of care, Day Rehab as a stand-alone service is a financial liability and is not sustainable. The current rates for group therapy fill in this gap, providing a key piece of the service puzzle that is offered alongside Day Rehab, which benefits members clinically while helping to

offset the financial liability of the overall program. There are between 1,200 and 1,500 Seriously-Mentally Ill adults that attend Day Rehab programs operated by Council members. The proposed rate cut by nearly 50% will cause a substantial number of these programs to cease operations. This is the exact opposite of what DHS stated it hoped to achieve when it announced its MSRP review. Rather than review Medicaid to locate and alleviate service gaps, with this rate change, DHS will be creating a new service gap. Council members have been in discussion with DHS about ideas that can be implemented into action to address these gaps. However, the hard truth is that these ideas are only items for conversation at this point. The Council would like to see evidence-based services implemented to serve that population of SMI adults who no longer need daily residential supervision in a Level 2 Therapeutic Community, but for whom weekly individual psychotherapy is insufficient. Group therapy is part of the stop-gap measure to bridge that gap, and the Council considers it unwise in the extreme to eliminate that stop-gap before first implementing the measures that will take its place. Those measures have not advanced beyond the talking stages.

The Council has been told that these proposed changes only address the Medicaid fee-for-service fee schedule, and that SMI adults served in PASSE would not be directly affected. Our five-year history in dealing with the PASSE entities would indicate that this view is incorrect. While the PASSE entities are required to treat the FFS fee schedule as a floor, they also treat it as a ceiling. We fear that closure of Day Rehab programs will result if PASSE 3 entities pass along the rate cut in group therapy, and that will result in a spike in inpatient hospitalizations, jail admissions, or both. The Council strongly urges DHS to reconsider the group therapy rate cut until a proper service continuum for SMI adults can be put into practice, and urges DHS to require the PASSEs to maintain the current rate for these services until their replacement can be implemented.

The Arkansas Council appreciates the opportunity to provide these comments. We welcome any questions or further discussion about the recommendations described here. Please contact Joel Landreneau. Thank you for your time and consideration.

RESPONSE: The state completed the rate study for outpatient counseling and proposed the new rate setting methodology using a percentage of Medicare in 2022, well before the beginning of the MSRP. AR Medicaid raised the rates for individual and family counseling to 80% of Medicare in fall of 2022 through a disaster state plan amendment (SPA). At that time providers were informed that group counseling rates would use the same rate setting methodology with a decrease in group rates to 100% of the Medicare rate but did not submit the decrease using a disaster SPA. This rule makes permanent the increase and enacts the

decrease. The providers of services for Medicaid beneficiaries with Serious Mental Illness will have continuing discussions with PASSEs to determine the best combination of professional and HCBS to support them in home and community settings.

Commenter's Name: Jared Sparks, for Arisa Health

1. Thank you for the opportunity to provide feedback about the proposed rule revisions. Arisa Health, Inc.'s comments are attached. I also sent this using the Arisa Health email address. Have a good weekend.

We appreciate the efforts DHS is undertaking to support quality behavioral health care for the citizens of Arkansas. Removing the PCP referral requirement and making permanent the individual counseling rates are positive and appreciated steps. There are questions in response to the proposed rule revisions that may outline additional areas of opportunities for provision of safe, efficient, and effective care.

Outpatient Behavioral Health Services

Effective January 1, 2024, the following services will be adjusted to pay 100% of the 2022 non-rural rate for the state of Arkansas.

Group Behavioral Health Counseling

Given that Arkansas is a rural state with health care provider deserts, why is the non-rural rate being used?

In comparison to a rural rate, will the use of a non-rural rate result in a higher or lower overall level of reimbursement per behavioral health service?

RESPONSE: The state did not use a rural differential in its analysis for outpatient behavioral health counseling services.

2. Is the Group Behavioral Health Counseling rate adjustment only for Tier 1 clients? A rebasing of the group rate for PASSE clients would reduce one of the few tools available to be used in conjunction with rehabilitative day programs for adults with serious mental illness. Does DHS have another plan for this population? Similarly, this reduction will affect one of the few tools available to be used in conjunction with Therapeutic Day Treatment programs for children who are severely emotionally disturbed.

Why is Medicaid using the 2022 fee schedule when these rates are slated for 2024?

RESPONSE: The state completed the rate study for outpatient counseling and proposed the new rate setting methodology using a percentage of Medicare in 2022. AR Medicaid raised the rates for individual and family counseling to 80% of Medicare in fall of 2022 through a disaster state plan amendment (SPA). At that time providers were informed that group counseling rates would use the same rate setting methodology with a decrease in group rates to 100% of the Medicare rate but did not submit the decrease using a disaster SPA. This rule makes permanent the increase and enacts the decrease. The providers of services for Medicaid beneficiaries with Serious Mental Illness will have continuing discussions with PASSEs to determine the best combination of professional and HCBS to support them in home and community settings.

3. 202.000

A.2. Group practices of Independently Licensed Practitioners can enroll directly without certification.

Why is this option being offered?

In comparison with group practices of ILPs, certified agencies typically provide services to more clients with serious mental illness and higher acuity. These agencies must also support a costly administrative burden to become certified. In acknowledgement of the increased risk and cost, certified agencies assume to provide services, why is there not a higher rate paid to certified agencies?

If, on the other hand, some ILP group practices serve some high needs clients but do not have the additional requirements of certified agencies, are there not quality of care concerns?

RESPONSE: This was not changed in this rule.

4. 214.3 Substance Abuse Covered Codes

...Behavioral Health Agency and Community Support System Providers Intensive and Enhanced Sites must be licensed by appropriate DHS division to provide Substance Abuse Services

The state could eliminate added cost if there was a single licensure for agencies that provide Substance Abuse Treatment and Mental Health Services. This would remove the need for two certifications with two separate expiration dates and two different annual audits.

RESPONSE: Thank you for your comment. While this is not a certification rule the state will consider this in future.

5. 240.100 Reimbursement

A. Counseling Services

and

241.00 Fee Schedule

What are the time frames/ranges for encounter-based services such as group and individual?

Units are identified as encounters for some services such as Individual Behavioral Health Counseling. There is not an easily identified time frame per encounter. This is necessary to support appropriate billing practices and to inform external audits. The time frames in the Counseling Manual do not seem to apply to encounters, as this is “an otherwise stated” unit. The linked Counseling Services Procedure Code Table also does not provide guidance.

The National CPT Codes have a range of 16-37 minutes for psychotherapy 90832. This is the procedure code identified in the procedure code table for the Division of Behavioral Health. We would like to confirm that Arkansas is using National CPT Code standards to define time frames for services such as 90832. What is the time frame/range of a 30-minute individual behavioral health counseling service in order to bill this service in compliance with National CPT Codes and AR behavioral health and DMS standards?

RESPONSE: The state continues to look at the CPT codes and will provide guidance on appropriate use of these codes.

The proposed effective date is January 1, 2024.

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

Per the agency, the additional cost to implement this rule is \$3,610,316 for the current fiscal year (\$1,010,888 in general revenue and \$2,599,427 in federal funds) and \$7,220,632 for the next fiscal year (\$2,021,777 in general revenue and \$5,198,855 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is \$1,010,888 for the current fiscal year and \$2,021,777 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;

Based upon a study of outpatient behavioral health rates conducted in 2022, the Division of Medical Services (DMS) issues a rule amending counseling rates and removing the primary care provider referral requirement to receive behavioral counseling services. The Medicaid State Plan amendment proposes to change the Behavioral Health Counseling rates beginning January 1, 2024, for specified services as follows: Individual Behavioral Health Counseling, Marital or Family Behavioral Health Counseling (both with and without the client present), and Mental Health Diagnosis will be calculated at eighty percent (80%) of the 2022 Medicare non-rural rate for the State of Arkansas; and Group Behavioral Health Counseling and Multi-Family Behavioral Health Counseling will be calculated at one hundred percent (100%) of the 2022 Medicare nonrural rate for the State of Arkansas. The rate changes were set using a state comparison methodology based on the Medicare rate. As a result, individual counseling rates that were below 80% of the Medicare rate were raised to 80% and the group and multi-group family therapy rate that were well above 100% of the Medicare rate were lowered to 100%.

Additionally, the primary care provider referral was reviewed and determined unnecessary for accessing behavioral health counseling services.

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

Rates were reviewed to determine if access or quality of service was being affected by the rates. Based on that review, it was determined that to ensure the appropriate level of service was being provided, rates needed to be adjusted to align with Medicare. Removal of the PCP referral requirement allows earlier access for identification and treatment of basic behavioral health needs.

(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;

The rates for behavioral health counseling services had not been studied or adjusted since 2014 and work with a group of behavioral health providers who were facing challenges in staffing professionals to provide services to Medicaid beneficiaries in need was discussed. The state began the study by looking at comparison states and the providers requested that adjoining states counseling rates be examined. Once these rates were studied the Medicare comparison methodology was chosen.

(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;

The rates for group and multi-family group counseling were lowered and the individual and family counseling rates were raised. Clinicians licensed in AR can provide services in other states via telehealth by becoming licensed in that state and some professions have developed counseling compacts to honor other state's licensure.

(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;

No alternatives have been proposed by the provider community.

(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

The problem is access to counseling services for AR Medicaid beneficiaries and the state is also working towards early identification of behavioral health issues through behavioral health screening in primary care as well as a model of collaborative care that would allow interventions in PCP office and decrease the need for long term counseling services.

(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 monitors State and Federal rules and policies for opportunities to reduce and control cost.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

- f. **SUBJECT: Developmental Screens for Children & REPEALS: Standards for Conducting Criminal Record Checks for Employees of Developmental Disabilities Service Providers; Policy V-D – Intensive Family Services**

DESCRIPTION:

Statement of Necessity

The Division of Medical Services (DMS) is adding a requirement to the Early and Periodic Screening, Diagnosis, and Treatment manual for primary care providers (PCPs) to perform a developmental screening for children based upon the American Academy of Pediatrics (AAP) guidelines in alignment with the Bright Futures Periodicity Schedule. Optum will no longer perform the developmental screens required for EIDT admission after April 1, 2024. The new screening will be incorporated into the Patient Centered Medical Home (PCMH) quality metrics. Adding the developmental screen will enhance early identification of developmental needs for children and increase the quality of referrals for specialized services.

In addition, the Arkansas Independent Assessment (ARIA) manual is updated to capture current assessment and referral requirements. The ARKids First-B manual is updated to capture the use of the Bright Futures Periodicity Schedules discussed above.

Rule Summary

Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment Manual

- Section 215.100 – Deleted the sentence that read, “There must be at least 365 days between each screen listed below for children age 3 years through 20 years.”

- Section 215.100 – added, “One visit per birth year for children ages 3 years through 20 years.”
- Section 215.310 – J., updated the periodicity tool.
- Section 215.320 – K., updated the periodicity tool.

Arkansas Independent Assessment (ARIA) Manual

- Changed client to beneficiary throughout manual. Made technical and grammatical changes throughout the manual.
- Table of Contents – need to update to include new section 220.500 (Complex Care).
- 201.000 – Arkansas Independent Assessment (ARIA) System Overview
 - Added “...and for certain populations to establish the per member per month payment to a managed care entity.”
 - Added “...and establishes the per member per month payment to a managed care entity...”
- 201.100 – Developmental Screen Overview
 - Deleted the sentence that read, “The implementation of the screening process supports Arkansas Medicaid’s goal of using a tested and validated assessment tool that objectively evaluates an individual’s need for services.”
 - Added, “The developmental disabilities screening process will sunset April 1, 2024.”
- 202.000 Assessor Qualifications Overview
 - Deleted the letter “G” only. No change made to the sentence.
- 210.100 – Referral Process
 - Added, “A reassessment will be completed by staff employed by the independent assessment contractor utilizing the current approved assessment instrument (ARIA), which was approved prior to April 1, 2021, to assess functional need. An interview will be conducted in person for initial assessments, with the option of using telemedicine to complete Behavioral Health reassessments. The telemedicine tool must meet the 1915(i) requirement for the use of telemedicine under 42 CFR 441.720 (a)(1)(i)(A) through (C).”
- 220.100 – Independent Assessment Referral Process
 - Added, “A reassessment will be completed by staff employed by the independent assessment contractor utilizing the current approved assessment instrument (ARIA), which was approved prior to April 1, 2021, to assess functional need. An interview will be conducted in person for initial assessments, with the option of using telemedicine to complete reassessments for members with intellectual or developmental disabilities. The telemedicine tool must meet the 1915(i) requirement for the use of telemedicine under 42 CFR 441.720 (a)(1)(i)(A) through (C).”

- 220.310 – Possible Outcomes
 - Section B.2.a., added, “if deemed appropriate and an appropriate bed is available.”
- 220.500 – Complex Care – added a new section to the manual explaining complex care requirements.
- 220.600 – Referral Process
 - Added a new section to explain the referral process for complex care.
- 220.700 – Assessor Qualifications
 - Added a new section to explain the qualifications of an assessor.
- 230.000 to 230.400 – Personal Care Services – section relocated and renumbered.
- Tiering – added section number 230.300.
- Possible Outcomes – changed section number from 230.300 to 230.400.

ARKids First-B Manual

- Section 222.800 – Deleted the sentence that read, “There must be at least 365 days between each screen listed below for children age 3 years through 18 years.”
- Section 222.800 – added, “One visit per birth year for children ages 3 years through 18 years.”
- Section 222.820 – J., updated the periodicity tool.
- Section 222.830 – K., updated the periodicity tool.

Repeals pursuant to the Governor’s Executive Order 23-02:

- Standards for Conducting Criminal Record Checks for Employees of Developmental Disabilities Service Providers; and
- Policy V-D: Intensive Family Services.

In response to public comment, the agency made the following revisions to the ARIA Manual:

- Section 220.600: A PASSE member may be considered for Complex Care services if the member has been assessed or re-assessed as Tier **2 or** 3.
- Section 230.100: Reassessments must be conducted in person **or by telemedicine.**

PUBLIC COMMENT: A public hearing was held on this rule on November 8, 2023. The public comment period expired on November 12, 2023. The agency provided the following public comment summary:

Commenter’s Name: Teresa Crossland, for Haden Gilder, Chief Operating Officer, on behalf of Arkansas Home Helpers

COMMENT: On behalf of my client Arkansas Home Helpers, I respectfully submit the attached public comment on the rule regarding Early Periodic Screening, Diagnostic, and Treatment (EPSDT).

Thank you for the opportunity to present comments on the proposed rule regarding Early Periodic Screening, Diagnostic, and Treatment (EPSDT), which includes proposed amendments to the Arkansas Independent Assessment (ARIA) manual. Arkansas Home Helpers serves Arkansans in all 75 counties of the Arkansas with home based personal care services and we submit the following in the spirit of better serving our clients.

Since Governor Hutchinson's Executive Order 20-05 issued in the Spring of 2020, the state has utilized telemedicine to perform initial assessments and annual reassessments for behavior disorders, developmental disabilities, and the aging population. In 2021, the Arkansas legislature officially placed the expanded telemedicine definitions into law. The clear intent of state policymakers was to provide citizens with more accessible access to healthcare. Sections 210.100 and 220.100 of the proposed rule reverse these policies by requiring the initial independent assessment for the behavioral health and developmental disabilities populations to be conducted in-person. Arkansas law allows for citizens to receive medical diagnoses and treatment via telemedicine with no initial in-person visit requirement. We would ask the Department to refrain from placing a higher regulatory burden on eligibility assessments than that which is required for actual treatment and care of patients in the state.

Additionally, the Department's exclusion of the aging population from this proposed rule serves as a barrier to access for seniors. The process to realize home based personal care services is already lengthy, ranging from 90 to 115 days for approval. In-person requirements for the initial assessment and annual reassessment only extend the process, prolonging care to our most vulnerable population.

Lastly, an in-person assessment requirement will exacerbate Arkansas' shortage of registered nurses. In a study conducted by GlobalData PLC, Arkansas has only 76% of the registered nurses required to meet the national average level of care. The study also noted the state has 1.4% of the nation's 65-and-older population, which requires more care than the general population. The aging population is growing faster than any other age group in Arkansas – 18%, or 97,000 more residents by 2035. When you add in the challenges of serving a large rural population, the in-person assessment will only create unnecessary delays. In sum, we respectfully request the Department continue the use of telemedicine for the initial assessment and annual reassessment. We also request the Department include the aging population in this proposed rule, creating a consistent

standard for all three audiences. Thank you for the opportunity to provide feedback as you develop the final rule. We appreciate the opportunity.

RESPONSE: Thank you for your comment. We will amend the Independent Assessment Manual to align with how we reassess clients with Intellectual and Developmental Disabilities and Behavioral Health needs. We do not initially assess any clients via telehealth. Allowing personal care and AR Choices independent reassessments to be done via telehealth aligns the regulations across the three specialty populations.

Commenter's Name: Matt McClure, Ed.D., Franchise Owner, Home Instead Senior Care

COMMENT: Thank you for the opportunity to comment on the proposed rule regarding Early Periodic Screening, Diagnostic, and Treatment (EPSDT), which includes proposed amendments to the Arkansas Independent Assessment (ARIA) manual.

This comment is on behalf of the Arkansas Home Based Services Association (AHBSA), made up of ** member organizations, serving patients throughout the state. Our organizations provide top-quality, in-home care services for patients across Arkansas, including in many rural communities.

Sections 210.100 and 220.100 of the proposed rule would amend the ARIA manual, to require the initial independent assessment for both Behavioral Health (BH) and Developmental Disabilities (DD) populations to be in-person, while providing the option of using telemedicine to complete reassessments for those populations. The same is proposed for evaluations for Complex Care services under Section 220.600, allowing reassessments for patients meeting the criteria for Complex Care to be conducted via telemedicine.

However, the referral process for Personal Care Services, under Section 230.0 of the proposed rule would require reassessments to be conducted in-person, without the option for using telemedicine, as is provided to other populations under the proposed revision. Our home services providers serve patients in rural and remote areas of the state, often making it difficult to schedule in-person independent third-party assessments and reassessments in a timely manner. In addition, our clients are more-often-than-not elderly, home-bound, and in acute need of home care services. Already, the wait time for approval can be from 90-115 days, and we believe requiring all initial assessments and reassessments to be in-person will increase that wait. Timely assessments are critical to ensuring access to care. For that reason, we respectfully request that a

telemedicine option be provided for both the initial third-party assessments and reassessments.

In the absence of allowing both assessments and reassessments to be conducted via telemedicine, we ask that the ARIA Manual, as revised under the proposed rule, give parity to all populations served, allowing reassessments for Personal Care Services to be conducted via telemedicine, as the draft currently allows for reassessments in the BH and DD populations.

Thank you for considering our feedback as you finalize the proposed rule.

RESPONSE: Thank you for your comment. We will amend the Independent Assessment Manual to align with how we reassess clients with Intellectual and Developmental Disabilities and Behavioral Health needs. We do not initially assess any clients via telehealth. Allowing personal care and AR Choices independent reassessments to be done via telehealth aligns the regulations across the three specialty populations.

Commenter's Name: Jonathan Fry, Owner of Home Instead

COMMENT: Thank you for the opportunity to comment on the proposed rule regarding Early Periodic Screening, Diagnostic, and Treatment (EPSDT), which includes proposed amendments to the Arkansas Independent Assessment (ARIA) manual.

This comment is on behalf of the Home Instead Senior Care franchises of Arkansas, made up of eight independently owned and operated locations, serving patients throughout the state. Our franchise locations provide top-quality, in-home care services for patients across Arkansas, including in many rural communities.

Sections 210.100 and 220.100 of the proposed rule would amend the ARIA manual, to require the initial independent assessment for both Behavioral Health (BH) and Developmental Disabilities (DD) populations to be in-person, while providing the option of using telemedicine to complete reassessments for those populations. The same is proposed for evaluations for Complex Care services under Section 220.600, allowing reassessments for patients meeting the criteria for Complex Care to be conducted via telemedicine.

However, the referral process for Personal Care Services, under Section 230.0 of the proposed rule would require reassessments to be conducted in-person, without the option for using telemedicine, as is provided to other populations under the proposed revision. Our home services providers serve patients in rural and remote areas of the state, often

making it difficult to schedule in-person independent third-party assessments and reassessments in a timely manner. In addition, our clients are more-often-than-not elderly, home-bound, and in acute need of home care services. Already, the wait time for approval can be from 90-115 days, and we believe requiring all initial assessments and reassessments to be in-person will increase that wait. Timely assessments are critical to ensuring access to care. For that reason, we respectfully request that a telemedicine option be provided for both the initial third-party assessments and reassessments.

In the absence of allowing both assessments and reassessments to be conducted via telemedicine, we ask that the ARIA Manual, as revised under the proposed rule, give parity to all populations served, allowing reassessments for Personal Care Services to be conducted via telemedicine, as the draft currently allows for reassessments in the BH and DD populations.

Thank you for considering our feedback as you finalize the proposed rule.

RESPONSE: Thank you for your comment. We will amend the Independent Assessment Manual to align with how we reassess clients with Intellectual and Developmental Disabilities and Behavioral Health needs. We do not initially assess any clients via telehealth. Allowing personal care and AR Choices independent reassessments to be done via telehealth aligns the regulations across the three specialty populations.

Commenter's Name: Jack Hopkins, Manager, Government Relations, Arkansas Health & Wellness Operations; Arkansas Total Care

COMMENT: Good afternoon. One clarifying comment on language mirroring within the PASSE Agreement.

220.500 – 220.600: the language referencing Tier IV Complex Care members does not align with the current PASSE Agreement and should be updated to align.

RESPONSE: Thank you for your comment. The state will make the adjustments needed to align the definition of Tier 4 for PASSE members.

Commenter's Name: Anna Strong, MPH, MPS, Executive Director, Arkansas Chapter, American Academy of Pediatrics

COMMENT: I would like to submit, on behalf of the Arkansas Chapter, American Academy of Pediatrics (ARAAP) comments on the proposed rule for Developmental Screens for Children.

ARAAP strongly supports the amendments to the ARKids First B, Child Health Services/EPSTD, and ARIA manuals. In particular we applaud:

—Reimbursable, American Academy of Pediatrics-recommended developmental screenings. Though developmental screenings were already required in the manual before the proposed changes, ARAAP’s understanding is that CPT Code 96110 will be turned on for \$8.80 for the developmental screenings outlined in the amended manual. Though not all developmental screenings or autism screenings that may be administered by PCPs will be reimbursed, paying for at least 3 developmental screenings during early childhood will incentivize primary care providers to administer universal, validated early childhood screenings such as the Ages and Stages Questionnaire (ASQ) or the Survey of Wellness in Young Children (SWYC). This will help to identify developmental needs earlier, connect children to needed services in a timely way, and meet federal requirements for reporting the Child Core Measures in FFY24.

—Primary care ownership of Developmental Screening for the purposes of EIDT Placement. ARAAP supports primary care provider ownership of screening administration and referrals to EIDT services rather than outsourcing those decisions to a vendor without pediatric medical training.

—Changes to the “365 day rule” for well-child visits. After the pandemic, many children were behind on their well-child visits. Allowing one visit annually, rather than requiring 365 days between them, aligns with most other payers and facilitates timely access to care and prescriptions for children.

RESPONSE: Thank you for your comment and support.

The proposed effective date is January 1, 2024.

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

Per the agency, the total estimated cost to implement this rule is \$217,272 for the current fiscal year (\$60,836 in general revenue and \$156,436 in federal funds) and \$434,544 for the next fiscal year (\$121,672 in general revenue and \$312,872 in federal funds). The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is \$60,836 for the current fiscal year and \$121,672 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;

The Division of Medical Services (DMS) is adding a requirement to EPSDT for primary care providers (PCPs) to perform a developmental screening for children based upon the American Academy of Pediatrics (AAP) guidelines in alignment with the Bright Futures Periodicity Schedule; updating the ARKids First-B manual to indicate the use of the Bright Futures Periodicity Schedules and American Academy of Pediatrics guidelines; and updating the Arkansas Independent Assessment (ARIA) manual to capture current assessment and referral requirements.

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

Adding the developmental screen will enhance early identification of developmental needs for children and increase the quality of referrals for specialized services.

(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;

The rule implements National 2024 Child Core Set Measures for Medicaid programs, and aligns with the American Academy of Pediatrics guidelines in alignment with Bright Futures. Information regarding Bright Futures can be found at <https://www.aap.org/en/practice-management/bright-futures/>, which summarizes as follows:

Bright Futures is a national health promotion and prevention initiative, led by the American Academy of Pediatrics and supported, in part, by the US Department of Health and Human Services, Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau (MCHB). The Bright Futures Guidelines provide theory-based and evidence-driven guidance for all preventive care screenings and health supervision visits. Bright Futures content can be incorporated into many public health programs such as home visiting, childcare, school-based health clinics and many others. Materials developed especially for families are also available.

(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 available.

(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;

The rule received no public comments with proposed less costly alternatives.

(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

There are no existing rules identified that created or contributed to a problem; this rule updates DHS rules to align with current industry practices.

(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 monitors State and Federal rules and policies for opportunities to reduce and control cost.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). See Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

11. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF PROVIDER SERVICES AND QUALITY ASSURANCE** (Martina Smith, Jay Hill, Mitch Rouse)

- a. **SUBJECT:** Minimum Dementia Training Requirements Pursuant to Act 335 of 2023 & **REPEALS:** DDS Policy 1044 – Individual Records; DDS Policy 2003 – Gifts and Bequests

DESCRIPTION:

Statement of Necessity

The 94th General Assembly enacted Act 335. Act 335 amends Arkansas Code § 20-10-2401 to require minimum dementia training for staff members who are employed by an assisted living facility to address gaps in current dementia training requirements.

Summary of Changes

To comply with the Act, the Division of Provider Services and Quality Assurance amends the Rules for Assisted Living Facilities I and Rules for Assisted Living Facilities II manuals to create and define the requirements. The updates address training principles, required curriculum, initial training, and annual training.

Repeals pursuant to the Governor’s Executive Order 23-02:

1. DDS Policy 1044 – Individual Records, and
2. DDS Policy 2003 – Gifts and Bequests.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on October 21, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: “The Department of Human Services shall adopt rules for initial and continuing education on dementia for covered staff members; and to establish two (2) hours of continuing education on dementia for all covered staff annually.” Ark. Code Ann. § 20-10-2509, *as created by* Act 335 of 2023.

This rule implements Act 335 of 2023. The Act, sponsored by Representative Julie Mayberry, set minimum dementia training

requirements for staff members who are employed by an assisted living facility and addressed gaps in current dementia training requirements and improved the quality of training.

12. DEPARTMENT OF THE MILITARY (Brittany Edwards)

a. SUBJECT: Arkansas National Guard Tuition Waiver Program

DESCRIPTION: The Department of the Military’s State Education and Incentive Branch proposes amendments to its Arkansas National Guard Tuition Waiver Program. Due to legislative enactments during the 94th General Session, certain changes are required to the Arkansas National Guard Waiver Tuition Program, which provides financial assistance for education to certain eligible Arkansas National Guard Service Members. The proposed rule includes three substantive changes to the existing Arkansas National Guard Tuition Waiver Program and includes minor formatting changes as well.

First, the proposed rule aligns the state residency requirement with newly enacted language regarding eligible residents and eligible non-residents for in-state tuition as elsewhere outlined, specifically Ark. Code Ann. § 6-60-205.

Second, the proposed rule explains exception procedures for service members exceeding the six-semester hour drop limit or a service member’s degree program exceeding the 120-semester hour limit.

Third, the rule explains eligibility and usage rules regarding the co-use of Federal Tuition Assistance or when a service member is enrolled simultaneously at more than one public institution, such as a main campus and a community college.

These changes are necessary in order to align the promulgated rule with Act 275 of the 94th General Assembly.

After publishing the rule for public comment, the Department became aware that certain text was inadvertently deleted in sections 6 CAR § 530-305(a) and (c) when accepting formatting changes. The deleted text was minor and did not alter the substance of the rule. It was placed back in the final rule.

PUBLIC COMMENT: A public hearing was held on September 12, 2023. The public comment period expired September 28, 2023. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and received the following response from the agency:

(1) Did the Adjutant General coordinate with the Division of Higher Education in promulgating these rule amendments, pursuant to Ark. Code Ann. § 6-60-214(h)(1)? **Agency Response:** Yes.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that the rule has no financial impact. The agency estimates zero total cost by fiscal year to a state, county, or municipal government to implement the rule, stating that the program is subject to available funds as specified in the rule.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-60-214(h)(1), the Adjutant General, in coordination with the Division of Higher Education, shall promulgate rules for the implementation of that section of the Arkansas Code, which concerns tuition benefits for soldiers and airmen of the Arkansas National Guard, including without limitation rules for the eligibility of soldiers and airmen. The proposed rule changes include those made in light of Act 275 of 2023, sponsored by Senator Jane English, which amended various provisions of law related to tuition benefits for soldiers and airmen of the Arkansas National Guard.

13. **DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS STATE POLICE** (Tess Bradford, items a-b; Major Roby Rhoads, item a; Captain Dustin Morgan, Nicole Roper, item b)

a. **SUBJECT:** Rino's Law

DESCRIPTION: The Department of Public Safety is proposing a new rule to address legislation establishing Rino's Law, which was passed during the 2023 legislative session. The purpose is to provide payment of up to \$2,500.00 per year for the costs of food, flea and tick infestation prevention, and veterinarian bills for retired canines adopted by an ASP canine handler.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on November 14, 2023. The agency received no comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that the proposed rule has a financial impact. Concerning the current fiscal year, the agency

estimated that one K-9 may be retiring this year with cost of \$2,500. Concerning the next fiscal year, the agency estimated that two K-9s may be retiring with a cost of \$5,000.

LEGAL AUTHORIZATION: Act 113 of 2023, which was sponsored by Representative Mark Berry, provided food and medical care to a canine retired from the Division of Arkansas State Police in certain circumstances and created Rino’s Law. The Department of Public Safety shall promulgate rules for the implementation of Title 12, Chapter 8, Section 127 concerning food and medical care for retired canines. *See Ark. Code Ann. § 12-8-127(b) as created by Act 113 of 2023.*

b. SUBJECT: Penalties for Violations Concerning the Selling of Used Motor Vehicles

DESCRIPTION: Arkansas State Police Used Motor Vehicle Dealer (“UMVD”) Licensing Rule 2.12 was revised pursuant to the legislation passed by House Bill 1671, 94th General Assembly, Regular Session, 2023 by Representative Pearce and by Senator J. Petty.

Specifically, Rule 2.12 has been revised to fix grammatical errors and to add the language contained in Ark. Code Ann. § 23-112-603. Ark. Code Ann. § 23-112-603 has been updated to provide the Arkansas State Police the ability to fine an applicant or licensee in an amount not to exceed one thousand dollars (\$1,000) for each violation of that subchapter.

The first change is the addition of the title “Violations and Penalties” to Rule 2.12. The language “A.” has been added and addresses the Director’s ability to charge an applicant criminally pursuant to Ark. Code Ann. § 23-112-603(a)(1) - (3). The second change addresses the Director’s ability to fine an applicant or licensee in an amount not to exceed one thousand dollars (\$1,000.00) for each violation of Ark. Code Ann. § 23-112-605. The third change added the language allowing the Director to enter into consent judgments with applicants or licensees providing for the payment of agreed upon fines not to exceed one thousand dollars (\$1,000.00) per violation in lieu of a hearing and/or other administrative action. The fourth change adding the language “B.” has been added to introduce the subsection regarding applications for certificates of licenses or their renewal. The final change to Rule 2.21 corrected a grammatical error in the last sentence of the Rule.

In addition to the above noted changes, UMVD Licensing Rule 4 has also been stricken in its entirety from the UMVD Licensing Rules. Because Rule 4 has been stricken, the Rules have been revised to reflect the correct numbering because of the stricken language. Specifically, UMVD Rule 4

is now titled “Reciprocal, Temporary, and Expedited Licensure,” which was previously Rule 5 before this revision.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on November 14, 2023. The agency received no comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that the proposed rule does not have a financial impact.

LEGAL AUTHORIZATION: The Department of Arkansas State Police may promulgate rules that are necessary to implement, enforce, and administer the Used Motor Vehicle Buyers Protection subchapter of the Arkansas Motor Vehicle Commission Act. *See* Ark. Code Ann. § 23-112-604(a). The proposed rule implements Act 821 of 2023, sponsored by Representative Shad Pearce, which amended the law concerning the penalties imposed on a used motor vehicle dealer for a violation of the required licensing laws. *See* Ark. Code Ann. § 23-112-603(a) *as amended by* Act 821 of 2023.

E. Agency Updates on the Status of Outstanding Rulemaking from the 2023 General Session Pursuant to Act 595 of 2021

1. Department of Education (Andrés Rhodes, Courtney Salas-Ford)

F. Agency Requests to Be Excluded from Reporting Requirements of Act 595 of 2021

1. Department of Commerce, State Insurance Department (Act 523 of 2023) (Amanda Gibson)

G. Agency Monthly Written Updates Pursuant to Act 595 of 2021 Concerning Rulemaking from the 2023 General Session

H. Evaluation of Rule Review Group 2 Agencies Pursuant to Act 781 of 2017 and Act 65 of 2021

1. Commissioner of State Lands (Kelly Boyd)

2. Arkansas Governor’s Mansion Commission¹

I. Adjournment

¹ The rules report submitted by the Commission reflects no rules currently in effect.