

**DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES**

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**SUBJECT:** Community Support System Provider Standards

**DESCRIPTION:**

Statement of Necessity

Although changes were made in the last few years to improve and better connect clients with Home and Community-Based Services and more tailored and intensive levels of services through the PASSE program and the new Adult Behavioral Health Services for Community Independence, significant needs yet remain, specifically:

- We still lack a robust number of providers for Behavioral Health (BH), Developmental Disabilities (DD), and dually diagnosed clients, leaving gaps in care. The services and payment structures are in place, but providers need two separate certifications to provide all services.
- Providers have continued to provide either intellectual/developmental disabilities services OR behavioral health services – not both, which is an ongoing and persistent need.

Rule Summary

DHS is proposing two overall changes: (1) creating a new Arkansas Medicaid provider type and certification called a Community Support System Provider that would allow providers to become certified to serve the BH, DD, and dually-diagnosed populations; and (2) updating rules to create a path forward for a crisis continuum of services to support providers' work. These changes will:

- Eliminate the need for two different certifications for providers to serve the BH and DD populations, though those individual certifications will remain in place and available to providers who choose to serve a single population.
- Break down the barrier between home and community-based services and intensive services to allow for easier and faster program transitions for our clients.
- Open new business opportunities for providers and allow us to maximize the current provider networks.
- Fill gaps in the continuum of care for our highest need clients.

**PUBLIC COMMENT:** A public hearing was held on this rule on October 16, 2020. The public comment period expired on October 27, 2020. The agency provided a summary of the public comments received and its responses thereto, which due to its length is attached separately.

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

1. Where do the definitions of “marketing,” “medical service encounter,” “professional service encounter,” “serious injury,” and “solicitation” come from?

**RESPONSE:** Marketing: a new definition intended to allow a program to accurately advertise their services so long as it does not meet the definition of solicitation.

Medical Service Encounter: This definition was created to provide a specific framework for and at the request of providers. “Medical” describes a psychiatrist/APRN and similar.

Professional Service Encounter: This definition was created to provide a specific framework for and at the request of providers. “Professional” describes a licensed mental health professional.

Serious Injury: Serious injury is a term of art that appears in the waiver document; it is required to be reported but it is not defined federally.

Solicitation: revised version from former DDS Policy 1091

2. Is there a specific statute giving DPSQA licensing authority? **RESPONSE:** Special language in the DPSQA appropriation bill. [Agency attached Act 88.]

3. Where do the employee qualifications in section 302(e)(2) come from? **RESPONSE:** These are minimum requirements for paraprofessional services. As for the work experience, this provider type is specialized for IDD and BH clients and experience with those groups is appropriate.

4. Subsections 303(b)(1) and (2)(A) list topics that must be covered in employee training before an employee may have contact with beneficiaries. Where do these topics come from? **RESPONSE:** (b)(1) are basic safety training requirements consistent with other Medicaid programs; (2)(A) pertains to specific training for the paraprofessionals working with clients with IDD and BH under this combined provider type.

5. The proposed rules require CSSPs to retain all employee records for 5 years. Is this timeframe statutory? **RESPONSE:** Nothing statutory, common timeframe used for DHS policy purposes.

6. The proposed rules state that beneficiary service records must be kept in a locked room or file cabinet. Are there any analogous security requirements for electronic records? **RESPONSE:** As written, the locked room requirement would apply to where any computer is used for accessing/storing electronic records.

7. Where does the list of required components for an emergency plan come from?

**RESPONSE:** Parts of various other DHS standards, including child care licensing standards, center-based standards, and CES waiver.

8. Section 401(a)(2) states that the maximum number of beneficiaries that may be residents of a CSSP at one time is 16. Where does this number come from?

**RESPONSE:** Federal regulations generally define structures with more than 16 beds as institutions instead of homes.

9. Is the required 20 square feet of bedroom space per beneficiary a statutory requirement? **RESPONSE:** No.

10. Is the requirement for at least one shower per six beneficiaries taken from somewhere else? **RESPONSE:** This requirement does not have a source. In creating this rule, DHS utilized its rule-making discretion to establish this reasonable requirement for the benefit of the residents.

11. Section 603(c)(2)(B) sets forth the required staff/beneficiary ratio in a transportation vehicle. Where does this ratio come from? **RESPONSE:** This ratio does not have a source. In creating this rule, DHS utilized its rule-making discretion to establish this reasonable requirement for the safety of the persons in the transport vehicle.

12. Section 603(d)(A) requires every vehicle used to transport eight or more passengers to have a safety alarm device. What is the purpose of this alarm? **RESPONSE:** Ensure all beneficiaries that are being transported exit the vehicle.

13. Where do the insurance coverage requirements for transportation vehicles come from? **RESPONSE:** Minimum Licensing Requirements for Child Care Centers

14. Are the behavior management plan requirements taken from other rules? If not, where do they come from? **RESPONSE:** Similar to those contained in the former CES Waiver, "i" state plan amendments, standards and EIDT/ADDT rules.

15. Where do the restrictions and guidelines on use of restraints come from (Section 606)? **RESPONSE:** Similar to those contained in the former CES Waiver standards. The language is also outlined in the federal waivers that serve IDD and BH clients.

16. Section 608(b)-(c) addresses community reintegration and therapeutic communities. Where do these requirements come from? **RESPONSE:** These requirements were developed with stakeholders.

17. Is the list of incidents a CSSP is required to report a statutory list or does it come from somewhere else? **RESPONSE:** This is the standard list of reportable incidents that are being implemented across Medicaid programs.

**18.** What specific statutory authority is DMS relying on to impose monetary penalties on a noncompliant CSSP? **RESPONSE:** Ark. Code Ann. § 25-15-217

The proposed effective date is January 1, 2021.

**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).

As an agency with the authority to suspend, revoke, or deny licenses, the Department may, as an alternative sanction, impose a monetary penalty up to \$500 on persons or entities under its jurisdiction. Ark. Code Ann. § 25-15-217(a)-(b). Special language in Act 88 of 2020 gave the Department's Division of Provider Services and Quality Assurance the authority to "use funds appropriated for the certification or licensure of an entity on behalf of any division of the Department of Human Services." Act 88, § 5.