

## DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

---

**SUBJECT:** DHS Telemedicine COVID-19 Response Manual

**DESCRIPTION:** This rule is needed to render maximum assistance to the citizens of Arkansas so the Department of Human Services (DHS) may continue to provide services to its clients between the expiration of the public health emergency through the end of the year. The temporary provisions amend certain rules and provide guidance, safeguarding DHS with adequate time to close out temporary measures that will no longer be needed in coming months without creating a financial risk for the state.

DHS identified certain rules needing temporary revision and the necessity of continuing guidance to providers and clients so that services provided by the agency are available for the remainder of the year or through the national health emergency. The rule continues certain rule suspensions and issued guidance that began in March 2020. The provisions in the rule are temporary, expiring either on December 31, 2021, or upon the end of the federal national health emergency, as detailed in the rule.

The affected areas and rules manuals are as follows:

DDS Developmental Rehabilitation Services Medicaid Provider Manual (COVID-19 Response Manual Section 241.000—First Connections Developmental Therapy Telemedicine)

DDS Occupational, Physical, Speech-Language Therapy Services Medicaid Provider Manual (COVID-19 Response Manual Section 244.000—Telemedicine for Occupational, Physical, and Speech Therapists and Assistants)

DDS Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Medicaid Provider Manual (COVID-19 Response Manual Section 245.000—Telemedicine for Applied Behavioral Analysis (ABA) by a BCBA)

DDS Autism Waiver Medicaid Provider Manual (COVID-19 Response Manual Section 246.000—Telemedicine for Autism Waiver)

DMS Medicaid Provider Manual Section I (COVID-19 Response Manual Section 260.102—Telemedicine Originating Site Requirements for APRNs and Section 260.103—Telemedicine Originating Site Requirements to Allow Services to a Beneficiary in His or Her Home Through Date of Service December 31, 2021)

DMS Outpatient Behavioral Health Services—Medicaid Provider Manual (COVID-19 Response Manual Section 265.100—Behavioral Health Telemedicine Services)

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on May 10, 2021. The agency provided the following summary of the public comments it received and its responses to those comments.

**Commenter's Name:** Jaqueline Pendleton, on behalf of Summit Community Care

**1:** 241.00 First Connections Developmental Therapy Telemedicine: allows telehealth for developmental therapy (T1027, T1027UB).

We do not recall this from previous memos. Is this a new requirement and does it extend through only the emergency?

**RESPONSE:** Memorandum DMS-40 was dated 5/7/2020. The proposed rule in the DHS Telemedicine COVID-19 Response Manual extends it through 12/31/2021.

**2:** 260.102 Telemedicine Originating Site Requirements for APRNs: "Virtual Patient Check Ins" allows use of a virtual check-in (G2012) to be used to assess whether an established patient needs an office visit.

We do not recall this from previous memos. Is this a new requirement/suggestion for this COVID period? We have concerns this might set a precedent.

**RESPONSE:** Memorandum DMS-05 was dated 3/31/2020. The proposed rule in the DHS Telemedicine COVID-19 Response Manual extends it through 12/31/2021.

**Commenter's Name:** Joel Landreneau, Esq., Crochet & Landreneau, PLLC, Attorneys at Law

**1:** I appreciate this opportunity to comment on the rule promulgation currently out for public comment regarding the use of telemedicine in the Medicaid program.

**Individual Psychotherapy**

This manual explicitly states that Marital/Family Psychotherapy can be delivered via telemedicine, and specifically, via telephones. This was one of the changes made by the rule suspensions adopted in the original response to COVID-19.

What is not explicit is that the use of telephone-only will continue to be authorized for Individual Psychotherapy. This was also a rule suspension issued by the Department pursuant to the Governor's Executive Order 20-06, which has not been renewed. On a prior occasion, I asked the Department if telephone-only will still be permitted for Individual Psychotherapy, and I was directed to the Department's FAQ page which states that it is, but which was dated May, 2020, and was issued under the authority of the now-expired 20-06.

My question is: will telephone-only still be acceptable for Individual Psychotherapy, and if so, under what authority? These draft rules do not address it. I would like to suggest

reliance on the following language contained in Act 829 that has recently been enacted, and with an emergency clause, is in force already:

28

29 SECTION 4. Arkansas Code § 23-79-1601(7), concerning the definition of  
30 "telemedicine", is amended to read as follows:

31 (7)(A) "Telemedicine" means the use of electronic information  
32 and communication technology to deliver healthcare services, including  
33 without limitation the assessment, diagnosis, consultation, treatment,  
34 education, care management, and self-management of a patient.

35 (B) "Telemedicine" includes store-and-forward technology

3

04-12-2021 13:25:42 JMB124

As Engrossed: H1/25/21 H2/8/21 H2/10/21 S3/9/21 S3/17/21 S4/6/21  
S4/12/21

HB1063

1 and remote patient monitoring.

2 (C) For the purposes of this subchapter, "telemedicine"  
3 does not include the use of:

4 (i)(a) ~~Audio-only communication, including without~~  
5 ~~limitation interactive audio unless the audio-only communication is real-~~  
6 ~~time, interactive, and substantially meets the requirements for a healthcare~~  
7 ~~service that would otherwise be covered by the health benefit plan.~~

8 (b) As with other medical services covered by  
9 a health benefit plan, documentation of the engagement between patient and  
10 provider via audio-only communication shall be placed in the medical record  
11 addressing the problem, content of conversation, medical decision-making, and  
12 plan of care after the contact.

The way this reads, it seems as though health insurers are given some discretion to determine if "audio-only communication . . . substantially meets the requirements for a healthcare service" (Individual Psychotherapy) that would otherwise be covered by the benefit plan. For the sake of clarity, it would be helpful if DHS state clearly how they intend to treat audio-only telemedicine delivery, and to make this determination and state so in these proposed rules. I would repeat this request for the other services mentioned as well: Mental Health Diagnosis, Substance Abuse Assessment, and Crisis Intervention.

**RESPONSE:** Audio only will continue to be allowed. Per your comment, Act 829 pertaining to audio-only communication is already in effect. DMS is taking steps to revise and promulgate its manuals as timely as the process will permit.

**2: Originating Site definition**

Section 260.103 continues the suspension that allows the originating site to be the client's own home. This suspends Section 105.190 in the original manual, which is a provision of general application throughout the Medicaid program. Therefore, it would appear that this rule suspension would apply to behavioral health as well. However, all of the discussion that follows under this title applies only to physicians, nurse practitioners, and physician's assistants. It should be made clear whether this suspension is generally applicable to all provider types, or only to physicians and their assistants.

This, too, is the subject of recent legislation. Act 767 of 2021 applies the definition "originating site" to "healthcare services," which is broader than just physician services. Likewise, this law defines "originating site" as including the home of the patient. However, Act 767 does not have an emergency clause, so it is not in effect yet. It is important for behavioral health care providers to know that this rule suspension applies to their services as well.

At the time these proposed rules were published, these two bills from 2021 had not yet become law. I would suggest adding them to the list of authorizing legislation under which this manual is promulgated.

Thank you for your consideration.

**RESPONSE:** Section 260.103 addresses suspension of the originating site requirement to allow all providers who can provide telemedicine services to a beneficiary in his or her home through the date of service December 31, 2021. DMS is currently initiating revisions to telemedicine rule to promulgate in accordance with Act 767 of 2021 in as timely a manner as the process will permit.

**3:** I would like to request that you add Supplemental Support to the list of services that can be delivered via audio-only telemedicine. This was allowed during the emergency declaration, and that service is allowed via telemedicine under Act 624 of 2021, but there is no specificity that telephone-only is allowed. This is a short service to check on well-being, and delivery via telephone is valuable.

**RESPONSE:** Section 248.000 of the DDS COVID-19 Response Manual addresses Supplemental Supports.

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

**Q:** The proposed rules indicate that, in an emergency situation, DMS has the authority to relax the requirement that a provider have an established relationship with a patient before using telemedicine. I see that ACA § 17-80-403(a)(2)(A) allows exceptions to the established relationship requirement if "the life or health of the patient is in danger or imminent danger." Is this the authority DMS is relying upon for the proposed rule or is there some other source for this provision?

**Response:** Yes.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on March 22, 2021. The proposed effective date for permanent promulgation is July 1, 2021.

**FINANCIAL IMPACT:** The agency indicated that this proposed rule does not have a 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); *see also* Ark. Code Ann § 20-10-203(b). 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).

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

DEPARTMENT/AGENCY Department of Human Services  
DIVISION Division of Medical Services  
DIVISION DIRECTOR Janet Mann  
CONTACT PERSON Mac Golden  
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437  
PHONE NO. 501-563-7634 FAX NO. 501-404-4619 E-MAIL Mac.E.Golden@dhs.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Janet Mann  
PRESENTER E-MAIL Janet.Mann@dhs.arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

\*\*\*\*\*

- 1. What is the short title of this rule? DHS Telemedicine COVID-19 Response Manual
- 2. What is the subject of the proposed rule? See Attached.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No

If yes, what is the effective date of the emergency rule? April 1, 2021

When does the emergency rule expire? July 29, 2021

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes  No

5. Is this a new rule? Yes  No   
If yes, please provide a brief summary explaining the regulation. \_\_\_\_\_

Does this repeal an existing rule? Yes  No   
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. \_\_\_\_\_

Is this an amendment to an existing rule? Yes  No   
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

See attached. Please note, this rule contains temporary provisions of existing rules to meet the needs of the pandemic and will end no later than December 31, 2021. There will be no mark-up of existing rules.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code Annotated §§ 20-10-203, 20-10-701, 20-38-103, 20-38-112, 20-48-103, 20-76-201, 20-76-401, 20 77-107, 20-80-306 to -311, 25-10-126, and 25-10-129.

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

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>

9. Will a public hearing be held on this proposed rule? Yes  No   
If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
May 10, 2021

11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
July 1, 2021

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See Attached.

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

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules?  
Please provide their position (for or against) if known. Unknown

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services

**DIVISION** Division of Medical Services

**PERSON COMPLETING THIS STATEMENT** Jason Callan

**TELEPHONE** (501) 320-6540 **FAX** \_\_\_\_\_ **EMAIL:** Jason.Callan@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** DHS Telemedicine COVID-19 Response Manual

1. Does this proposed, amended, or repealed rule have a financial impact?    Yes             No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?            Yes             No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?            Yes             No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;  
\_\_\_\_\_
- (b) The reason for adoption of the more costly rule;  
\_\_\_\_\_
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
\_\_\_\_\_
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

<b><u>Current Fiscal Year</u></b>		<b><u>Next Fiscal Year</u></b>	
General Revenue	\$ _____	General Revenue	\$ _____
Federal Funds	\$ _____	Federal Funds	\$ _____
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____

Total \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue	\$0
Federal Funds	\$0
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ 0

General Revenue	\$0
Federal Funds	\$0
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

\$ 0 \_\_\_\_\_

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

\$ 0 \_\_\_\_\_

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

## NOTICE OF RULE MAKING

The Director of the Division of Medical Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rules under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-76-201, 20-77-107, and 25-10-129.

### **Effective July 1, 2021:**

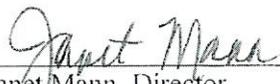
The Director of the Division of Medical Services (DMS) is establishing temporary rules and suspending current rules due to the continuing declaration of a National Public Health Emergency. The suspension of current rules implements one or more portions of the Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, including the enhanced Federal Medical Assistance Percentage (FMAP), the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136, and implements U.S. Department of Education, Office of Civil Rights and Office of Special Education and Rehabilitative Services guidance.

Suspending these rules allow providers to render maximum assistance to the citizens of Arkansas and provide uninterrupted services. These suspensions shall automatically end December 31, 2021. DMS establishes methods to use teletherapy to provide developmental and consultative services. This includes service and billing requirements. DMS outlines allowable telemedicine services provided by licensed occupational, physical, or speech therapists or assistants with service and billing requirements. Telemedicine is allowed for established patients for Applied Behavioral Analysis services with service and billing requirements. The rules also address telemedicine under the Autism Waiver. Originating site requirements are suspended, and guidance issued for out-of-state physicians, nurse practitioners, and physician assistants use of telemedicine. For Behavioral Health, certain face-to-face treatment requirements, telemedicine service limitations for beneficiaries over age twenty-one, limitations related to substance abuse assessments, and face-to-face service requirements for crisis intervention are suspended with billing requirement codes listed for use.

The proposed rules are available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rules at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. Public comments must be submitted in writing at the above address or at the following email address: [ORP@dhs.arkansas.gov](mailto:ORP@dhs.arkansas.gov). All public comments must be received by DHS no later than May 10, 2021. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-396-6428.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed, and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. 4501960528

  
\_\_\_\_\_  
Janet Mann, Director  
Division of Medical Services

## DHS Telemedicine COVID-19 Response Manual

**Why is this change necessary? Please provide the circumstances that necessitate the change.**

The rule is needed to render maximum assistance to the citizens of Arkansas so the Department of Human Services (DHS) may continue to provide services to its clients between the expiration of the public health emergency through the end of the year. The temporary provisions amend certain rules and provide guidance, safeguarding DHS with adequate time to close out temporary measures that will no longer be needed in coming months without creating a financial risk for the state.

**What does the Arkansas COVID-19 Response Manual cover?**

DHS identified certain rules needing temporary revision and the necessity of continuing guidance to providers and clients so that services provided by the agency are available for the remainder of the year or through the national health emergency. The rule continues certain rule suspensions and issued guidance that began in March 2020. The provisions in the rule are temporary, expiring either on December 31, 2021, or upon the end of the federal national health emergency, as detailed in the rule.

**What is the change? Please provide a summary of the change(s).**

DHS issues revisions, suspensions, and guidance in relation to certain rules. The affected areas and rules manuals affected are contained in the following chart.

Division	DMS COVID-19 Response Manual Section Number & Title	Regular Manual
DDS	241.000—First Connections Developmental Therapy Telemedicine	Developmental Rehabilitation Services Medicaid Provider Manual
DDS	244.000—Telemedicine for Occupational, Physical, and Speech Therapist and Assistants	Occupational, Physical, Speech-Language Therapy Services Medicaid Provider Manual
DDS	245.000—Telemedicine for Applied Behavioral Analysis (ABA) by a BCBA	Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Medicaid Provider Manual
DDS	246.000—Telemedicine for Autism Waiver	Autism Waiver Medicaid Provider Manual
DMS	260.102—Telemedicine Originating site requirements for advanced practice registered nurses	Medicaid Provider Manual Section I
DMS	260.103—Telemedicine originating site requirements to allow services to a beneficiary in his or her home through date of service December 31, 2021.	Medicaid Provider Manual Section I
DMS	265.100—Behavioral Health Telemedicine Services	Outpatient Behavioral Health Services – Medicaid Provider Manual

# **DHS Telemedicine COVID-19 Response Manual**

**July 1, 2021**

**DHS TELEMEDICINE COVID-19 RESPONSE  
CONTENTS**

<b>200.000</b>	<b>OVERVIEW</b>
201.000	Authority
202.000	Purpose
203.000	Appeals
204.000	Severability
241.000	First Connections Developmental Therapy Telemedicine
244.000	Telemedicine for Occupational, Physical, and Speech Therapist and Assistants
245.000	Telemedicine for Applied Behavioral Analysis (ABA) by a BCBA
246.000	Telemedicine for Autism Waiver
260.102	Telemedicine Originating site requirements for advanced practice registered nurses
260.103	Telemedicine originating site requirements to allow services to a beneficiary in his or her home through date of service December 31, 2021.
265.100	Behavioral Health Telemedicine Services

## 200.000 OVERVIEW

### 201.000 Authority

The following rules are duly adopted and promulgated by the Arkansas Department of Human Services (DHS) under the authority of Arkansas Code Annotated §§ 20-10-203, 20-10-701, 20-38-103, 20-38-112, 20-48-103, 20-76-201, 20-76-401, 20-77-107, , 25-10-126, and 25-10-129.

### 202.000 Purpose

In response to the COVID-19 pandemic, DHS identified programs and services that required additional flexibility or changes to adapt to ensuring the health and safety of our clients. This manual details them so that DHS may render uninterrupted assistance and services to our clients.

### 203.000 Appeals

Appeal requests for COVID-19 response policies must adhere to the policy set forth in the Medicaid Provider Manual Section 160.000 Administrative Reconsideration and Appeals which can be accessed at <https://medicaid.mmis.arkansas.gov/Provider/Docs/all.aspx>.

### 204.000 Severability

Each section of this manual is severable from all others. If any section of this manual is held to be invalid, illegal, or unenforceable, such determination shall not affect the validity of other sections in this manual and all such other sections shall remain in full force and effect. In such an event, all other sections shall be construed and enforced as if this section had not been included therein.

**241.00 First Connections Developmental Therapy Telemedicine**

During a public health emergency, the Office of Special Education Programs (OSEP) requires that eligible children with disabilities have continuity of Individual Family Service Plan (IFSP) services provided through alternative means such as teletherapy or other video conferencing. Currently, Medicaid's telehealth policies exclude Developmental Therapists from providing teletherapy services. First Connections needs a way to continue to provide developmental and consultative services to parents/guardians to support program-eligible children in developing and learning functional skills.

This method will be available until December 31, 2021.

- Modification to use teletherapy to provide developmental therapy/consultative services (DT) to parents/guardians of eligible children 0-3 with a current IFSP to help parents help their child develop and learn as required by IDEA, Part C.
- DT is provided to parents/guardians of eligible children through accessible real-time technology which includes a video component with originating site requirements removed so that families can receive services from their home (maximum 60 minutes per week).
- DT through teletherapy must be billed to the First Connections grant. T1027 Developmental Therapy is prior authorized at \$18.00 per unit and T1027 modifier UB Developmental Therapy Assistant is prior authorized at \$15.00 per unit.

**244.00 Telemedicine for Occupational, Physical, and Speech Therapists and Assistants**

In response to COVID-19 allowable telemedicine services include services provided by licensed occupational, physical, or speech therapists or assistants. These services are available to established patients only.

Parental Consultation is a COVID-19 response service that allows a therapist assistant or therapist to instruct a parent or caregiver on how to use therapeutic equipment or techniques with their child to continue working on therapy goals and objectives. To bill for this service, the therapy assistant or therapist must document that the parent or caregiver was present with a beneficiary. The service must be provided using the appropriate real-time technology that includes both a video and audio component. The originating service requirement is relaxed so that the parent may receive this service from their home.

The service may be provided in 15-minute sessions with a maximum of 8 sessions per month. All services must be prior authorized by eQHealth Solutions. This service and individual therapy services through telemedicine will be available until December 31, 2021.

Individual Therapy Services provided by a licensed Physical Therapist, Occupational Therapist, or Speech Therapist or Assistant allows for continued therapy services for established patients during this time of social distancing.

The technology used must be real-time and include a video and audio component. The sessions are limited to thirty minutes a piece, with a maximum of three (3) sessions per week.

The following services cannot be completed via telemedicine:

- A. Evaluations and re-evaluations. However, if an annual evaluation is due during this time, the deadline may be extended until the patient is able to come into the office.
- B. Group Therapy Services.

**245.00 Telemedicine for Applied Behavioral Analysis (ABA) for BCBA**

In response to COVID-19 allowable telemedicine services includes Applied Behavioral Analysis (ABA) services to established patients only. To allow for continued therapy services for established patients during this time of social distancing, DMS/DDS is lifting the requirement that the beneficiary be located at a healthcare facility (originating site) to receive telemedicine services for the following services only:

- Adaptive behavior treatment provided by a Board-Certified Behavior Analyst (BCBA) or Board-Certified Behavior Analyst-Doctoral (BCBA-D)
- Family adaptive behavior treatment guidance, by a BCBA or BCBA-D

This service through telemedicine will be available until December 31, 2021.

Billing Instructions

All units are prior authorized. To bill for this service, the BCBA must document that the parent or caregiver was present with a beneficiary. The service may be provided at the same rate as the regular "face-to-face" rate. All services must be prior authorized by eQHealth Solutions. When billing for these services you must include all modifiers on the claim. All Therapy claims submitted for Telemedicine must include the GT modifier and (02) as the place of service.

BCBA is a licensed clinician that may perform telemedicine under the scope of their license. The sessions are limited to 30 minutes, with a maximum of three (3) sessions per week.

97155 EP

Adaptive behavior treatment provided by a BCBA or BCBA-D. Individual adaptive behavior treatment by BCBA, face-to-face with the patient and may also include caregivers. This includes implementation and modification of treatment the plan. This may also include simultaneous direction of technician.

97156 EP

Family adaptive behavior treatment, provided by a BCBA, face-to-face with parents and/or caregivers. Family sessions should address education of the parents or caregivers on the patient's plan of care, specific objectives, treatment approaches, etc. as they relate to the individual client's ASD symptoms and how to address them in the patient's natural environment.

The following services cannot be completed via telemedicine:

- A. Evaluations and re-evaluations. However, if an annual evaluation is due during this time, the deadline may be extended until the patient is able to come into the office.
- B. Group ABA Services.

246.000 Telemedicine Autism Waiver

In response to COVID-19 the allowable telemedicine service available under the Autism Waiver is 2024 U3 Individual Assessment/Treatment Plan/Development/Monitoring.

These services through telemedicine will be available until December 31, 2021.

260.102 Telemedicine Originating Site Requirements for Advanced Practice Registered Nurses

**Section 105.190, regarding the originating site requirements for services provided to established patients by advanced practice registered nurses is suspended through date of service December 31, 2021.**

DMS issues the following guidance and policy related to Nurse Practitioners (NP) use of telemedicine.

Professional Relationship Requirements

A provider must have an established relationship with a patient before utilizing telemedicine to treat a patient.

Nurse Practitioners may provide telemedicine services using the following guidelines to establish professional relationship with new patients until the State Public Health Emergency is rescinded:

- The NP providing telehealth services must have access to a patient's personal health record maintained by a physician.
- The telemedicine service may be provided by any technology deemed appropriate, including telephone, but it must be provided in real time (cannot be delayed communication).
- NP may use telemedicine to diagnose, treat, and, when clinically appropriate, prescribe a non-controlled drug to the patient as allowed under their scope of practice.

To bill for these services, use the appropriate billing procedure code with the "GT" modifier and Place of Service (POS) "02".

Once the State Public Health Emergency has ended, Section 105.190 of the Medicaid Provider Manual is reinstated according to statutory authority.

Originating Site Requirements

DMS is waiving the originating site requirement for evaluation and management (E&M) services provided to established patients by NPs. This will allow the NP to utilize telemedicine technology, including telephone, when appropriate, to diagnose, provide treatment and prescribe to patients as allowed by their scope of practice, while the patient remains in their home. To use telemedicine technology to provide services without an originating site, the following requirements must be met:

- The technology must be real-time (cannot be delayed communications).

- The NP must have access to the patient’s medical records.

To bill for these services, please use the appropriate billing codes with the “GT” and Place of Service “02” modifier.

Virtual Patient Check-Ins

To prevent unnecessary travel and office visits, Medicaid is opening the virtual check-in CPT (code G2012) described below through date of service December 31, 2021.

To use the Code G2012 to provide virtual check-in services, meet the following requirements:

- Can be any real-time audio (telephone), or “2-way audio interactions that are enhanced with video or other kinds of data transmission.”
- For established patients only.
- To be used for:
  - Any chronic patient who needs to be assessed as to whether an office visit is needed.
  - Patients being treated for opioid and other substance-use disorders.
- Nurse or other staff member cannot provide this service. It must be a clinician who can bill evaluation and management (E&M) services.
- If an E&M service is provided within the defined time frames, then the telehealth visit is bundled with that E&M service. It would be considered pre- or post-visit time and not separately billable.
- No geographic location restrictions for the patient.
- Communication must be HIPAA compliant.

Code	Short Description	Fee
G2012	Brief communication technology-based service, e.g. virtual check-in, by a physician or other qualified health care professional who can report E&M services, provided to an established patient, not originating from a related E&M service provided within the previous 7 days nor leading to an E&M service or procedure within the next 24 hours or soonest available appointment. Typically, 5-10 minutes of medical discussion.	\$13.33

260.103 Telemedicine Originating Site Requirements to Allow Services to a Beneficiary in his or her Home Through Date of Service December 31, 2021

**Section 105.190 is suspended for the originating site requirement to allow all providers who can provide telemedicine services to provide those services to a beneficiary in his or her home through date of service December 31, 2021.**

*An out-of-state physician, nurse practitioner, or physician assistant who is an enrolled provider in Arkansas Medicaid may provide telemedicine services to an Arkansas Medicaid client, including prescribing drugs when clinically appropriate. The provider must follow any applicable requirements, including without limitation requirements of the United States Drug Enforcement Agency (DEA), the Arkansas State Medical Board, and the Arkansas Board of Nursing. It is the understanding of DHS that the DEA has temporarily waived the requirement that out-of-state physicians have an Arkansas DEA registration to prescribe drugs through telemedicine:*

[https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC018\)\(DEA067\)%20DEA%20state%20reciprocity%20\(final\)\(Signed\).pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC018)(DEA067)%20DEA%20state%20reciprocity%20(final)(Signed).pdf)

#### Professional Relationship Requirements

Generally, a provider must have an established relationship with a patient before utilizing telemedicine to treat a patient. (See Medicaid Provider Manual § 105.190.) However, DMS has the authority to relax this requirement in case of an emergency. DMS is lifting the requirement to have an established professional relationship before utilizing telemedicine for physicians through date of service December 31, 2021 under the following conditions:

- The physician providing telehealth services must have access to a patient's personal health record maintained by a physician.
- The telemedicine service may be provided by any technology deemed appropriate, including telephone, but it must be provided in real time (cannot be delayed communication).
- Physicians may use telemedicine to diagnose, treat, and, when clinically appropriate, prescribe a non-controlled drug to the patient.

To bill for these services, please use the appropriate billing procedure code with the "GT" modifier and Place of Service (POS) "02"

#### Originating Site Requirements

DMS is waiving the originating site requirement for evaluation and management (E&M) services provided to established patients by primary care providers. This will allow the physician to utilize telemedicine technology, including telephone, when appropriate, to diagnose, treat and prescribe non-controlled substances to patients while the patient remains in their home. The following requirements must be met to use telemedicine technology to provide services without an originating site:

- The technology must be real-time - cannot be delayed communications
- The physician must have access to the patient's medical records.

To bill for these services, please use the appropriate billing codes with the "GT" and Place of Service "02" modifier.

#### Virtual Patient Check-Ins

To use the Code G2012 to provide virtual check-in services, the following requirements must be met:

- Can be any real-time audio (telephone), or “2-way audio interactions that are enhanced with video or other kinds of data transmission.”
- For established patients only.
- To be used for:
  - Any chronic patient who needs to be assessed as to whether an office visit is needed.
  - Patients being treated for opioid and other substance-use disorders.
- Nurse or other staff member cannot provide this service. It must be a clinician who can bill primary care services.
- If an E&M service is provided within the defined time frames, then the telehealth visit is bundled with that E&M service. It would be considered pre- or post-visit time and not separately billable.
- No geographic location restrictions for the patient.
- Communication must be HIPAA compliant.

Code	Short Description	Fee
G2012	Brief communication technology-based service, e.g. virtual check-in, by a physician or other qualified health care professional who can report E&M services, provided to an established patient, not originating from a related E&M service provided within the previous 7 days nor leading to an E&M service or procedure within the next 24 hours or soonest available appointment. Typically, 5-10 minutes of medical discussion.	\$13.33

265.100 Behavioral Health Telemedicine

**Sections 252.113 and 252.114 concerning face-to-face treatment requirements are suspended through date of service December 31, 2021. Section 252.117 concerning telemedicine service limitations for beneficiaries age twenty-one (21) and over is suspended through date of service December 31, 2021 along with Section 252.119 concerning telemedicine service limitations related to substance abuse assessments and Section 255.001 concerning face-to-face service requirements for crisis intervention.**

DMS is suspending the rules prohibiting telemedicine for Marital/Family Behavioral Health Counseling with or without the Beneficiary being present. By suspending this rule, licensed behavioral health professionals will be able to provide Marital and Family Therapy Services via telemedicine. Any technology deemed appropriate may be used, including telephones, but technology must utilize direct communication that takes place in real-time.

The allowable codes for these rule suspensions:

- Marital/Family Behavioral Health Counseling with Beneficiary Present
  - 90847, U4, GT
  - 90847, U4, U5, GT – Substance Abuse
  - 90847, UC, UK, U4, GT – Dyadic Treatment
  - Place of Service to include 02 Telemedicine
- Marital/Family Behavioral Health Counseling without Beneficiary Present
  - 90846, U4, GT
  - 90846, U4, U5, GT – Substance Abuse
  - Place of Service to include 02 Telemedicine

DMS is suspending the rule limiting Mental Health Diagnosis be conducted via telemedicine to only the adult population over age 21. By suspending this rule, licensed behavioral health professionals will be able to use telemedicine as an allowable mode of service delivery to beneficiaries under the age of 21.

The allowable code for this rule suspension:

- Mental Health Diagnosis
  - 90791, U4, GT
  - 90791, UC, UK, U4, GT – Dyadic Treatment Diagnosis
  - Allowable Mode of Delivery- Adults, Youth and Children

DMS is suspending the requirement that substance abuse assessments be conducted face-to-face. By suspending this rule, licensed behavioral health professionals will be able to use telemedicine as an allowable mode of service delivery to provide substance abuse assessments.

The allowable code for this rule suspension:

- Substance Abuse Assessment
  - H0001, U4

DMS is suspending the rule prohibiting telemedicine for Crisis Intervention Services. By suspending this rule, licensed behavioral health professionals will be able to provide Crisis Intervention Services via telemedicine. Technology must utilize direct communication that takes place in real-time.

The allowable billing codes for this rule suspension:

- Crisis Intervention
  - H2011, HA, U4, GT
  - Place of service code 02