

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: SPA-2020-0008 Physicians' Evaluation & Management Code Rate Increase

DESCRIPTION:

Statement of Necessity

The Arkansas Department of Human Services (DHS), Division of Medical Services (DMS), intends to revise the Arkansas Medicaid State Plan maximum unit reimbursement rate for physicians' evaluations and management services, as required by Executive Order 19-02. A rate review was completed in January 2020. DHS bases the rate increases upon a rate review recommendation.

Rule Summary

A revision to the Arkansas Medicaid State Plan is necessary, effective for claims with dates of service on or after July 1, 2020, to increase the reimbursement rate maximums for evaluation and management codes (subject to a routine rate study performed by DHS in January 2020). All rates are published on the agency's website:

(<http://medicaid.mmis.arkansas.gov>).

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on May 11, 2020. The agency indicated that it received a single public comment.

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

COMMENT:

On behalf of approximately 420 pediatrician members, the Arkansas Chapter of the American Academy of Pediatrics wishes to submit public comment for SPA 2020-0008: Physicians' Evaluation and Management Code Rate Increase. Having only received details about the SPA a few hours ago, on the day public comment was due, our comments will be less detailed than intended.

We truly appreciate the effort that was made to provide a much-needed rate increase in the face of large cuts to the state budget due to COVID-19. While 5% is not the increase we hoped for considering it has been 15 years since the last fee-for-service rate increase, and Medicaid rates for some of pediatricians' office visit CPT codes are among the lowest in the nation and hover around 40% of private insurance rates, we support any efforts to continue to keep practice slots open for children on Medicaid and ARKids First. This is a welcome step in the right direction toward ensuring pediatric practices can provide equal access to care for all children.

Our larger concern about this SPA is what's not included in it. We appreciated Ms. Mann's invitation to provide feedback to AR Medicaid in January about the state's late 2019 analysis of primary care physician rates, and we are disappointed that most of the recommendations in our January 31, 2020 letter were not adopted.

First, we hoped to see the recommended currently-paid codes that are frequently used by pediatricians included in the list of codes receiving an increase. Some examples of these codes that are used daily in primary care settings include strep and flu PCR tests, RSV tests, updraft treatments, urinalysis, and vital/required screenings such as lead, vision, and hearing.

Second, our recommendations included suggestions for modernizing Medicaid codes to align with the American Academy of Pediatrics' Bright Futures. We advised several recommended screening codes be turned on, including services that were newly required as part of an EPSDT/well-child visit in January 1, 2020 EPSDT/ARKids First manual changes but are not being paid. An initial draft of the codes to be adjusted that was shared with us in early March 2020 included four of these screening codes, but they were not in today's version.

In short order, we expect to see established payment rates for the developmental/autism screenings (96110) and adolescent depression screenings (96127) that are now required. The well-visit's 5% increase (\$2.82) does not even cover the cost of these new services that require infrastructure and additional time to conduct. As a reminder, developmental screenings (96110) are a core measure that must be reported to CMS by 2024; we are one of only 5 states that does not reimburse for this service. And in this stressful and uncertain time, depression screenings are a must for teens.

We also hope to see payment established for recommended screenings including maternal depression screening (96161), health risk assessments/asthma control tests (96160), and vision screening with instrument (99177). We are aware that these changes may be made through a process other than a State Plan Amendment.

Finally, we also recommended activation of codes that support complex/behavioral primary care and after-hours care that pediatricians are providing to their patients without reimbursement.

We know that our plans to meet in person to discuss the rate review were sidelined by the pandemic, so we look forward to continuing our quarterly meetings (virtually or in person) in the meantime. We expect that as state budgets normalize, we will revisit our conversation about recommendations in our January letter.

RESPONSE: Thank you for your comment and support of the 5% increase. DMS did review and consider each of the policy recommendations made by the ARAAP. However, due to budget and time constraint, DMS decided to focus efforts on changes that would have the most impact across provider types and specialties. We continue to review and consider the policy recommendations you made and will make changes to the

Medicaid policy as appropriate. We value your support and look forward to continuing to work with you in the future.

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

QUESTION: Is CMS approval required for this rule? If so, what is the status on that approval? **RESPONSE:** The physicians' evaluation and management code rate increase (SPA 2020-0008) does require CMS approval. It was submitted April 14, 2020. CMS will have until July 13, 2020 to approve or deny, but they have indicated we should have the approval soon.

The proposed effective date is July 1, 2020.

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

Per the agency, the additional cost to implement the rule is \$4,599,168 for the current fiscal year (\$1,307,543 in general revenue and \$3,291,625 in federal funds) and \$4,599,168 for the next fiscal year (\$1,307,543 in general revenue and \$3,291,625 in federal funds). The estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$1,307,543 for the current fiscal year and \$1,307,543 for the next fiscal year.

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

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

As required by Executive Order 19-02, the rate review process for physicians' evaluation and management services was completed in January 2020. Based upon a rate review recommendation, a revision of the Arkansas Medicaid State Plan is necessary to increase rates for physicians' evaluation and management services.

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

As required by Executive Order 19-02, the rate review process for physicians' evaluation and management services was completed in January 2020. Based upon a rate review recommendation, a revision of the Arkansas Medicaid State Plan is necessary to increase rates for physicians' evaluation and management 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;

As required by Executive Order 19-02, the rate review process for physicians' evaluation and management services was completed in January 2020.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
There are no less costly alternatives.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
None at this time.

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
None.

(7) an agency plan for review of the rule no less than every ten years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives

Executive Order 19-02 requires physicians' evaluation and management services rates to be reviewed no less frequently than every four years.

LEGAL AUTHORIZATION: The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law 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 Alexandra Rouse
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437
PHONE NO. 501-320-6383 FAX NO. 501-404-4619 E-MAIL Alexandra.rouse@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Janet Mann
PRESENTER E-MAIL Janet.Mann@dhs.arkansas.gov

INSTRUCTIONS

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

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

1. What is the short title of this rule? SPA #2020-0008 Physicians' Evaluation & Management Code Rate Increase

2. What is the subject of the proposed rule? SPA #2020-0008 Physicians' Evaluation & Management Code Rate Increase

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes

No

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

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129
7. What is the purpose of this proposed rule? Why is it necessary? See Attached.
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).
<https://medicaid.mmis.arkansas.gov/general/comment/comment.aspx>
9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: _____

Time: _____

Place: _____

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

May 11, 2020

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

July 1, 2020

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

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

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Physicians and Group Practices; Outpatient Clinic Practices; Arkansas Medical Society – Position Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT Lynn Burton

TELEPHONE (501) 682-1857 **FAX** (501) 682-8155 **EMAIL:** Lynn.burton@dhs.arkansas.gov

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

SHORT TITLE OF THIS RULE SPA #2020-0008 Physicians' Evaluation & Management Code Rate Increase

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

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

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

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

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

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

General Revenue \$1,307,543
Federal Funds \$3,291,625
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$4,599,168

Next Fiscal Year

General Revenue \$1,307,543
Federal Funds \$3,291,625
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$4,599,168

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

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

Current Fiscal Year

\$ 1,307,543

Next Fiscal Year

\$ 1,307,543

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

Yes No

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

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

As required by Executive Order 19-02, the rate review process for physicians' evaluation and management services was completed in January 2020. Based upon a rate review recommendation, a revision of the Arkansas Medicaid State Plan is necessary to increase rates for physicians' evaluation and management services.

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

As required by Executive Order 19-02, the rate review process for physicians' evaluation and management services was completed in January 2020. Based upon a rate review recommendation, a revision of the Arkansas Medicaid State Plan is necessary to increase rates for physicians' evaluation and management services.

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There are no less costly alternatives.

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None at this time.

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None

- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

- (a) the rule is achieving the statutory objectives;
- (b) the benefits of the rule continue to justify its costs; and
- (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Executive Order 19-02 requires physicians' evaluation and management services rates to be reviewed no less frequently than every four years.

NOTICE OF RULE MAKING

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

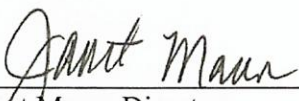
Effective July 1, 2020:

The Arkansas Department of Human Services (DHS), Division of Medical Services (DMS), intends to revise the Arkansas Medicaid State Plan rates for physicians' evaluation and management services as required by Executive Order 19-02. A rate review was completed in January 2020. DHS bases the rate increases upon a rate review recommendation, since rates have not increased in over 14 years. The rates shall increase for dates of service on or after July 1, 2020, and all rates shall be published on the agency's website: <http://medicaid.mmis.arkansas.gov/>. DMS also updated the text of the rule to modern formatting standards. The financial impact for this rule for the fiscal year is \$4,599,168.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the Medicaid website at <https://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than May 11, 2020. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6266.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. 4501888131



Janet Mann, Director
Division of Medical Services

Statement of Necessity and Rule Summary

SPA #2020-0008 Physicians' Evaluation & Management Code Rate Increase

Statement of Necessity

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