

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: Children's Health Insurance Program (CHIP) State Plan Amendment for Parity and Therapy Units

DESCRIPTION:

Statement of Necessity

This promulgation consists of two Children's Health Insurance Program (CHIP) State Plan Amendments (SPAs).

The first SPA is necessary to update the CHIP State Plan to clarify that a small number of ARKids-B beneficiaries with a higher level of care needs due to behavioral health or developmental disability diagnoses will receive services from a Provider-led Arkansas Shared Savings Entity (PASSE) rather than through fee-for-service.

The second SPA is necessary to comply with the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) by providing assurances that the CHIP State Plan does not impose financial requirements on benefits and limitations on benefits are not more restrictive for mental health or substance use disorders than the requirements and limitations for medical and surgical benefits. In addition, the second SPA updates terminology and changes benefit thresholds for occupational, physical, and speech therapy services from 4 units of each discipline daily to 6 units of each weekly with an option for extension of benefits, comparable to recently revised Medicaid standards.

The MHPAEA requires health insurers as well as group health plans to guarantee that financial requirements on benefits, including co-pays, deductibles, and out-of-pocket maximums, and limitations on treatment benefits such as caps on visits with a provider or days in a hospital visit, for mental health or substance use disorders are not more restrictive than the insurer's requirements and restrictions for medical and surgical benefits. Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) are not group health plans or issuers of health insurance. They are public health plans through which individuals obtain health coverage. However, provisions of the Social Security Act that govern CHIP plans, Medicaid benchmark benefit plans, and managed care plans that contract with State Medicaid programs to provide services require compliance with certain requirements of MHPAEA.

Rule Summary

The following updates have been made to the first CHIP State Plan as described above:

- Clarifies that a small number of ARKids-B beneficiaries with a higher level of care needs due to behavioral health or developmental disability diagnoses will receive services from a Provider-led Arkansas Shared Savings Entity (PASSE).

The following updates have been made to the second CHIP State Plan as described above:

- Assurances are provided that the State Plan complies with the requirements of MHPAEA.
- The use of generic prescriptions has been changed from “when available” to “when obtainable.”
- Substance Abuse Treatment Services (SATS) has been changed to Outpatient Behavioral Health Services (OBHS) which includes Substance Abuse Services.
- The benefit thresholds for occupational, physical and speech therapy services have been changed from four (4) units of each discipline daily to six (6) units of each weekly with an option for extension of benefits, comparably to recently revised Medicaid standards.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on November 3, 2020. The agency indicated that it did not receive any public comments.

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

1. What is the status on CMS approval? **RESPONSE:** A call was scheduled with CMS on Monday, November 1 to discuss all remaining concerns. Once those are addressed, the official SPA can be resubmitted and should be approved.

2. Where does the definition of “inpatient services” on page 105 come from? **RESPONSE:** This is a standard definition used for the purposes of distinguishing between inpatient services and the other three services in which parity must be met.

The proposed effective date is January 1, 2021.

FINANCIAL IMPACT: The agency indicated that this 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). 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 Mental Health Parity and Addiction Equity Act (MHPAEA). *See* 29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26(a)(1). The MHPAEA

requires parity in mental health and substance use disorder benefits provided by group health plans that offer both medical and surgical benefits and mental health or substance use disorder benefits. *See* 29 U.S.C. § 1185a(a)(1); 42 U.S.C. § 300gg-26(a)(1). Per the agency, while Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) are not group health plans or issuers of health insurance, provisions of the Social Security Act that govern CHIP plans, Medicaid benchmark benefit plans, and managed care plans that contract with State Medicaid programs to provide services require compliance with certain requirements of MHPAEA.