

DEPARTMENT OF HUMAN SERVICES, DIVISION OF PROVIDER SERVICES AND QUALITY ASSURANCE (DPSQA)

SUBJECT: Division of Provider Services and Quality Assurance COVID-19 Response Manual

DESCRIPTION:

Statement of Necessity

This rule is needed to render maximum assistance to the citizens of Arkansas so that the Division of Provider Services and Quality Assurance (DPSQA) 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.

DPSQA identifies 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 throughout the national health emergency. The rule contains 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.

Rule Summary

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

Division	DPSQA COVID-19 Response Manual – Section Number and Title	Regular Manual
DPSQA	271.000 – Pre-Admission Screening for Nursing Facility Residents Potentially MI/DD	Procedures for Determination of Medical Need for Nursing Home Services
DPSQA	272.000 – Therapeutic Community Direct Service Requirements	Therapeutic Communities Certification Manual

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on May 10, 2021. The agency indicated that it received no public comments.

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 the 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 Provider Services and Quality Assurance (DPSQA)
DIVISION DIRECTOR Martina Smith
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 Martina Smith
PRESENTER E-MAIL Martina.Smith@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. Whittaker
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 One Capitol Mall, 5th Floor
 Little Rock, AR 72201

- Division of Provider Services and Quality Assurance (DPSQA)
1. What is the short title of this rule? 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 §§20-10-701, 20-76-201, 20-77-107, 25-10-129, 20-10-203, 20-38-103, and 20-38-112.

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: N/A

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

Total \$0 _____

Total \$0 _____

(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 Provider Services and Quality Assurance 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: §§ 20-10-701, 20-76-201, 20-77-107, 25-10-129, 20-10-203, 20-38-103, and 20-38-112.

Effective July 1, 2021:

The Director of the Division of Provider Services and Quality Assurance (DPSQA) establishes temporary rules suspending current rules due to the continuing declaration of a National Public Health Emergency. The suspension of rules implements one or more portions of the Waiver to section 1135 of the Social Security Act that was approved by the Centers for Medicare and Medicaid Services on April 2, 2020

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. Parts of two Procedures for Determination of Medical Need for Nursing Home Services pre-screening rules are suspended. The first rule is suspended to the extent it prohibits facilities from admitting individuals with diagnoses or other indicators of mental illness or developmental disability; and, the second rule is suspended to the extent it requires the state to complete a Level 2 assessment for mental illness or developmental disability within seven (7) to nine (9) workdays from the date the mental illness or developmental disability is identified by the initial screening. DPSQA also suspends seven Therapeutic Communities, Level 1 and Level 2 direct service requirements listed in the Therapeutic Community Certification Manual. DPSQA and the Division of Medical Services add recommendations for direct service providers during the suspension of the requirements.

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. 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



Martina Smith, Director
Division of Provider Services and Quality Assurance

**Division of Provider Services and Quality Assurance (DPSQA)
COVID-19 Response Manual**

Statement of Necessity

The rule is needed to render maximum assistance to the citizens of Arkansas so that the Division of Provider Services and Quality Assurance (DPSQA) 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.

DPSQA identifies 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.

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Division of Provider Services and Quality Assurance (DPSQA)
COVID-19 Response Manual

July 1, 2021

**DPSQA COVID-19 RESPONSE
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- 272.000 Therapeutic Community Direct Service Requirements

PROPOSED

200.000 OVERVIEW

201.000 Authority

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

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 the 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.

270.000 PROVIDER CERTIFICATION

271.000 Pre-Admission Screening for Nursing Facility Residents Potentially MI/DD

42 CFR § 483.20(k) requires pre-admission screening for prospective nursing home residents to identify persons as potentially MI/DD. CMS granted an 1135 waiver for Arkansas waiving pre-admission screening on April 2, 2020. CMS previously had issued a blanket waiver related to pre-admission screening on March 13th. Specifically, the approval of Federal Section 1135 Waiver requests stated:

- Section 1919(e)(7) of the Act allows Level I and Level II assessments to be waived for 30 days. All new admissions can be treated like exempted hospital discharges. After 30 days, new admissions with mental illness (MI) or intellectual disability (ID) should receive a Resident Review as soon as resources become available.
- Per 42 C.F.R. §483.106(b)(4), new preadmission Level I and Level II screens are not required for residents who are being transferred between nursing facilities (NF). If the NF is not certain whether a Level I had been conducted at the resident's evacuating facility, a Level I can be conducted by the admitting facility during the first few days of admission as part of intake and transfers with positive Level I screens would require a Resident Review.
- The 7-9-day timeframe for Level II completion is an annual average for all preadmission screens, not individual assessments, and only applies to the preadmission screens (42 C.F.R. §483.112(c)). There is not a set timeframe for when a Resident Review must be completed, but it should be conducted as resources become available.

The 1135 waiver is set to terminate "upon termination of the public health emergency, including any extensions."

These processes and procedures will be available until December 31, 2021.

In response to this declaration and waiver, the Department of Human Services suspended parts of two rules of the Procedures for Determination of Medical Need for Nursing Home Services: (1) Rule I to the extent it prohibits facilities from admitting individuals with diagnoses or other indicators of mental illness or developmental disability; and, (2) Rule II to the extent it requires the state to complete a Level 2 assessment for mental illness or developmental disability within seven (7) to nine (9) workdays from the date the mental illness or developmental disability is identified by the initial screening.

By suspending these rules, nursing homes are able to admit individuals with diagnoses or other indicators of mental illness or developmental disability without first getting an assessment and approval by the Division of Provider Services and Quality Assurance, Office of Long-term Care (OLTC), clearing such individuals for placement in the facility. However, prior to admission, the facility must review the individual's information to ensure the facility can meet the individual's medical and behavioral needs.

272.000 Therapeutic Community Direct Service Requirements

DMS is suspending the rule related to Therapeutic Communities level of direct service requirements contained in the Therapeutic Communities Certification Manual.

The rules to be suspended are Therapeutic Community Certification Manual, Sections 113, 114, 115, 116, 118, 119, and 120.

DPSQA and DMS recommends that Therapeutic Communities offer as many direct service hours to beneficiaries as possible in response to COVID-19 staffing issues. It is recommended that professional counseling services be reduced from ten (10) hours per week to three (3) encounters per week, physician services be reduced from two (2) encounters per month to one (1) encounter per month, and QBHP intervention services be reduced from forty-two (42) hours per week to eighteen (18) hours per week.

These services will be available until December 31, 2021.

PROPOSED