

DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

SUBJECT: DDS 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 Developmental Disabilities Services (DDS) 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 DDS 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.

DDS 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 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 public health emergency, as detailed in the rule.

Summary

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

Division	DDS Covid-19 Response Manual Section Number and Title	Regular Manual
DDS	242.000 – Adult Developmental Day Treatment and Early Intervention Day Treatment Nursing Services Outside the Clinic	Adult Developmental Day Treatment Medicaid Provider Manual; Early Intervention Day Treatment Medicaid Provider Manual
DDS	243.000 – Prescription and Evaluation Extensions	Adult Developmental Day Treatment Medicaid Provider Manual; Early Intervention Day Treatment Medicaid Provider Manual; Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Provider Manual; Occupational, Physical, Speech-Language Therapy Services Medicaid Provider Manual; Developmental Rehabilitation Services Medicaid Provider Manual

DDS	247.000 – Well Checks and Attendance Payments for Adult Developmental Day Treatment and Early Intervention Day Treatment	Adult Developmental Day Treatment Medicaid Provider Manual; Early Intervention Day Treatment Medicaid Provider Manual
DDS	248.000 – Community and Employment Support Waiver Supplemental Supports	Provider-Led Arkansas Shared Saving Entity (PASSE) Program Medicaid Provider 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 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); *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 Developmental Disabilities Services
DIVISION DIRECTOR Melissa Stone
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 Melissa Stone
PRESENTER E-MAIL Melissa.Stone@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? DDS 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 §§ 20-48-101 et seq, 20-48-601 et seq, 20-48-1001 et seq. 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

NOTICE OF RULE MAKING

The Director of the Division of Developmental Disabilities 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: §§ 20-48-101 *et seq.*, 20-48-601 *et seq.*, 20-48-1001 *et seq.* and 25-10-129.

Effective July 1, 2021:

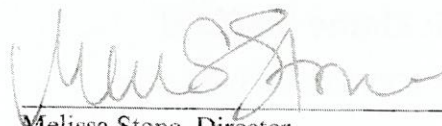
The Director of the Developmental Disabilities Services (DDS) is establishing temporary rules and suspending current rules due to the continuing declaration of a National Public Health Emergency. The suspension of current rules implements one or more portions of the Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, including the enhanced Federal Medical Assistance Percentage (FMAP), and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136.

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. DDS allows nursing services to be provided outside of Early Intervention Day Treatment Clinic and Adult Developmental Day Treatment Clinic settings. DDS is allowing extensions on re-evaluations and treatment prescriptions for certain therapies. Well Check services are allowed if the beneficiary is unable to attend the clinic setting. Requirements and billing information is outlined for each of the previously mentioned rules. DDS modifies provider types to all Qualified Behavioral Health Paraprofessionals employed by Outpatient Behavioral Health Service Agencies to provide Supportive Living Services. DDS also allows the extension of reassessments and re-evaluations for up to one year past the due date and allows for virtual person-centered planning meetings instead of face-to-face.

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



Melissa Stone, Director

Division of Developmental Disability Services

From: legalads@arkansasonline.com
To: [Lisa Teague](#)
Subject: Re: Full Run AD
Date: Friday, April 9, 2021 8:36:26 AM
Attachments: [image001.png](#)
[image002.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image010.png](#)

[EXTERNAL SENDER]

Thanks. Will run as requested.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Lisa Teague" <Lisa.Teague@dhs.arkansas.gov>
To: legalads@arkansasonline.com
Cc: "Jack Tiner" <jack.tiner@dhs.arkansas.gov>, "Mac Golden" <Mac.E.Golden@dhs.arkansas.gov>
Sent: Thursday, April 8, 2021 10:53:45 AM
Subject: Full Run AD

Please run the attached Notice of Public Hearing in the *Arkansas Democrat-Gazette* on the following days:

- Sunday, April 11th
- Monday, April 12th
- Tuesday, April 13th

I am aware that the print version will only be provided to all counties on Sundays.

Invoice to: **AR Dept of Human Services**

P.O. Box 1437

Slot S535

Little Rock, AR 72203

ATTN: Elaine Stafford

Or email invoices to: dms.invoices@arkansas.gov


Lisa Teague

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Developmental Disabilities 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 DDS 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?

Current Fiscal Year

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

Next Fiscal Year

General Revenue \$ _____
Federal Funds \$ _____
Cash Funds _____
Special Revenue _____
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.

**Statement of Necessity and Rule Summary
DDS 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 Developmental Disabilities Services (DDS) 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 DDS 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.

DDS 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.

Summary

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

Division	DDS Covid-19 Response Manual Section number & Title	Regular Manual
DDS	242.000—Adult Developmental Day Treatment and Early Intervention Day Treatment Nursing Services outside the clinic	Adult Developmental Day Treatment Medicaid Provider Manual, Early Intervention Day Treatment Medicaid Provider Manual
DDS	243.000—Prescription and Evaluation Extensions	Adult Developmental Day Treatment Medicaid Provider Manual, Early Intervention Day Treatment Medicaid Provider Manual, Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Provider Manual, Occupational, Physical, Speech-Language Therapy Services Medicaid Provider Manual, Developmental Rehabilitation Services Medicaid Provider Manual
DDS	247.000—Well checks and attendance payments for Adult Developmental Day Treatment and Early Intervention Day Treatment	Adult Developmental Day Treatment, Early Intervention Day Treatment Medicaid Provider Manual
DDS	248.000—Community and Employment Support Waiver Supplemental Supports	Provider-Led Arkansas Shared Saving Entity (PASSE) Program Medicaid Provider Manual

**Division of Developmental Disabilities Services (DDS)
COVID-19 Response Manual**

July 1, 2021

PROPOSED

**DDS COVID-19 RESPONSE
CONTENTS**

200.000 OVERVIEW

- 201.000 Authority
- 202.000 Purpose
- 203.000 Appeals
- 204.000 Severability

240.000 DEVELOPMENTAL DISABILITIES AND DELAYS

- 242.000 Adult Developmental Day Treatment and Early Intervention Day Treatment Nursing Services outside the clinic
- 243.000 Prescription and Evaluation Extensions
- 247.000 Well checks and attendance payments for Adult Developmental Day Treatment and Early Intervention Day Treatment
- 248.000 Community and Employment Support Waiver Supplemental Supports

PROPOS

200.000 OVERVIEW

201.000 Authority

The following rules are duly adopted and promulgated by the Division of Developmental Disabilities Services (DDS) of the Department of Human Services (DHS) under the authority of Arkansas Code Annotated §§ 20-48-101 et seq, 20-48-601 et seq, 20-48-1001 et seq. and 25-10-129.

Applicable Guidance:

Families First Coronavirus Response Act (Public Law 116-127 – March 18, 2020)

CMS Families First Coronavirus Response Act – Increased FMAP FAQ (question 6):
<https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf>

Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136 – March 27, 2020)

202.000 Purpose

In response to the COVID 19 pandemic, DDS 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 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.

240.000 DEVELOPMENTAL DISABILITIES AND DELAYS

242.000 Adult Developmental Day Treatment and Early Intervention Day Treatment Nursing Services Outside Clinic

In response to the COVID-19 outbreak in Arkansas and consistent with CMS's coverage and payment for COVID-19, DMS/DDS is suspending the prohibition on use of nursing services to be provided outside of an Early Intervention Day Treatment (EIDT) Clinic and an Adult Development Day Treatment (ADDT) Clinic setting (49), limited to provider type 24 only for services provided to established patients during the COVID-19 outbreak and the declaration of public health emergency. This addendum expands allowable services to be done in a home setting (12) provided by licensed Registered Nurses and Licensed Practical Nurses.

This service will be available until December 31, 2021.

Nursing services are defined as the following, or similar, activities:

- A. Assisting ventilator-dependent beneficiaries
- B. Tracheostomy: suctioning and care
- C. Feeding tube: feeding, care and maintenance
- D. Catheterizations
- E. Breathing treatments
- F. Monitoring of vital statistics, including diabetes sugar checks, insulin, blood draws, and pulse ox
- G. Administration of medication

Billing Information:

T1002 – Registered Nurse, services up to 15 minutes

T1003 – Licensed Practical Nurse, services up to 15 minutes

243.000 Prescription and Evaluation Extensions

In response to the COVID-19 outbreak, DMS/DDS will allow extensions on re-evaluations and treatment prescriptions for ADDT, EIDT, ABA, OT, PT, Speech, and Developmental Therapy. This exemption will be available until December 31, 2021. Extensions are limited to the following:

- Evaluations that expired on or after March 1, 2020.
- Prior Authorizations will be extended in 90-day increments from the date the re-evaluation was/is due.

Guidelines for requesting an extension:

- A. Provide a copy of the expired or expiring evaluation/prescription to the DDS representative via email.
- B. DDS will reply with an email providing you with an extension letter for your records.
- C. If a Prior Authorization is needed, you will enclose this letter with your request to eQHealth of the re-evaluation extension. Billing procedures will remain the same.

247.000 Well Checks and Attendance Payments for Adult Developmental Day Treatment and Early Intervention Day Treatment

In response to COVID-19, well check services are allowable if the beneficiary is unable to attend the clinic setting. The well check services are not allowable if the beneficiary has attended in person at the clinic at least one day that week. Attendance payments are allowable if a beneficiary attends the clinic in person that day.

Well Check services are available for vulnerable children and adults with developmental disabilities and delays who meet the state-determined medical necessity criteria for the programs.

The service is typically a 15-30-minute check-in visit, either by phone or in the home, that ensures the beneficiaries needs are being met for overall health and well-being, such as their nutritional status, medication regimen and any emerging health issues, while the beneficiary is unable to attend their day treatment program where these activities are part of the daily onsite services provided. The services must be recommended by a physician or other licensed practitioner who must determine the services are medically necessary.

The beneficiaries are eligible to receive two (2) well checks per week, one by telemedicine (including telephone) and one face-to-face. Beneficiaries under age twenty-one (21) may get an extension of benefits upon a showing of medical necessity as determined by the state. The well check may be provided in the home or using telemedicine.

Billing Instructions:

T1027 Family Training and Counseling

T1027 U1 in person, one 30-minute unit encounter for \$15.00, place of service (12)

T1027 U2 telephonic (by phone), one 15-minute unit encounter for \$7.50, place of service (02).

Providers cannot bill two well checks on the same day.

Beneficiaries are eligible for two well check services a week, so providers can bill either one "face to face" or telephonic. Example: IF U1 is provided and billed on Monday, you cannot provide and bill for U2 on Monday. U2 will have to be provided and billed another day during the week to meet the 2 call per week check in requirement.

Attendance payments are available for beneficiaries who attend the clinic setting.

If a child or an adult attends an EIDT/ ADDT clinic, providers may bill one 15- minute unit encounter for \$15.00, Place of Service (49), per beneficiary Monday – Friday. If a beneficiary

attends a clinic at least one day during the week, a well check service cannot be billed for that same week.

These services will be available until December 31, 2021.

248.000 Community and Employment Support Waiver

In response to COVID-19 DMS/DDS will temporarily modify provider types to all Qualified Behavioral Health Paraprofessionals employed by Outpatient Behavioral Health Service Agencies to provide Supportive Living Services, including Supplemental Supports to PASSE members.

DMS/DDS further amended the CES Waiver to allow an extension for reassessments and reevaluations for up to one year past the due date; allow the option to conduct evaluations, assessments, and person-centered service planning meetings virtually/remotely in lieu of face-to-face meetings; and allow an electronic method of signing off on required documents such as the person-centered service plan.

These services will be available until December 31, 2021.

PROPOSED