EXHIBIT K

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: Extension of Benefits for Acute Crisis Units and Substance Abuse Detoxification, and Telemedicine for Specific Services

DESCRIPTION:

Statement of Necessity

The Division of Medical Services (DMS) revises the Outpatient Behavioral Health (OBH) Provider Manual and amends the State Plan to incorporate an extension of benefits to replace previous hard limits so that clients can access medically necessary services. Correspondingly, DMS adds provisions allowing for telemedicine for certain services. Finally, DMS updates Section III of all provider manuals to reflect the telemedicine changes.

Rule Summary

DMS revises the OBH provider manual to incorporate an extension of benefit process when it is medically necessary for a client to exceed ninety-six (96) hours per admission in an Acute Crisis Unit, and when it is medically necessary to exceed six (6) encounters per State Fiscal Year of Substance Abuse Detoxification. The State Plan was amended to reflect the changes.

Correspondingly, updates to the manual include provisions allowing for telemedicine for:

- Group Behavioral Health Counseling, ages eighteen (18) and above
- Marital/Family Behavioral Health Counseling with Beneficiary Present
- Marital/Family Behavioral Health Counseling without Beneficiary Present
- Mental Health Diagnosis, under age twenty-one (21)
- Substance Abuse Assessment
- Crisis Intervention

The following changes to the OBH provider manual and Section III of all provider manuals:

- Section 252.111 is revised to remove the GT informational modifier for telemedicine.
- Section 252.112 is revised to include use of telemedicine for ages eighteen (18) and over.
- Section 252.113 is revised to include use of telemedicine.
- Section 252.114 is revised to include use of telemedicine.
- Section 252.115 is revised to remove the GT informational modifier for telemedicine.
- Section 252.117 is revised to remove age limitations for use of telemedicine for mental health diagnoses, and to remove the GT informational modifier for telemedicine.

- Section 252.118 is revised to remove the GT informational modifier for telemedicine.
- Section 252.119 is revised to include the use of telemedicine.
- Section 252.121 is revised to remove the GT informational modifier for telemedicine.
- Section 252.122 is revised to remove the GT informational modifier for telemedicine.
- Section 255.001 is revised to include use of telemedicine.
- Section 255.003 is revised to include extension of benefits for additional days when medically necessary and duplication of rule is deleted.
- Section 255.004 is revised to include extension of benefits for additional encounters when medically necessary.
- Section 305.000 is revised to remove references to the GT modifier when billing for telemedicine.

PUBLIC COMMENT: A public hearing was held on this rule on June 29, 2021. The public comment period expired June 29, 2021. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Joel Landreneau, Crochet & Landreneau, PLLC

1. Okay, I have two comments to make about the proposed rules, the proposed changes in 252 and the billing codes for outpatient behavioral health services. During the COVID pandemic and the emergency rule suspensions that were put into place during that time, there were somewhat different treatment for different codes, with respect to audio only telemedicine, some and the COVID emergency promulgated manual that came out in early April, also, made a specific provision, say, for example, for marital and family counseling which could be done audio only, but then some of the other telemedicine approved services, such as crisis intervention, made no specific mention of audio only and whether or not audio only was or was not permitted.

And so individual therapy was also one that was not specifically addressed in that manual and it isn't here either, and so I would request that if there is going to be an allowance for audio only for some or all of the billing codes, that the manual would reflect, that so that unless that's addressed somewhere else I don't see it here, it looks like telemedicine is just that, a term is just used. I guess the definition of that term would be as Arkansas law now defines telemedicine. I think it's act 829 that allowed audio only, but then it has a qualification in it that says, "if it meets the standards for the service," or something along those lines, it looks like it might be a payor decision whether or not audio only does or does not substantially meet the standards for that service, so I would request that clarification be made. I get that question a lot.

I'm sorry, I didn't even introduce myself, I'm Joel Landreneau, I'm Executive Director of Behavioral Health Providers Association and I get this question a lot, "is audio only allowed or not allowed for this or that service," and it would be very helpful if that was clarified.

RESPONSE: Thank you for your comment and questions. The comments and questions related to Act 829 and other telemedicine acts will be reviewed separately from this rule. We will consider what revisions may need to be promulgated and implemented during that review.

2. The second comment I would like to make is, with respect to who the authorized performing providers are. The proposed changes allow for, say, for example, individual behavioral health counseling 90832, 90834, 90837, have modifiers for substance abuse U4 and U5 and those services can be in our judgment, delivered by people who hold the AADC credential. These are master's degree therapists who are specifically trained and supervised in the delivery of substance abuse services.

It doesn't appear, I think, historically, they haven't been permitted to provide individual psychotherapy, even when substance abuse is the primary diagnosis, and I would request that the AADC's, of which there are little more than 100 in the state who have that credential. It is a nationally recognized credential and it is, it qualifies them to render substance abuse services, so it would, I think that would appear to individual behavioral health counseling the 90832, 34, 37, U4 and U5 modifiers, it would also apply to the group behavioral health counseling and 90853 U4 and U5 and marital and family, there's a substance abuse modifier at 90847.

So I would request, some of the AADC's also have LPC and LCSW credentials, which would enable them to do this, but not all of them do, but all a AADC's have Master's degrees and to the extent that there are those out there who have Master's degrees and the requisite training in substance abuse treatment, they should be reimbursed for Medicaid, when they render substance abuse treatment.

And that concludes my remarks.

RESPONSE: Thank you for your comments. Your request is outside the scope of this proposed rule change. No changes were proposed regarding allowed performing providers. For a list of currently authorized providers see section 211.200 Staff Requirements in Section II of the Outpatient Behavioral Health Services manual.

Commenter's Name: Joel Landreneau, on behalf of the Behavioral Health Providers' Association

1. The removal of the telemedicine modifier from certain codes is a welcome development. It has been a needless effort by providers and a needless expense for the state to require separate authorizations for the same service according to delivery modality. Our understanding of this change is that one authorization will be required for a service, which will then be interchangeable between face-to-face and telemedicine, and identifiable by the place of service codes. Please confirm that this understanding is correct.

RESPONSE: Under the proposed change, one authorization will be required for a service to be provided. Separate authorizations for face-to-face or telemedicine provision of services will not be required.

2. There needs to be a distinction made clear between those services that can be delivered via telemedicine audio-only, and those that cannot. Act 829 of 2021 amended the definition of "telemedicine" to read as follows:

> (C) For the purposes of this subchapter, "telemedicine" does not include the use of:
>
> (i)(a) Audio-only communication, ~~including without limitation interactive audio~~ unless the audio-only communication is real-time, interactive, and substantially meets the requirements for a healthcare service that would otherwise be covered by the health benefit plan.

This definition of "telemedicine" applies to each and every service. In all cases, telephone-only is "real-time" and "interactive." These rules should establish bright-line rules for when a service "substantially meets the requirements for a healthcare service that would otherwise be covered by the health benefit plan." Our reading of this language is that the payors determine when audio-only "substantially meets the requirements for a healthcare service." The present rules, as enacted and as proposed, do not make these determinations, leaving providers uncertain regarding when audio-only can or cannot be used in service delivery. Act 829 had an emergency clause, and thus it has been law since April 21, 2021. These rules should be revised to clarify when audio-only is permitted or prohibited.

RESPONSE: Thank you for your comment and questions. Comments and questions related to Act 829 and other telemedicine acts will be reviewed separately from this rule. We will consider what revisions may need to be promulgated and implemented during that review.

3. Codes with Substance-Abuse modifiers should add LADAC's and AADC's to the list of Allowable Performing Providers. Behavioral Health Agencies ("BHA's") in this state are facing great difficulties in recruiting and retaining Independently Licensed Practitioners who are willing to do the work required of therapists in BHA's, such as supervision of paraprofessionals. Some agencies are in such straits that they are unable to assign a therapist to a new patient for weeks at a time. There are strong incentives for therapists to leave BHA's and establish independent practices, including a billing rate that is equal to that paid to BHA's, but without the added, uncompensated responsibilities therapists are need for in agencies.

There are several policy changes that are needed to address this situation, which is beginning to approach crisis levels. One simple change that could be made in this draft is for Medicaid to recognize Licensed Alcoholism and Drug Abuse Counselors (LADAC's) and Advanced Certified Alcohol Drug Counselor (AADC's) for those codes that have a Substance Abuse modifier, and recognize these practitioners for services requiring that

modifier. LADAC's and AADC's both require a Master's Degree in a Behavioral Science or Human Services field with a clinical application from an accredited university. AADC's require a 300-hour supervised practicum and 2,000 hours of supervised work experience under a Master's Level supervisor. LADAC's likewise require a Master's degree in a health or behavioral services field, along with 3 years' clinically supervised work experience in the field of Substance Abuse and Mental Health. Many of these professionals also hold certifications as LCSW's or LPC's, but there is a sizeable number within the state that do not. This means that Medicaid will not pay for a certified substance abuse practitioner with a Master's Degree to render Individual Therapy to SUD-primary patients, even though they are qualified to do so within the scope of their practice.

As of July 13, 2021, there are presently 120 AADC's in the State of Arkansas who are qualified to serve SUD patients, but who are not reimbursed by Medicaid for doing so unless they also hold an LCSW or an LPC. There is no public policy reason who Master's-level treatment professionals should be excluded from serving Medicaid patients, especially in this time when recruiting and retaining LCSW's and LPC's is so difficult for BHA's. I would ask that this request be treated as a request for rule promulgation under Ark. Code Ann. § 25-15-204(d).

RESPONSE: Your request is outside the scope of this proposed rule change. No changes were proposed regarding allowed performing providers. For a list of currently authorized providers see section 211.200 Staff Requirements in Section II of the Outpatient Behavioral Health Services manual.

4. Mental Health Diagnosis should be increased to a maximum of two hours per encounter. Mental Health Diagnosis was reduced in rate in the 2018 transformation to an equivalent of one hour of service in the old rate. Practitioners routinely tell me that they take about two (2) hours at a minimum to do a thorough intake, which they regard as vital to arrive upon an accurate diagnosis and well-informed plan of care. The one single encounter, at the rate at which it is paid, is not sufficient to meet the needs of the patient, and more often than not, the practitioners simply perform the thorough intake anyway, and accept the inadequate payment. I would ask that this request be treated as a request for rule promulgation under Ark. Code Ann. § 25-15-204(d).

RESPONSE: Thank you for your comment. Your requested change is outside of the scope of this proposed rule change. This proposed rule change does not address the encounter or rate for Mental Health Diagnosis service but is limited only to changes regarding telemedicine service for Medicaid beneficiaries who are under age 21.

The proposed effective date is October 1, 2021.

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

Per the agency, the total estimated cost to implement this rule is $163,170 for the current fiscal year ($46,308 in general revenue and $116,862 in federal funds) and $217,560 for

the next fiscal year ($61,744 in general revenue and $155,816 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is $46,308 for the current fiscal year and $61,744 for the next fiscal year.

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).

Portions of this rule implement Act 624 of 2021. The Act, sponsored by Representative Lee Johnson, ensured that reimbursement in the Arkansas Medicaid Program for certain behavioral and mental health services provided via telemedicine continues after the public health emergency caused by COVID-19. Per the Act, Arkansas Medicaid must reimburse for "crisis intervention services; substance abuse assessments; mental health diagnosis assessments for" beneficiaries under age 21; group therapy for beneficiaries 18 and older; and "counseling and psychoeducation provided by" certain licensed personnel. Act 624, § 1(b).

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

Medicaid and CHIP Operations Group

August 27, 2021

Dawn Stehle
Deputy Director for Health and Medicaid
Arkansas Department of Human Services
112 West 8th Street, Slot S401
Little Rock, AR 72201-4608

Re: Arkansas State Plan Amendment (SPA) 21-0005

Dear Ms. Stehle:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 21-0005. This amendment proposes extending benefit limits Acute Crisis Unit and Substance Abuse Detoxification services.

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act and implementing regulations 42 CFR § 435.733. This letter is to inform you that Arkansas Medicaid SPA 21-0005 was approved on August 26, 2021 with an effective date of January 1, 2022.

If you have any questions, please contact Michala Walker at 816-426-6503 or via email at michala.walker@cms.hhs.gov

Sincerely,

Digitally signed by James G. Scott -S
Date: 2021.08.27 14:35:21 -05'00'

James G. Scott, Director
Division of Program Operations

Enclosures

cc: Elizabeth Pitman
Jack Tiner
Chloe Crater

Bcc: Nancy Kirchner, DBC

QUESTIONNAIRE FOR FILING PROPOSED RULES 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 PO 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, 5th Floor
Little Rock, AR 72201

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1. What is the short title of this rule? Hospital Acute Crisis Units

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 X

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 X

If yes. what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

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

5. Is this a new rule? Yes_____ No X If yes, please providea brief summary explaining the rule.

Does this repeal an existing rule? Yes_____ No X 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 X 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.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Ark. Code Ann. 20-77-101 et seq.

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 X No_____
If yes, please complete the following:

Date: October 23, 2020

Time: 3:00p.m.

Place: Remotely 1-774-220-4000 access code:8426607

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

November 9, 2020

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

January 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.

Arkansas Hospital Association-position unknown;

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Medical Services
PERSON COMPLETING THIS STATEMENT Elizabeth Pitman
TELEPHONE NO. (501) 244-3944 **FAX NO.** 501-682-1197 **EMAIL:** elizabeth.pitman@dhs.arkansa

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 Hospital Acute Crisis Units

1. Does this proposed, amended, or repealed rule have a financial impact?
   Yes X 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 X 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 X 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:

   N/A

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

   N/A

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

   N/A

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

   N/A

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		**Next Fiscal Year**	
General Revenue	$0	General Revenue	$0
Federal Funds	$0	Federal Funds	$0
Cash Funds	$0	Cash Funds	$0
Special Revenue	$0	Special Revenue	$0

Other (Identify)	$0	Other (Identify)	$0
Total	$	Total	$

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

Current Fiscal Year		**Next Fiscal Year**	
General Revenue	$279,910	General Revenue	$543,820
Federal Funds	$684,510	Federal Funds	$1,369,020
Cash Funds	$0	Cash Funds	$0
Special Revenue	$0	Special Revenue	$0
Other (Identify)	$0	Other (Identify)	$0
Total	$964,420	Total	$1,912,840

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**
$279,910	$543,820

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 X

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 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 January 1, 2021:

In an effort to fill gaps and improve continuity of behavioral health services in Arkansas, it is necessary to include a new section in the Arkansas Medicaid Provider Manual to define the operation of Acute Crisis Units in the Hospital and Critical Access Hospital settings. Section 218.400 is added to recognize Acute Crisis Units as part of Hospital and Critical Access Hospital services.

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 November 9, 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.

A public hearing by remote access only will be held on October 23, 2020, at 3:00 p.m. Individuals can access this public hearing by calling 1-774-220-4000 and entering the conference code, 8426607.

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

Janet Mann, Director
Division of Medical Services

Statement of Necessity and Rule Summary

Hospital Acute Crisis Units

Statement of Necessity

In an effort to fill gaps and improve continuity of behavioral health services in Arkansas, it is necessary to include a new section in the Arkansas Medicaid Provider Manual to define the operation of Acute Crisis Units in the Hospital and Critical Access Hospital settings.

Rule Summary

Section 218.400 is added to recognize Acute Crisis Units as part of Hospital and Critical Access Hospital services.