

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: Outpatient Acute Crisis Units

DESCRIPTION:

Statement of Necessity

Arkansas Medicaid is clarifying the Arkansas Medicaid Hospital Provider Manual to define the operation of Outpatient Acute Crisis Units. This change is necessary to fill gaps and improve continuity of behavioral health services in Arkansas. A State Plan Amendment is being submitted to expand ACUs into hospital outpatient settings and increase the rate for freestanding ACUs operated outside of a hospital. These changes will allow for hospitals without psychiatric units to receive reimbursement for crisis services while also helping to divert people from Emergency Departments and local jails. The rate was implemented on July 1, 2021, at a rate of \$572.00 per day.

Rule Summary

- Section 218.400 is revised to recognize Outpatient Hospital Acute Crisis Units and provide hyperlinks to extension of benefits and billing information.
-Medicaid State Plan 3.1-A, page dd; 3.1-B, page 2 dd; 4.19-B, page 1aa(1); and 4.19-B, page 5aa are revised to add outpatient hospital acute crisis units; update rate methodology for Outpatient Behavioral Health Services acute crisis units, and add the same rate methodology for Outpatient Hospital Acute Crisis Units.

PUBLIC COMMENT: A public hearing was held on this rule on October 13, 2021. The public comment period expired October 30, 2021. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2022, with retroactive rate change to July 1, 2021.

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

Per the agency, the additional cost to implement this rule is estimated at \$953,534 for the current fiscal year (\$271,543 in general revenue and \$681,992 in federal funds) and \$953,534 for the next fiscal year (\$270,613 in general revenue and \$682,921 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$271,543 for the current fiscal year and \$270,613 for the next fiscal year.

The agency indicated that this rule will result in 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, local 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;

Arkansas Medicaid is seeking to increase access to outpatient acute crisis unit services as a diversion to use of Emergency Rooms and Hospital Inpatient Admissions for psychiatric and substance use disorder diagnoses and disease process when the person's life or another's life is not in jeopardy.

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

Create access to Behavioral Health and Substance Use Disorder Services in the proper settings and locations and in the process improve access to existing acute hospital beds for those who need a higher level of care.

(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;

Arkansas has seen a rise in Behavioral Health and Substance Use Disorders in the state recently. Together with the onslaught of COVID-19 and a prevalence of other chronic diseases leading to increased need for hospital beds, the state is seeking evidence-based, less costly alternatives for those who can be treated successfully in other settings, while improving access to hospital beds for those in need of a higher level of care.

(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;

No less costly alternatives have been identified.

(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;

No alternatives have been suggested 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;

No existing rules have been identified.

(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.

The Agency monitors State and Federal rules and regulations for opportunities to reduce and control cost.

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).

**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 Elizabeth Pitman
CONTACT PERSON Mac Golden
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437
PHONE NO. 501-320-6383 **FAX NO.** 501-404-4619 **E-MAIL** Mac.E.Golden@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Elizabeth Pitman
PRESENTER E-MAIL Elizabeth.pitman@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

1. What is the short title of this rule? Outpatient Acute Crisis Unit

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? _____

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."**

See attached.

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://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: October 13, 2021

Time: 10:00 a.m.

Place: Zoom—81675100914

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
October 30, 2021

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
January 1, 2022, with retroactive rate change to 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.

Arkansas Medicaid Providers of Outpatient Behavioral Health Agency Services; unknown
Arkansas Hospital Association, unknown

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT Jason Callan

TELEPHONE 501-320-6540 **FAX** 501-682-8155 **EMAIL:** Jason.callan

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 Outpatient Acute Crisis Unit

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;
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

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

Total \$ 0 _____

Next Fiscal Year

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

Total \$ 0 _____

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

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	\$ 271,543	General Revenue	\$ 270,613
Federal Funds	\$ 681,992	Federal Funds	\$ 682,921
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	\$ 953, 534	Total	\$ 953,534

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.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ 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.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ 271,543	\$ 270,613

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;

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Statement of Necessity and Rule Summary Outpatient Acute Crisis Unit

Statement of Necessity

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Summary

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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: §§ 25-10-129, 20-76-201, and 20-77-107.

Effective January 1, 2022:

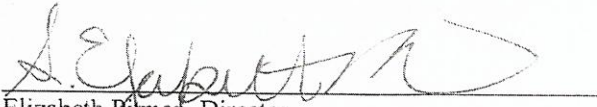
The Director of the Division of Medical Services (DMS) amends the Arkansas Medicaid Hospital Provider Manual to define the operation of Outpatient Acute Crisis Units (ACU). The Medicaid State Plan change is being submitted to expand ACUs into hospital outpatient settings and increase the rate for freestanding ACUs operated outside of a hospital. An ACU must ensure that ongoing assessment and observation; crisis intervention; psychiatric, substance, a co-occurring treatment; and initial referral mechanism services are available and provided. A hospital providing an ACU may also provide substance abuse detoxification with the unit. Substance abuse detoxification definitions are added to the manual. DMS adds that rates are based on eighty percent (80%) of the current daily rate for the Arkansas State Hospital as of 7/1/2021. Services are authorized for ninety-six (96) hours per encounter before the provider must initiate an extension of benefits request for a medical necessity approval for services beyond ninety-six (96) hours.

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 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 **October 30, 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.

A public hearing by remote access only through a Zoom webinar will be held on **October 13, 2021**, at **10:00 a.m.** and public comments may be submitted at the hearing. Individuals can access this public hearing at <https://us02web.zoom.us/j/81675100914>. The webinar ID is 81675100914. If you would like the electronic link, "one-tap" mobile information, listening only dial-in phone numbers, or international phone numbers, please contact ORP at ORP@dhs.arkansas.gov.

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. 4502035775


Elizabeth Pitman, Director
Division of Medical Services