EXHIBIT I

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Section 1-1-18; Section III-1-18; Outpatient Behavioral Health Services-2-18; Federally Qualified Health Clinic-1-18; Hospital-1-18; Physician-1-18; Rural Health-1-18; and State Plan Amendment-2018-002 - Telemedicine

DESCRIPTION: In accordance with Act 203 of 2017, the originating site for telemedicine services will be covered for Arkansas Medicaid beneficiaries. This will not affect current benefit limits.

Effective August 1, 2018, Arkansas Medicaid will cover the originating site facility fee for Telemedicine Services retroactively for dates of service on or after April 10, 2018.

PUBLIC COMMENT: The Department held a public hearing on April 30, 2018. The public comment period ended on May 9, 2018. In May, the Department received public comments from two organizations, including the following:

On behalf of the **Developmental Disabilities Provider Association (DDPA)** and the **Arkansas Medical Society**, Robert Wright, an attorney from Mitchell, Blackstock, Ivers, Sneddon, PLLC, sent letters on May 8, 2018, regarding the proposed rules to implement the state's telemedicine statute into Medicaid. He noted that the statute required that all payers reimburse telemedicine as they would the same service face-to-face, effective January 1, 2018, and that DDPA is fully supportive of the responsible use of Telemedicine in the Medicaid program.

A. All of the changes in the manuals show an effective date of July 1, 2018. The State Plan Amendment is dated January 1, 2018. The transmittal letters say the manuals have been updated effective July 1, 2018, for dates of service on or after January 1, 2018. Given these different dates, we are seeking clarification on how all of the manual provisions and state plan amendment fit together. Are we correct that if a telemedicine service was provided on March 1, 2018, (or any date between January 1, 2018, and June 30, 2018) in accordance with the provisions in Section I of the manual, that service will be paid if submitted to Medicaid on or after July 1, 2018?

B. Another area requiring clarification is the requirement for the originating site (the site where the patient is physically located during a telemedicine encounter). State statute does not limit the location of the origination site. It simply states that a health benefit plan must pay a fee to an originating site that is operated by a healthcare professional or a licensed healthcare entity if the professional or entity are authorized to bill the health plan directly. However, the statute does not require that the originating site be such a facility. It could be a school, for example. In that case, because the school cannot bill the health plan, the health plan is not required to pay a facility fee to the originating site.

Section 105.190 of the proposed manual release is not clear but seems to require the originating site to be the office of a healthcare professional or a healthcare entity enrolled in Medicaid. Proposed Section 305.000 says in the third paragraph: "The originating site must be operated by a healthcare professional or licensed healthcare entity authorized to

bill Medicaid directly for healthcare services to facilitate a high-quality interaction, including both telecommunication and clinical aspects of the telemedicine visits."

It appears that the proposed manual release has gone further than the law authorizes, perhaps unintentionally, when it requires health plans to pay for telemedicine services. The statute certainly allows the originating site to be the office of a healthcare professional or a healthcare entity, but it does not require it. We would request that the proposed manual release be changed to be consistent with state law by not restricting the originating site to the office of a healthcare professional or a healthcare entity that is able to bill the Medicaid program.

AGENCY RESPONSE:

A. With regard to a clarification on the effective date of the service, the dates of service will be retroactive to January 1, 2018, as this was necessary to meet the requirements of the Act.

B. With regard to the concern about the requirements of the originating site, DHS considered it before filing the final rule. No changes were made because for billing purposes, all originating sites must be Medicaid-enrolled providers.

Laura Kehler Shue, an attorney with the Bureau of Legislative, asked a follow-up question to DHS's response. There is still a concern that the response is not clarifying or addressing the specific "originating site" issue that Robert Wright raised in his letters with regard to the Provider Manual, particularly, Section 105.190 and the third paragraph in Section 305.000 Telemedicine Billing Guidelines. He asserts that the rule language appears to go further than Act 203 allows by requiring that the originating site "be operated by a healthcare professional or licensed healthcare entity" and "to facilitate a high-quality interaction, including both telecommunication and clinical aspects of the telemedicine visits." As the definition of "originating site" in Ark. Code Ann. § 23-79-1601 no longer requires "offices of a healthcare profession or a licensed healthcare entity," is there any specific response to the concern about this language that some may argue is extraneous and perhaps adding a higher standard than the law in Act 203 requires?

AGENCY RESPONSE: The language for Section 105.190 Telemedicine was taken directly from Act 203 as illustrated below. As DHS reimburses Medicaid providers and a provider must be authorized to bill Medicaid in order to be reimbursed by Medicaid, when composing policy 105.190 we substituted "Arkansas Medicaid" for "health benefit plan."

> **Section 105.190 Telemedicine**
> Payment will include a reasonable facility fee to the originating site operated by a licensed or certified healthcare professional or licensed or certified healthcare entity if the professional or entity is authorized to bill Arkansas Medicaid directly for healthcare services.
>
> **23-79-1602. Coverage for Telemedicine**
> (d)(1) A health benefit plan shall provide a reasonable facility fee to an originating site operated by a healthcare professional or a licensed healthcare entity if the

healthcare professional or licensed healthcare entity is authorized to bill the health benefit plan directly for healthcare services.

DHS will not be changing this portion of policy based on Mr. Wright's comment. The proposed effective date of the rule is August 1, 2018. DHS originally intended for the proposed rules to be effective on July 1, 2018, while allowing providers to retroactively bill back to January 1, 2018. CMS initially had concerns about the retroactive effective date, but providers will be allowed to bill retroactively back to April 10, 2018.

FINANCIAL IMPACT: The estimated additional cost to implement the rule is $110,831 for the current fiscal year ($32,606 in general revenue and $78,225 in federal funds) and $499,424 for the next fiscal year ($146,831 in general revenue and $352,593 in federal funds).

LEGAL AUTHORIZATION: The Department of Human Services (DHS) is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12).

The Telemedicine Act, Act 203 of 2017, sponsored by Senator Cecile Bledsoe, amended the definition of "telemedicine" and "originating site," addressed requirements of a professional relationship when using telemedicine, added standards, and addressed insurance coverage. "Originating Site" is defined as a site at which a patient is located at the time healthcare services are provided to him or her by means of telemedicine. *See* Ark. Code Ann. § 17-80-402(3) and § 23-79-1601(4). The effective date of the insurance coverage portion of the Act is January 1, 2018.

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 Rose M Naff

CONTACT PERSON Cathy Coffman

ADDRESS PO Box 1437, Slot S295 Little Rock AR.72203

PHONE NO. 501-537-1670 **FAX NO.** 501-404-4619 **E-MAIL.** cathy.coffman@dhs.arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Tami Harlan

PRESENTER E-MAIL tami.harlan@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:**

Donna K. Davis
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?

Section I-1-18, Section III-1-18, Outpatient Behavioral Health Services-2-18, Federally Qualified Health Clinic-1-18, Hospital-1-18, Physician-1-18, Rural Health-1-18, and State Plan Amendment-2018-002

2. What is the subject of the proposed rule?

Effective January 1, 2018 Arkansas Medicaid will cover the originating site facility fee for Telemedicine Services.

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 ☒

Does this repeal an existing rule? Yes ☐ No ☒

Effective January 1, 2018 Arkansas Medicaid will cover the originating site facility fee for Telemedicine Services.

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."**

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

Act 203 of the 91st General Assembly

7. What is the purpose of this proposed rule? The purpose of this rule which is effective January 1, 2018, is to allow Arkansas Medicaid to cover the originating site facility fee for Telemedicine Services.

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). www.medicaid.state.ar.us/general/comment/comment.aspx

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐
If yes, please complete the following:

Date: April 30, 2018
Time: 5:00 PM
Place: Darragh Center Central Library 100 Rock Street, Little Rock , AR

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
May 9, 2018

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

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 and the Arkansas State Library 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. All Medicaid providers will be for this change.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Medical Services

PERSON COMPLETING THIS STATEMENT Brian Jones

TELEPHONE 501-537-2064 **FAX** 501-404-4619 **EMAIL:** Brian Jones @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 Section I -1-18, Section III-1-18, Outpatient Behavioral Health Services-2-18, Federally Qualified Health Clinic-1-18, Hospital-1-18, Physician-1-18, Rural Health Clinic-1-18, and State Plan Amendment-2018-002

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		**Next Fiscal Year**	
General Revenue	0	General Revenue	0
Federal Funds	0	Federal Funds	0

Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	0	Total	0

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

Current Fiscal Year		Next Fiscal Year	
General Revenue	73,465	General Revenue	146,930
Federal Funds	176,247	Federal Funds	352,493
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	249,712	Total	499,424

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

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
$ 73,465	$ 146,930

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.

Summary Telemedicine:

In accordance with Act 203 of the 91st General Assembly of 2017; effective for dates of service on or after January 1, 2018, the originating site for Telemedicine services will be covered for Arkansas Medicaid beneficiaries. This will not affect current benefit limits.

AMOUNT, DURATION AND SCOPE OF SERVICES PROVIDED

Revised: ~~October 1, 2004~~January 1, 2018

CATEGORICALLY NEEDY

5. a. Physicians' Services (Continued)

(6) Consultations are limited to two (2) per recipient per year in a physician's office, patient's home, hospital or nursing home. This yearly limit is based on the State Fiscal Year (July 1 through June 30). This limit is in addition to the yearly limit described in Item 5.(1). Extensions of the benefit limit will be provided if medically necessary for recipients in the Child Health Services (EPSDT) Program.

~~(7) Effective for dates of service on or after September 15, 1995, interactive consultations (telemedicine) are limited to two (2) per recipient. This yearly limit is based on the State Fiscal Year (July 1 through June 30). Extensions of the benefit limit will be considered for eligible recipients of all ages.~~

(87) Abortions are covered when the life of the mother would be endangered if the fetus were carried to term or for victims of rape or incest. The circumstances must be certified in writing by the woman's attending physician. Prior authorization is required.

5. b. Medical and surgical services furnished by a dentist (in accordance with Section 1905 (a)(5)(B) of the Act).

Medical services furnished by a dentist are limited to twelve (12) visits per State Fiscal Year (July 1 through June 30) for recipients age 21 and older.

The benefit limit will be considered in conjunction with the benefit limit established for physicians' services, rural health clinic services, office medical services furnished by an optometrist and certified nurse midwife services. Recipients will be allowed twelve (12) visits per State Fiscal Year for medical services furnished by a dentist, physicians' services, rural health clinic services, office medical services furnished by an optometrist, certified nurse midwife services or a combination of the five. For physicians' services, medical services provided by a dentist, office medical services furnished by an optometrist, certified nurse midwife services or rural health clinic core services beyond the 12 visit limit, extensions will be provided if medically necessary. Certain services, specified in the appropriate provider manual, are not counted toward the 12 visit limit. Recipients under age 21 in the Child Health Services (EPSDT) Program are not benefit limited.

Surgical services furnished by a dentist are not benefit limited.

29. Telemedicine Services

Telemedicine is the use of electronic information and communication healthcare technology to deliver healthcare services including without limitation, the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient. Telemedicine includes store-and-forward technology and remote patient monitoring.

MEDICALLY NEEDY

5. a. Physicians' Services (Continued)

(a) Benefit Limit Details

The benefit limit will be considered in conjunction with the benefit limit established for rural health clinic services, medical services furnished by a dentist, office medical services furnished by an optometrist, certified nurse midwife services and services provided by an advanced practice nurse or registered nurse practitioner or a combination of the six. Beneficiaries under age 21 in the Child Health Services (EPSDT) Program are not benefit limited.

Certain services, specified in the appropriate provider manual, are not counted toward the 12 visit limit.

(b) Extensions

For services beyond the 12 visit limit, extensions will be provided if medically necessary.

(i) The following diagnoses are considered to be categorically medically necessary and are exempt from benefit extension requirements: Malignant neoplasm; HIV infection and renal failure.

(ii) Additionally, physicians' visits for pregnancy in the outpatient hospital are exempt from benefit extension requirements.

(2) Each attending physician/dentist is limited to billing one day of care for inpatient hospital covered days regardless of the number of hospital visits rendered.

(3) Surgical procedures which are generally considered to be elective require prior authorization from the Utilization Review Section.

(4) Desensitization injections - Refer to Attachment 3.1-A, Item 4.b. (12).

(5) Organ transplants are covered as described in Attachment 3.1-E.

(6) Consultations are limited to two (2) per recipient per year in a physician's office, patient's home, hospital or nursing home. This yearly limit is based on the State Fiscal Year (July 1 through June 30). This limit is in addition to the yearly limit described in Item 5.(1). Extensions of the benefit limit will be provided if medically necessary for recipients in the Child Health Services (EPSDT) Program.

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Telemedicine is the use of electronic information and communication healthcare technology to deliver healthcare services including without limitation, the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient. Telemedicine includes store-and-forward technology and remote patient monitoring.

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OTHER TYPES OF CARE

Revised:- ~~October 1, 1991~~January 1, 2018

25. ~~(RESERVED)~~Telemedicine Originating Site Facility Fee

Effective for dates of service on or after January 1, 2018, the reimbursement rate for the telemedicine originating site facility fee will be set at 10% of the Calendar Year 2017 Medicare Telemedicine Originating Site Facility Fee. All fee schedule rates are published on the agency's website (www.medicaid.state.ar.us). Except as otherwise noted in the State Plan, state developed fee schedule rates are the same for both governmental and private providers.