

DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

SUBJECT: Occupational Therapy, Physical Therapy, and Speech-Language Pathology
State Plan Amendment

DESCRIPTION:

Statement of Necessity

This amendment updates the Arkansas Medicaid State Plan with the new occupational therapy, physical therapy, and speech-language pathology services rate review methodology and most recent rate review results.

Rule Summary

This rule updates the occupational therapy, physical therapy, and speech-language pathology services rate review methodology. It also includes a timeframe for implementing rate adjustments related to the most recent rate review.

PUBLIC COMMENT: A public hearing was held on this rule on April 18, 2022. The public comment period expired on May 7, 2022. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Dana Warren, Program Coordinator, ABC Children's Academy & Recovery Zone Pediatric Therapy

1. How does Medicaid plan to retroactive bill the rate increase as providers cannot hold billing due to operational costs?

RESPONSE: Thank you for your comment. Once all final approvals for the State Plan Amendment are received, the Division of Medical Services will perform a retroactive mass adjustment to all applicable procedure codes for service dates on or after April 1, 2022. If on the date of the mass adjustment, a provider has already been paid (at the current rate) for one of the applicable procedure codes with a service date on or after April 1, 2022, then the provider will automatically receive a payment for the difference between the new higher rate and the amount already paid at the old rate. The mass adjustment will occur automatically for all such claims without any provider action. The new rates will be uploaded into MMIS on July 1, 2022. So, if on the date of the mass adjustment, a provider had not already billed one of the applicable procedure codes for a service date on or after April 1, 2022, then the provider would submit the claim through the MMIS portal (as per standard operating procedures) and any such claims would pay at the new rate.

2. Voiding and Rebilling claims makes sense but a lot of unnecessary work. Is it possible to move forward with correct payment now? Or will there be a difference payment check

issued for services rendered from April 1st to June 30th that were paid out on the lower amount?

RESPONSE: Thank you for your comment. Once all final approvals for the State Plan Amendment are received, the Division of Medical Services will perform a retroactive mass adjustment to all applicable procedure codes for service dates on or after April 1, 2022. If, on the date of the mass adjustment, a provider has already been paid (at the current rate) for one of the applicable procedure codes with a service date on or after April 1, 2022, then the provider will automatically receive a payment for the difference between the new higher rate and the amount already paid at the old rate. The mass adjustment will occur automatically for all such claims without any provider action. The new rates will be uploaded into MMIS on July 1, 2022. So, if on the date of the mass adjustment, a provider had not already billed one of the applicable procedure codes for a service date on or after April 1, 2022, then the provider would submit the claim through the MMIS portal (as per standard operating procedures) and any such claims would pay at the new rate.

Commenter's Name: Morgan Hegi, DPT

COMMENT: To whom it may concern, I am writing to you in regards to the proposed rule to amend the Medicaid fee schedule rates for occupational therapy, physical therapy, and speech therapy treatment services. I urge you to please support this proposal. These rates have not been increased since 2008. Over the last 14 years, our economy has seen significant inflation and rising costs of living as well as rising costs of education. For example, the average cost for annual in-state tuition of a public physical therapy doctorate program for the 2007-2008 academic year in the United States was \$11,410. For 2020-2021, this average cost was \$19,847. Medicaid fee schedule rates of treatment services for occupational, physical, and speech therapies should reflect these increased costs over the years as it costs more to obtain degrees, operate therapy clinics and facilities, hire staff, and provide the best patient care possible. Physical, occupational, and speech therapies are necessary medical services to help improve patients' functioning within society as well as increase quality of life. I strongly encourage you to support the proposed increase in Medicaid fee schedule rates for these therapy treatment services to better the care and lives of many Arkansans.

RESPONSE: Thank you for your comments.

Commenter's Name: Melinda Lunn, Owner, Cross Therapy Services

COMMENT: I just wanted to say that I fully support this because I've had this clinic for 24 years now. And there's only been one increase in payment in the 24 years and the cost of our equipment goes up, the cost of insurance, cost of living, all continues to increase, but that the increase in our treatment sessions have not taken place, and so I am in full support of raising the pay rate.

RESPONSE: Thank you for your comments.

The proposed effective date is July 1, 2022, with a retroactive date to April 1, 2022.

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

Per the agency, the total cost to implement this rule is \$6,745,537 for the current fiscal year (\$1,914,383 in general revenue and \$4,831,154 in federal funds) and \$52,277,913 for the next fiscal year (\$14,836,472 in general revenue and \$37,441,441 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government as a result of this rule is \$1,914,383 for the current fiscal year and \$14,836,472 for the next fiscal year.

The agency indicated that there is 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, municipal 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;

The purpose of this Rule is to implement the requirements of Ark. Code Ann. §§ 20-76-201, 20-77-107, and 25-10-129.

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

The purpose of this Rule is to implement the requirements of Ark. Code Ann. §§ 20-76-201, 20-77-107, and 25-10-129.

(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;

The purpose of this Rule is to implement the requirements of Ark. Code Ann. §§ 20-76-201, 20-77-107, and 25-10-129.

(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;

There are no less costly alternatives.

(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;

N/A

(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

N/A

(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.

The Agency monitors State and Federal rules and policies for opportunities to reduce and control costs.

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 Developmental Disability Services
DIVISION DIRECTOR Melissa Weatherton
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 Melissa Weatherton
PRESENTER E-MAIL Melissa.Weatherton@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:

**Rebecca Miller-Rice
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? Occupational Therapy, Physical Therapy, and Speech-Language Pathology State Plan Amendment

2. What is the subject of the proposed rule? Updating the Arkansas Medicaid State Plan to incorporate new occupational therapy, physical therapy, and speech-language pathology services rate review methodology and most recent rate review results.

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: TBD

Time: TBD

Place: TBD

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

TBD

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

July 1, 2022 for promulgation with a retroactive date to April 1, 2022

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 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 July 1, 2022:

The Director of the Division of Developmental Disabilities Services amends the Arkansas Medicaid State Plan. This amendment updates the Arkansas Medicaid State Plan to incorporate the new rate review methodology and most recent rate review results. Effective April 1, 2022, the agency's fee schedule rates for occupational therapy, physical therapy, and speech-language pathology treatment services were set based on an average of 2019 Medicare utilization data for the same services. The fee schedule rates for occupational therapy, physical therapy, and speech-language pathology evaluations were determined to be in line with Medicare and were not changed. The occupational therapy, physical therapy, and speech-language pathology treatment rate adjustments will be implemented over two (2) years. An initial rate increase of 16% will be implemented on April 1, 2022, and a second increase of 15% will be implemented on April 1, 2023, resulting in a total 31% increase from the current rate. The projected annual cost of this change beginning SFY 2022 is \$6,745,537.00, of which, the federal share is \$4,831,154.00, and for SFY 2023 is \$52,277,913.00, of which, the federal share is \$37,441,441.00.

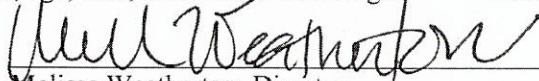
The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may access and download the proposed rule at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. This notice also shall be posted at the local office of the Division of County Operations (DCO) of DHS in every county in the state.

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 7, 2022. 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 April 18, 2022, at 2:00 p.m. and public comments may be submitted at the hearing. Individuals can access this public hearing at <https://us02web.zoom.us/j/83174399619>. The webinar ID is 831 7439 9619. 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



Melissa Weatherton, Director
Division of Developmental Disabilities Services

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 Occupational Therapy, Physical Therapy, and Speech-Language Pathology State Plan Amendment

- 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?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	<u>\$0.00</u>	General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>	Federal Funds	<u>\$0.00</u>
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____

Total \$0.00 Total \$0.00

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

Current Fiscal Year

Next Fiscal Year

General Revenue \$1,914,383
 Federal Funds \$4,831,154
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$ 6,745,537

General Revenue \$14,836,472
 Federal Funds \$37,441,441
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$52,277,913

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

\$ 0.00

\$ 0.00

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

\$ 1,914,383

\$ 14,836,472

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;

The purpose of this Rule is to implement the requirements of Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129.

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

The purpose of this Rule is to implement the requirements of Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129.

- (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;

The purpose of this Rule is to implement the requirements of Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129.

- (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;

There are no less costly alternatives.

- (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;

N/A

- (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

N/A

- (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.

The Agency monitors State and Federal rules and policies for opportunities to reduce and control costs.

**Statement of Necessity and Rule Summary
Occupational Therapy, Physical Therapy, and Speech-Language Pathology State Plan
Amendment**

Statement of Necessity

This amendment updates the Arkansas Medicaid State Plan with the new occupational therapy, physical therapy, and speech-language pathology services rate review methodology and most recent rate review results.

Summary

- Updates the occupational therapy, physical therapy, and speech-language pathology services rate review methodology.
- Includes timeframe for implementing rate adjustments related to most recent rate review.

Please attach additional documents if necessary

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

Revised: ~~January~~ April 1, 2024

4.b. Early and Periodic Screening and Diagnosis of Individuals Under 21 Years of Age and
Treatment of Conditions Found (Continued)

(19) Physical Therapy, Occupational Therapy, and Speech-Language Therapy Services

Effective for dates of service on or after October 1, 1999, the Arkansas Medicaid maximum rates for physical therapy services, occupational therapy services and **speech-language** therapy services are based on court-ordered rates issued by the United States District Court, Eastern District of Arkansas, Western Division and agreed upon by the Division of Medical Services and representatives of the Arkansas Physical Therapy Association, the Arkansas Occupational Therapy Association and the Arkansas Speech-Language-Hearing Association.

Effective April 1, 2022, the agency's therapy fee schedule rates for occupational therapy, physical therapy, and speech-language pathology treatment services were set based on an average of 2019 Medicare utilization data for the same services as of January 1, 2008 and are effective for services on or after that date. The fee schedule rates for occupational therapy, physical therapy, and speech-language pathology evaluations were determined to be in line with Medicare and were not changed. The occupational therapy, physical therapy, and speech-language pathology treatment rate adjustments will be implemented over two (2) years. An initial rate increase will be implemented on April 1, 2022, and the second will be implemented on April 1, 2023.

~~All therapy~~ The applicable fee schedule of rates at any given time are published on the agency's website (**Fee Schedules - Arkansas Department of Human Services** www.medicaid.state.ar.us). A uniform rate for these services is paid to all governmental and non- governmental providers unless otherwise indicated in the state plan. The State assures that physical therapists, occupational therapists and **speech-language** therapists will meet the requirements contained in 42 CFR 440.110.

Therapy Assistants - Effective for dates of service on or after October 1, 1999, the Arkansas Medicaid maximum for the physical therapy assistant, occupational therapy assistant and the **speech-language** therapy assistant is based on 80% of the amount reimbursed to the licensed therapist.

Fee schedule service reimbursement is based on the lesser of the amount billed or the Arkansas Title XIX (Medicaid) maximum charge allowed.

1. Physical Therapy

Listed below are covered physical therapy services:

Description

Evaluation for physical therapy
Individual physical therapy Group
physical therapy
Individual physical therapy by physical therapy assistant Group
physical therapy by physical therapy assistant

At the beginning of each calendar year, Medicaid officials and the Arkansas Physical Therapy Association or its successor will arrive at mutually agreeable increase or decrease in reimbursement rates based on the market forces as they impact on access. Any agreed upon increase or decrease will be implemented at the beginning of the following state fiscal year, July 1 with any appropriate State Plan changes.

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

Revised: April 1, 2022

4.b. Early and Periodic Screening and Diagnosis of Individuals Under 21 Years of Age and Treatment of Conditions Found (Continued)

(19) Physical Therapy, Occupational Therapy, and Speech-Language Therapy Services

Effective for dates of service on or after October 1, 1999, the Arkansas Medicaid maximum rates for physical therapy services, occupational therapy services and speech-language therapy services are based on court-ordered rates issued by the United States District Court, Eastern District of Arkansas, Western Division and agreed upon by the Division of Medical Services and representatives of the Arkansas Physical Therapy Association, the Arkansas Occupational Therapy Association and the Arkansas Speech-Language-Hearing Association.

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At the beginning of each calendar year, Medicaid officials and the Arkansas Physical Therapy Association or its successor will arrive at mutually agreeable increase or decrease in reimbursement rates based on the market forces as they impact on access. Any agreed upon increase or decrease will be implemented at the beginning of the following state fiscal year, July 1 with any appropriate State Plan changes.