

**DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES**

**SUBJECT:** State Plan #2017-008 and Episodes of Care #1-17

**DESCRIPTION:** Effective January 1, 2018, two sections of the Episodes of Care Provider Manual will be updated to remove the Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) Episodes of Care. The new Behavioral Health (BH) Transformation initiative transfers the episode of care incentive mechanisms to the Patient Centered Medical Home (PCMH) program. Transitional information will still be published for ADHD and ODD through July of 2018.

**PUBLIC COMMENT:** A public hearing was held on October 25, 2017. The public comment period expired on November 12, 2017. The Department provided the following comment and its response:

Joel Landreneau, an attorney with Crochet and Landreneau, PLLC in Little Rock, who represents and consults behavioral health providers, offered the following:

A defect in the [Episodes] design model made a supposedly incentive-based payment system not incentive-based at all. A provider didn't know whether or not you would be the principal accountable provider who would be eligible for gain share or risk share until after the period of time in question had already passed, you couldn't possibly be incentivized to do anything. Not only that, you couldn't even make reliable interim checks on where you stood in the gain share or risk share calculation to see how close you were to the threshold on any kind of regular basis. So, what happened was that you either hit the lottery with a small price or you got punished after the fact when you could do nothing else about it. In other words, it was backward-looking. And nothing that is meant to be an incentive can be an incentive if it's only backward-looking. The only incentive that Episodes of Care at least in ADHD and ODD, served, was to avoid it, and that's what a lot of people did. They would do what they could to avoid even having a patient load come into the Episodes of Care.

I have the same concerns about Department activities going forward, specifically the independent assessment. I have clients who have received their blocks for independent assessments for October, and what they are finding is that there is a pretty poor match between those people who they think need assessments and those people who were added to the list. There are people on the list who aren't all that sick, there are people on the list who are no longer beneficiaries of Medicaid at all.

At a recent Optum meeting, I found that perhaps a reason for that is that the list was derived mainly from the prior quarter's billing data. In other words, whoever was billing in April through June or maybe June through September, that is who is being identified now, instead of looking at a list that you could obtain from Beacon on who has active prior authorizations now. That's forward-looking. Because in order to get that authorization, you would have had to submit to Beacon medical information that projects what a client's need is going to be in the coming three months.



If the Department wants to look at billing data, they should have run a billing data analysis of how much you are spending on somebody who is projected to have needs in the future. This is the same flaw that Episodes had. It's backward-looking. If you are going to influence behavior and if you're going to create an incentive, then the method of selection and the incentive needs to be, first of all, involve a feedback of information so you know where you stand in the process. Also, try to anticipate what the need is going to be and not simply provide a historical narrative of what the need used to be. I think that's what made Episodes less effective than it could have been, and I have the same concern for the independent assessments going forward.

**RESPONSE:** The Department appreciates the comments made at the public hearing. While it is true we are proposing the removal of the ADHD and ODD rules from Medicaid policy as a financial episode of care, we will be expanding our reporting on the cost and quality of behavioral health services across all providers. These reports will be beneficial and will still allow providers to measure their quality of care.

There are two reasons for proposing this rule change: 1) behavioral health transformation is moving the responsibility for cost and quality for tier one behavioral Health Services to the Primary Care Physician in a Patient Centered Medical Home, and 2) behavioral health transformation has introduced a new procedure coding system which would affect the validity of calculations and thresholds in the Behavioral Health Episodes of Care.

The commenter expresses his opinion that financial incentives cannot be based on retrospective episodes of care. He also expresses his opinion that it is difficult to track episodes throughout the performance period. Episodes of Care reports are published quarterly for Principal Accountable Providers. In these reports, every beneficiary with an open or closed episode is listed in detail showing the average adjusted cost of each episode and whether quality measures have been met. In the ADHD Level I Episode of Care's last performance period, there were 183 providers, of which 119 (65%) were in the commendable category and receiving gain share payments. Seven providers (3.8%) were in the non-acceptable category and subject to risk share. With regards to the commenter's comments regarding independent assessments, independent assessments are outside the domain of Episodes of Care and are not relevant to this rule change.

DHS made no changes to the proposed rule as a result of the comments received. The Department states that the instant rule change will require CMS approval, which is pending as of November 16, 2017. The proposed effective date is January 1, 2018.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The repeal of an existing rule removes two episodes of care, Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD), from the episodes of care program. The new Behavioral Health Transformation initiative, approved by Legislative Council and implemented on July 1, 2017, transfers the episode of care incentive mechanisms to the Patient Centered Medical Home (PCMH) program.

The Department of Human Services 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). Arkansas Code §20-77-107 specifically authorizes the department to “establish and maintain an indigent medical care program.”



**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 James Gallaher  
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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, 5<sup>th</sup> Floor  
Little Rock, AR 72201**

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1. What is the short title of this rule? State Plan #2017-008 and Episodes of Care #1-17

2. What is the subject of the proposed rule? To remove the Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) Episode of Care from the Medicaid Manual and the Arkansas State Plan

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.

The rule established and described the design elements of the ADHD and ODD episodes of care.

Is this an amendment to an existing rule? Yes  No

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. Arkansas Statute 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary?

There are two reasons the removal of this rule is needed. First, with the implementation of the Behavioral Health (BH) Transformation on July 1, 2017, the cost of care for Tier 1 BH beneficiaries will be the responsibility of primary care physicians who are enrolled in the Patient Centered Medical Home (PCMH) program. Second, a component of BH Transformation will be new, modified and deleted procedure billing codes, quantity measurements (units) and rates.

As a result, the Behavioral Health Episodes of Care (EOC), Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD), will be inaccurate, duplicative, and superseded by Behavioral Health Transformation as of January 1, 2018. The implementation of a new billing code structure will cause erroneous outcomes in the ADHD and ODD Episodes of Care. The accountability of the cost of care for these services will now be with the Patient Centered Medical Home program; ADHD and ODD Episodes of Care are no longer required as a cost and quality mechanism.

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://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: TBD

Time: TBD

Place: TBD

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

November 12, 2017

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

January 1, 2018

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 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. \_\_\_\_\_

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT**     Department of Human Services

**DIVISION**         Division of Medical Services

**PERSON COMPLETING THIS STATEMENT**     James Gallaher

**TELEPHONE** 501.396.6364     **FAX** 501.404.4619     **EMAIL:** james.gallaher@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**     State Plan #2017-008 and Episodes of Care 1-17

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 \_\_\_\_\_  
Federal Funds \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_



Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_

Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_

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

**Current Fiscal Year**

General Revenue \$0.00  
 Federal Funds \$0.00  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \$0.00

**Next Fiscal Year**

General Revenue \$0.00  
 Federal Funds \$0.00  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \$0.00

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**

\$ 0.00

**Next Fiscal Year**

\$ \$0.00

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 of**

### **State Plan #2017-008 and Episodes of Care 1-17**

Effective January 1, 2018, two sections of the Episodes of Care Provider Manual will be updated to remove the Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) Episodes of Care. The new Behavioral Health (BH) Transformation initiative transfers the episode of care incentive mechanisms to the Patient Centered Medical Home (PCMH) program. Transitional information will still be published for ADHD and ODD through July of 2018.



