

EXHIBIT H

SUBJECT: Private Duty Nursing (PDN) Rate Calculation SPA #2018-015

DESCRIPTION:

- A 1993 Consent Decree in the case *Arkansas Medical Society, et. al v. Department of Human Services* requires reimbursement for Private Duty Nursing to be adjusted annually based upon market forces as they impact on access.
- Arkansas Medicaid will increase maximum reimbursement rates for Private Duty Nursing (PDN), Registered Nurse (RN) services, and RN supervisory visits from \$54.00 to \$56.00 per hour; and Licensed Practical Nurse (LPN) services will increase from \$37.00 to \$38.00 per hour.
- The new maximum reimbursement rates are based on market analysis.
- These reimbursement changes are necessary to ensure access of Private Duty Nursing services for Arkansas Medicaid beneficiaries.

PUBLIC COMMENT: The public comment period expired on January 25, 2019. The Department did not hold a public hearing. It also received no public comments. The proposed effective date is upon legislative review and approval.

Per the agency, CMS approval is required for the state plan amendment, and that approval was granted on February 27, 2019.

FINANCIAL IMPACT: The financial impact for the current fiscal year is \$213,680 (\$62,822 in general revenue and \$150,858 in federal funds); and for the next fiscal year, the financial impact is \$427,359 (\$123,122 in general revenue and \$304,237 in federal funds).

Since there is 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, the agency provided the following information:

(1) a statement of the rule's basis and purpose;

This rule's basis and purpose is to increase private duty nursing program reimbursement rates so that the transfer of patients from inpatient hospital stay care to the less costly home based private duty nursing program care is accomplished more timely.

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

Increasing reimbursement rates for these services will allow private duty nursing providers to attract and retain RN and LPN staff necessary to provide less costly home based private duty nursing services when compared with the more costly inpatient hospital care. Attracting new RN and LPN staff and retaining current staff is necessary in order to fulfill the demand and access or these services.

- (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;

Reimbursement rates for these services were last increased in 2015. Current access to these services for all qualifying beneficiaries may not always be available if rates are not increased.

- (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;

The alternatives to private duty nursing service are not less costly.

- (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 are proposed 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; and

The State is under a Consent Decree obligation to meet with the private duty nursing provider association and arrive at mutually agreed upon reimbursement changes for these services.

- (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 cost.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-76-201, DHS shall administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it. *See Ark. Code Ann. § 20-76-201(1).* DHS shall also make rules and regulations and take actions as are necessary or desirable to carry out the provisions of Title 20, Chapter 76, Public Assistance Generally, of the Arkansas Code. *See Ark. Code Ann. § 20-76-201(12).* Additionally, Ark. Code Ann. § 20-77-107(a)(1) specifically authorizes DHS to "establish and maintain an indigent medical care program." DHS and its various divisions also are authorized to promulgate rules, as necessary to conform to federal statutes, rules, and regulations as may now or in the future affect programs administered or funded by or through the department or its various divisions, as necessary to receive

any federal funds which may now or in the future be available to the department or its various divisions. See Ark. Code Ann. § 25-10-129(b).

DEPARTMENT OF _____
 DIVISION _____
 CONTACT PERSON _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____ FAX _____
 NAME OF PROJECT _____
 REGISTERED MAIL _____

QUESTIONS

- A. Please make copies of this form for your use.
- B. Please answer each question carefully and completely. You may use additional sheets if necessary.
- C. If you have a technical question, please give the person's name and phone number.
- D. Submit two (2) copies of this document and financial report statement attached to the form to the _____ and _____.

Director
 Administrative Rules Review Board
 Arkansas Legislative Council
 Division of Legislative Services
 One Capitol Mall, 2nd Floor
 Little Rock, AR 72201

1. What is the title of the bill?

2. What is the subject of the proposal?

3. Is this bill related to emergency management?
 No Yes
 If you please provide the federal emergency management and relief act number _____

4. Was this bill filed under the emergency provisions of the Arkansas Constitution?
 No Yes
 If yes, what is the effective date of the emergency? _____

What date is the emergency expected to expire?

**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 Tami Harlan
CONTACT PERSON Isaac Linam
ADDRESS PO Box 1437, Slot S295, Little Rock, AR 72203-1437
PHONE NO. 501-320-6570 **FAX NO.** 501-404-4619 **E-MAIL** Isaac.Linam@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**

1. What is the short title of this rule? Private Duty Nursing (PDN) Rate Calculation SPA # 2018-015.

2. What is the subject of the proposed rule? To establish the rate calculation method for PDN for dates of services on or after January 1, 2019

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."**

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? The purpose of the proposed rule is to bring the Private Duty Nursing fee schedules to current market analysis of salaries in order to ensure access of Private Duty Nursing services for Arkansas Medicaid beneficiaries.

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 No
If yes, please complete the following:

Date: _____

Time: _____

Place: _____

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

January 25, 2019

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

June 1, 2019

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. Arkansas State Nursing Board will be in favor of this rule.

Jack Tiner

From: legalads@arkansasonline.com
Sent: Thursday, December 20, 2018 2:42 PM
To: Jack Tiner
Subject: Re: Full Run Ad

[EXTERNAL]

Thanks, Jack. Will run on Wed 12/26, Thurs 12/27, and Fri 12/28.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette

DEADLINES FOR WEEK OF DECEMBER 17 - 21
Deadline for Sun 12/23 is Fri 12/21 @ 11 AM
Deadline for Mon 12/24 is Fri 12/21 @ 12 noon
Deadline for Tues 12/25 and Wed 12/26 is Fri 12/21 @ 5 PM

From: "Jack Tiner" <jack.tiner@dhs.arkansas.gov>
To: legalads@arkansasonline.com
Cc: "Isaac Linam" <Isaac.Linam@dhs.arkansas.gov>, "Becky Murphy" <Becky.Murphy@dhs.arkansas.gov>, "Renita Whitley" <Renita.Whitley@dhs.arkansas.gov>
Sent: Thursday, December 20, 2018 1:30:05 PM
Subject: Full Run Ad

Please run the attached ad on December 26th, 27th, and 28th, 2018, in the *Arkansas Democrat-Gazette*.

Invoice to: **AR Dept of Human Services**
Accounts Payable
P.O. Box 8068
Slot W406
Little Rock, AR 72203-8068
682-6565

Thank you.

Jack Tiner | Arkansas Department of Human Services
Office of Rules Promulgation
Office of Legislative and Intergovernmental Affairs
DHS/DMS Medical Assistance Manager
700 Main St. | Slot S295 | Little Rock, AR 72203
Office: 501-320-6112
Fax: 501-404-4619
Jack.Tiner@dhs.arkansas.gov

Sensitive

NOTICE OF RULE MAKING

The Director of the Division of Medical Services hereby issues, for a thirty-day public comment period, a notice of rulemaking for the following proposed medical assistance rule(s) 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 for dates of service occurring January 1, 2019, and after, Arkansas Medicaid will increase maximum reimbursement rates for Private Duty Nursing (PDN), Registered Nurse (RN) services, and RN supervisory visits from \$54.00 to \$56.00 per hour; and Licensed Practical Nurse (LPN) services will increase from \$37.00 to \$38.00 per hour. The new maximum reimbursement rates are based on market analysis. These reimbursement changes are necessary to ensure access of Private Duty Nursing services for Arkansas Medicaid beneficiaries. The annual budget impact associated with this change is \$427,359

The proposed rule is available for review at the 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 January 25, 2019.

If you need this material in a different format, such as large print, contact the Office of Rule Promulgation at 501-320-6429.

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. **4501809667 EL**

Tami Harlan, Director
Division of Medical Services

Jack Tiner

From: Jack Tiner
Sent: Thursday, December 20, 2018 2:33 PM
To: 'register@sos.arkansas.gov'
Cc: Isaac Linam; Becky Murphy; Renita Whitley
Subject: DHS/DMS--Proposed Filing--Private Duty Nursing (PDN) Rate Calculation SPA # 2018-015
Attachments: Secretary of State filing--Private Duty Nursing Rate Increase.pdf

The public notice for the attached proposed revision to the Medicaid State Plan will run in the *Arkansas Democrat-Gazette* on December 26 through 28, 2018. The comment period will end January 25, 2019.

Thank you.

Jack Tiner | Arkansas Department of Human Services
Office of Rules Promulgation
Office of Legislative and Intergovernmental Affairs
DHS/DMS Medical Assistance Manager
700 Main St. | Slot S295 | Little Rock, AR 72203
Office: 501-320-6112
Fax: 501-404-4619
Jack.Tiner@dhs.arkansas.gov

Sensitive

This email may contain sensitive or confidential information.

CONFIDENTIALITY NOTICE: This email message, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential or sensitive client and/or employee information. If you are not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you may not use, disclose, copy or disseminate this information. Please call the sender immediately or reply by email and destroy all copies of the original message, including attachments.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT Brian Jones

TELEPHONE 501-537-2064 **FAX** 501-682-3889 **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 _____

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

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

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

General Revenue	\$ 62,822
Federal Funds	\$ 150,858
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$213,680

Next Fiscal Year

General Revenue	\$123,122
Federal Funds	\$304,237
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$427,359

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

\$ 62,822

Next Fiscal Year

\$ 123,122

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;

This rule's basis and purpose is to increase private duty nursing program reimbursement rates so that the transfer of patients from inpatient hospital stay care to the less costly home based private duty nursing program care is accomplished more timely.

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

Increasing reimbursement rates for these services will allow private duty nursing providers to attract and retain RN and LPN staff necessary to provide less costly home based private duty nursing services when compared with the more costly inpatient hospital care.

Attracting new RN and LPN staff and retaining current staff is necessary in order to fulfill the demand and access or these services.

- (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;

Reimbursement rates for these services were last increased in 2015. Current access to these services for all qualifying beneficiaries may not always be available if rates are not increased.

- (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;

The alternatives to private duty nursing service are not less costly.

- (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 are proposed 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; and

The State is under a Consent Decree obligation to meet with the private duty nursing provider association and arrive at mutually agreed upon reimbursement changes for these services.

- (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 cost.

SUMMARY FOR

Private Duty Nursing (PDN) Rate Calculation SPA # 2018-015

- A 1993 Consent Decree in the case *Arkansas Medical Society, et. al v. Department of Human Services* requires reimbursement for Private Duty Nursing to be adjusted annually based upon market forces as they impact on access.
- Arkansas Medicaid will increase maximum reimbursement rates for Private Duty Nursing (PDN), Registered Nurse (RN) services, and RN supervisory visits from \$54.00 to \$56.00 per hour; and Licensed Practical Nurse (LPN) services will increase from \$37.00 to \$38.00 per hour.
- The new maximum reimbursement rates are based on market analysis.
- These reimbursement changes are necessary to ensure access of Private Duty Nursing services for Arkansas Medicaid beneficiaries.
- The annual budget impact associated with this change is \$427,359.

