

EXHIBIT J

DEPARTMENT OF HUMAN SERVICES, BEHAVIORAL HEALTH SERVICES

SUBJECT: Rehabilitative Services for Persons with Mental Illness (RSPMI) Moratorium Amendment 5

DESCRIPTION: This extends the current RSPMI moratorium on DBHS certified RSPMI sites until December 31, 2015. This is needed so that DBHS maintains control over the amount of RSPMI sites that are certified to provide behavioral health services by DBHS. To enroll as a Medicaid provider, RSPMI sites must be certified by DBHS. DBHS has no information that any eligible Medicaid beneficiary experiences difficulty obtaining medically necessary RSPMI care and services.

PUBLIC COMMENT: A public hearing was not held on this rule. The public comment period expired April 14, 2015. The Department received no public comments.

The proposed effective date for the final rule is July 1, 2015.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Ark. Code Ann. § 20-76-201 authorizes the Department of Human Services to administer programs for the indigent and to "make rules and regulations" pertaining to the administration of those programs. Ark. Code Ann. § 20-77-107 specifically authorizes the Department to "establish and maintain an indigent medical care program."

Ark. Code Ann. § 25-10-129 directs the Department to promulgate rules to conform to federal law that affects "programs administered or funded by or through the department" as necessary to receive available federal funds.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Behavioral Health Services
DIVISION DIRECTOR James C. Green, Interim Director
CONTACT PERSON Robbie Nix
ADDRESS 4800 West 7th Street, Little Rock, AR 72205
PHONE NO. 501-686-9871 FAX NO. 501-683-0860 E-MAIL robert.nix@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING James C. Green
PRESENTER E-MAIL charlie.green@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? Rehabilitative Services for Persons with Mental Illness (RSPMI) Moratorium Amendment 5
2. What is the subject of the proposed rule? The purpose of the proposed rule is extend the current RSPMI moratorium on DBHS certified RSPMI sites until December 31, 2015.
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 Annotated § 25-10-129 et. seq.; Arkansas Administrative Procedure Act § 25-15-204

7. What is the purpose of this proposed rule? Why is it necessary? The purpose of the proposed rule is extend the current RSPMI moratorium on DBHS certified RSPMI sites until December 31, 2015.

This update is necessary so that DBHS maintains control over the amount of RSPMI sites that are certified to provide behavioral health services by DBHS. To enroll as a Medicaid provider, RSPMI sites must be certified by DBHS. DBHS has no information that any eligible Medicaid beneficiary experiences difficulty obtaining medically necessary RSPMI care and 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).

http://humanservices.arkansas.gov/dbhs/Pages/dbhs_docs.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.)

April 14, 2015

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

July 1, 2015

12. Do you expect this rule to be controversial? Yes No

If yes, please
explain. _____

13. 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.

Medical associations, interested providers and advocacy organizations. Their positions for or against is not
known at this time.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Behavioral Health Services
PERSON COMPLETING THIS STATEMENT Julie Meyer
TELEPHONE NO. 501-683-0551 **FAX NO.** 501-683-0860 **EMAIL:** julie.meyer@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 Rehabilitative Services for Persons with Mental Illness (RSPMI) Moratorium Amendment 5

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) _____

Next Fiscal Year

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

Total \$0 _____

Total \$0 _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$0 _____

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$0 _____

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 _____

\$ 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.

Current Fiscal Year

Next Fiscal Year

\$ 0 _____

\$ 0 _____

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

Rehabilitative Services for Persons with Mental Illness (RSPMI) Moratorium Amendment 5

The purpose of the proposed rule is extend the current RSPMI moratorium on DBHS certified RSPMI sites until December 31, 2015. This update is necessary so that DBHS maintains control over the amount of RSPMI sites that are certified to provide behavioral health services by DBHS. To enroll as a Medicaid provider, RSPMI sites must be certified by DBHS. DBHS has no information that any eligible Medicaid beneficiary experiences difficulty obtaining medically necessary RSPMI care and services.

DIVISION OF BEHAVIORAL HEALTH SERVICES
REHABILITATION SERVICES FOR PERSONS WITH MENTAL ILLNESS
PROVIDER CERTIFICATION

AMENDMENT 45

Findings.

- (1) There are over ~~300~~ 275 outpatient service sites in the state for the delivery of Rehabilitation Services for Persons With Mental Illness (RSPMI). The Division of Behavioral Health Services has no information that any eligible Medicaid beneficiary experiences difficulty obtaining medically necessary RSPMI care and services.
- (2) Medicaid pays for RSPMI on a fee-for-service basis. Uncontrolled expansion of RSPMI sites will increase provider costs for staff and infrastructure. These inefficiencies will pressure providers to find ways to deliver more services and thereby unnecessarily increase costs to the Arkansas Medicaid Program.
- (3) The Arkansas Medicaid Program projects that there will be insufficient state general revenues available to maintain the current level of Medicaid services beginning in state fiscal year 2014.
- (4) Among other things, the Medicaid Program is seeking ways to improve efficiency, reduce costs, and maximize the use of federal funds as required under Ark. Code Ann. § 25-10-129.
- (5) However, no federal funding incentives are available for the expansion of the RSPMI program.
- (5) For the above reasons it is necessary that the moratorium on new RSPMI sites remain intact as amended below.

As stated in Section VI of the DBHS RSPMI Certification Rule, DBHS will process all certification requests within ninety calendar days of receiving all information that is necessary to review and process the certification request. DBHS will notify each prospective provider/provider in writing of its determination and furnish a copy to DMS.

1. There is a moratorium on the certification of new RSPMI sites. "New site" means any site not certified as an RSPMI site as of October 31, 2008, except:
 - (i) Sites for which a pending application was under review by the Division of Behavioral Health Services on October 31, 2008;
 - (ii) Replacement sites opened by an existing provider to provide ongoing continuity of RSPMI services when the provider is terminating services at a currently certified and operating RSPMI site;
 - (iii) Sites in continuous lawful operation furnishing RSPMI services since May 31, 2008.
2. The moratorium shall be in effect until ~~June 30, 2015~~ December 31, 2015, unless altered by amendment of this rule.
3. If the Director of the Division of Behavioral Health Services determines that the moratorium is causing an undue hardship to persons with mental illness, the Director may authorize a reasonable accommodation. An undue hardship may exist if medically necessary services become unavailable due to closure of a site or an RSPMI provider ceasing operations.

4. This moratorium shall not prohibit existing RSPMI providers from delivering RSPMI services in public schools under § III(T) of the RSPMI Certification Manual.

