EXHIBIT D

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Outpatient Behavioral Health Services Update New-16, ARKids 3-16, Inpatient Psychiatric Services for Persons Under Age 21 Update 1-16, School Based Mental Health Update 1-16, Substance Abuse Treatment Services 2-16, Rehabilitative Services for Persons with Mental Illness 4-16, Licensed Mental Health Practitioners 2-16 and State Plan Amendment #2016-008

DESCRIPTION: Effective July 1, 2017, Arkansas Medicaid proposes to implement the Medicaid Outpatient Behavioral Health Services Program while also amending the Inpatient Psychiatric Services for Persons Age 21 program and School Based Mental Health program. The proposed rule ensures that behavioral health care reimbursed by Medicaid is: (1) Family/consumer-driven and person-centered, to support and promote evidence-based, recovery-oriented practices that guide service delivery and payment efficiency; (2) Provides customized, culturally and linguistically competent, community-based services; (3) Offers the least restrictive care; (4) Utilizes a team-based approach to treatment decisions to address service needs; and (5) Ensures services are high quality based on data from outcomes and evaluation tools.

PUBLIC COMMENT: A public hearing was held on October 4, 2016. The public comment period expired on November 13, 2016. The department received the following comments:

Comment: Regarding the Independent Assessment, specifically, 1) Which instrument will be chosen? 2.) Qualifications of the assessors?

Response: The independent assessment entity, as well as the instrument, will be identified via procurement by the State. The version of instrument has not been decided upon at this time. The independent assessment instrument will be conducted by an appropriately trained individual to perform the assessment as required to maintain the validity and reliability of the tool.

Comment: Concerns about the delay in allowable provision of services to individuals waiting on independent assessment.

Response: Counseling Level Services and Crisis Services can be provided to any beneficiary as long as the services are medically necessary. There is no delay in providing Counseling Level or Crisis Services. Certain populations will be presumptively eligible for Rehabilitative/Intensive Level Services until they receive an independent assessment. These include 1.) Youth involved in the juvenile justice system (DYS custody); 2.) Individuals involved in the foster care system (DCFS custody); 3.) Individuals discharged from acute psychiatric hospital stays; 4.) Individuals discharged from crisis residential stays; 5.) Adults with involvement in the forensic system; 6.) Clients identified and referred by DBHS.

Comment: Care Coordination Entity?

Response: The proposed Care Coordination model will assist adults and children with behavioral health needs develop a person and family centered plan and will facilitate access to needed services across multiple systems. The responsibility for providing Care Coordination to individuals with the highest levels of behavioral health service need will be held by the Arkansas Coordinating Care Entity (ACE).

Comment: Concerned that the Behavioral Health Transformation plan may not realize significant decrease in Medicaid expenditures. This will likely occur because of the expanded array of services, the expanded population of persons eligible to receive services (for example, person with only a substance use diagnosis), and because of the ending of the moratorium, the vast expansion of providers who will be participating in the Medicaid system.

Response: The goal of the Behavioral Health Transformation is to ensure that individuals are receiving the right services, at the right time, in the right location. Access to expanded services is determined by utilizing an independent assessment which determines eligibility for the more intensive services targeted to specific populations. To make a meaningful impact on Behavioral Health treatment in Arkansas, it is essential to address the following:
Substance abuse treatment services are not coordinated/integrated with mental health services.

Enhanced continuum of crisis services

Enhance and expand Care coordination

Overutilization of residential treatment for children

Lack of emphasis on Family Support Services and other evidence based practices

Allowing more providers in the State does not mean that there will be an increase in the amount of individuals needing medically necessary behavioral health services. The efficiencies created by allowing co-location of therapy services to ensure people are able to access those services easily, the ability to treat mental health and substance use disorders by the same therapist and creating a system that provides incentive to focus on recovery will create a coordinated and efficient behavioral health system that improves outcomes of clients with behavioral health needs.

Comment: Will DHS consider expanding allowable places of services for specific Counseling Level services to Beneficiary's Home and Homeless Shelters?

Response: Homeless Shelters (Place of Service 04) and Beneficiary's Home (Place of Service 12) will be added as an allowable place of services for specific services within the Outpatient Behavioral Health Services manual. The services where Place of Service 04 (Homeless Shelter) will be an allowable place of service will be: 1) Individual Behavioral Health Counseling; 2) Marital/Family Behavioral Health Counseling with Beneficiary Present; 3) Marital/Family Behavioral Health Counseling without Beneficiary Present; 4)

Psychoeducation; 5) Mental Health Diagnosis; 6) Interpretation of Diagnosis; 7) Substance Abuse Assessment; 8) Pharmacologic Management, and; 9) Psychiatric Assessment.

Comment: Can the daily allowable limit of 1 unit (60 minutes) for Psychological Testing be amended? 60 minutes does not allow adequate time for the clinical interview and administration of a psychological test

Response: The Department of Human Services agrees with this comment and will amend the daily allowable amount of units of this service (CPT Code 96101) to be billed from 1 unit to 4 units daily. The 8 unit yearly allowable amount, with extension of benefits available, will remain in place.

Comment: What are the proposed rates and how were they determined?

Response: The proposed changes in reimbursement rates are based upon the 2014 Public Consulting Group (PCG) Rate study. The Department of Human Services will post the proposed reimbursement fee schedule on the Division of Medical Services website for the associated changes.

Comment: Will the independent assessment take away authority for mental health professionals to determine appropriate care?

Response: No. A treatment plan will only be reimbursable for individuals determined to be eligible for Rehabilitative Level Services and adults in Intensive Level Services. While the independent assessment helps determine the tier of the individual, the provider agency will develop the treatment plan to guide clinical care provided by professionals and paraprofessional members of the team. The definition for the service is, "Treatment Plan is a plan developed in cooperation with the beneficiary (or parent or guardian if under 18) to deliver specific mental health services to restore, improve, or stabilize the beneficiary's mental health condition. The Plan must be based on individualized service needs as identified in the completed Mental Health Diagnosis, independent assessment, and independent care plan. The Plan must include goals for the medically necessary treatment of identified problems, symptoms and mental health conditions. The Plan must identify individuals or treatment teams responsible for treatment, specific treatment modalities prescribed for the beneficiary, and time limitations for services. The plan must be congruent with the age and abilities of the beneficiary, client-centered and strength-based; with emphasis on needs as identified by the beneficiary and demonstrate cultural competence."

Comment: Why is no treatment plan required for individuals receiving Counseling Level Services?

Response: Beneficiaries receiving only Counseling Level Services do NOT require a Treatment Plan. The services offered in this level are a limited array of counseling services provided by a master's level clinician. Establishment of goals and a plan to reach those goals is part of good clinical practice and can be developed with the client

during the Mental Health Diagnostic Assessment and Interpretation of Diagnosis. Also part of good clinical practice is assessing client's response to treatment at each session which should include a review of progress towards the mutually agreed upon goals. The treatment plan requirement for individuals receiving Rehabilitative Level Services and Therapeutic Communities in Intensive Level Services is because individuals with more complex needs would entail plans for services provided by multiple people including both professionals and paraprofessionals.

Comment: How will providers be trained and informed about the upcoming changes?

Response: The Department is willing to meet with providers and hopes to continue meeting with providers during the transition to this new system. A transition plan will be developed that will assist providers in preparing for the upcoming proposed changes. The purpose of the Behavioral Health Transformation is to create a more effective and efficient system.

Comment: The proposal states that revisions in the Master Treatment Plan must occur every 90 days. We strongly recommend that the frequency of periodic treatment plan reviews change to every 180 days. This was one of the recommendations shared by 3 provider groups/associations submitted in a proposed cost savings plan early this year.

Response: The language regarding frequency of treatment plan reviews will be amended to state that a Treatment Plan will only be required to be reviewed every 180 days, with a maximum yearly benefit of 4 units per SFY.

Comment: 213.200 The Treatment plan is based on the independent assessment. Does this mean our therapists have no say in what or how to treat?

Response: Beneficiaries receiving only Counseling Level Services do NOT require a Treatment Plan. The services offered in this level are a limited array of counseling services provided by a master's level clinician. A treatment plan will only be required for individuals determined to be eligible for Rehabilitative Level Services and adults in Intensive Level Services. While the independent assessment helps determine the tier of the individual, the provider agency will develop the treatment plan to guide clinical care provided by professionals and paraprofessional members of the team. The definition for the service is, "Treatment Plan is a plan developed in cooperation with the beneficiary (or parent or guardian if under 18) to deliver specific mental health services to restore, improve, or stabilize the beneficiary's mental health condition. The Plan must be based on individualized service needs as identified in the completed Mental Health Diagnosis, independent assessment, and independent care plan. The Plan must include goals for the medically necessary treatment of identified problems, symptoms and mental health conditions. The Plan must identify individuals or treatment teams responsible for treatment, specific treatment modalities prescribed for the beneficiary, and time limitations for services. The plan must be congruent with the age and abilities of the

beneficiary, client-centered and strength-based; with emphasis on needs as identified by the beneficiary and demonstrate cultural competence."

Comment: We are pleased with the addition of new and services that are best practices.

Response: Thank you.

The proposed effective date is pending legislative approval.

CONTROVERSY: This is expected to be controversial. This amendment will transform the Medicaid Behavioral Healthcare system within the state, including the service array and fee schedule.

FINANCIAL IMPACT: The estimated savings is $83,296,247 for the current fiscal year ($24,505,756 in general revenue and $58,790,491 in federal funds) and the same savings is projected for the next fiscal year.

LEGAL AUTHORIZATION: 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 AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Department of Human Services

DIVISION Division of Medical Services

DIVISION DIRECTOR Dawn Stehle

CONTACT PERSON Robert Nix

ADDRESS P.O. Box 1437, Slot S295, Little Rock, AR 72203

PHONE NO. 501-686-9871 **FAX NO.** 501-404-4619 **E-MAIL** robert.nix@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? Outpatient Behavioral Health Services Update New-16, ARKids 3-16, Inpatient Psychiatric Services for Persons Under Age 21 Update 1-16, School Based Mental Health Update 1-16, Substance Abuse Treatment Services 2-16, Rehabilitative Services for Persons with Mental Illness 4-16, Licensed Mental Health Practitioners 2-16 and State Plan Amendment #2016-008

2. What is the subject of the proposed rule? To establish the Outpatient Behavioral Health Services Program while also amending the Inpatient Psychiatric Services for Under Age 21 Program and School Based Mental Health Program in Arkansas Medicaid.

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 Statute 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary? To establish the Outpatient Behavioral Health Services Program while also amending the Inpatient Psychiatric Services for Under Age 21 Program and School Based Mental Health Program in Arkansas Medicaid.

The proposed rule is necessary to ensure that behavioral health care reimbursed by Medicaid is: (1) Family/consumer-driven and person-centered, to support and promote evidence-based, recovery-oriented practices that guide service delivery and payment efficiency, (2) Provides customized, culturally and linguistically competent, community-based services, (3) Offers the least restrictive care, (4) Utilizes a team-based approach to treatment decisions to address service needs, and (5) Ensures services are high quality based on data from outcomes and evaluation tools.

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/InternetSolution/general/comment/comment.aspx

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: October 4, 2016

Time: 4:30 pm

Place: Central Arkansas Library
Lee Room
100 Rock Street
Little Rock, AR 72201

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

November 13, 2016

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

July 1, 2017

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

If yes, please explain. This proposed amendment will transform the Medicaid Behavioral Healthcare system within the State, including the service array and fee schedule.

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 Medical Services

PERSON COMPLETING THIS STATEMENT Dr. Charlie Green

TELEPHONE NO. 501-686-9164 **FAX NO.** 501-404-4619 **EMAIL:** charlie.green@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 Outpatient Behavioral Health Services Update New-16, ARKids 3-16, Inpatient Psychiatric Services for Persons Under Age 21 Update 1-16, School Based Mental Health Update 1-16, Substance Abuse Treatment Services 2-16, Rehabilitative Services for Persons with Mental Illness 4-16, Licensed Mental Health Practitioners 2-16 and State Plan Amendment #2016-008

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		General Revenue	

Federal Funds		Federal Funds	
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	($24,505,756) Savings	General Revenue	($24,505,756) Savings
Federal Funds	($58,790,491) Savings	Federal Funds	($58,790,491) Savings
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total	($83,296,247) Savings	Total	($83,296,247) Savings

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**
$ (24,505,756) Savings	$ (24,505,756) Savings

The above amount will be General Revenue saved by the Behavioral Health transformation.

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.