

# EXHIBIT E

## DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

**SUBJECT: Rehabilitative Services for Persons with Mental Illness (RSPMI)  
Update #2-16**

**DESCRIPTION:** This rule eliminates speech therapy services to the RSPMI program which are duplicative to other programmatic services; eliminates costly collateral services which have been determined obsolete to the program; and adjusts daily benefit limits for interventions to the amount reasonably expected to be beneficial. It reduces the daily maximum units for mental health professionals and mental health paraprofessionals in the RSPMI program.

**PUBLIC COMMENT:** A public hearing was held on July 18, 2016. The public comment period expired on July 26, 2016. The department received the following comments:

**One hundred seventeen comments were submitted within the 30 day comment period in response to RSPMI 2-16. Ninety-seven of those were comments from clients stating what their concerns are if their services are eliminated. Four of those comments were from Birch Tree; two attorney offices; three from Families, Inc Counseling Services; three from school districts and a few others. The comments are addressed in the responses below.**

**Comment:** Several parties submitted comments stating that the proposed changes to benefit limits for intervention services would cause rapid deterioration among recipients and would result in increased hospitalizations, incarcerations and homelessness.

**Response:** The proposed changes allow recipients to receive all medically necessary care. The provider may request an extension of benefits. Beacon Health will review all extension of benefit requests. Extensions will be granted if the additional services are deemed to be medically necessary.

**Comment:** Several parties commented that there is no evidence that access to care was considered during the review process.

**Response:** The Division of Medical Services (DMS) is considering access to care, but has not yet conducted an inquiry regarding how patient care would be affected by RSPMI 2-16.

**Comment:** Several parties commented that the proposed changes were arbitrarily selected and driven by budgetary considerations without giving consideration to the patient and possible repercussions.

**Response:** DMS has identified that overutilization and improper use of these services impacts Medicaid spending and quality of care.

**Comment:** Eliminating services, along with daily and annual caps in this manual release and the previous release, combine to create serious parity issues. Eliminating or limiting these medically

necessary outpatient services will result in avoidable, but more costly, inpatient service needs

in the future. Wholesale changes that remove services from the service array without adequate

support and service infrastructure as a replacement will not accomplish the intended savings

and, more importantly, will result in worse outcomes for children with mental illness.

**Response:** The proposed changes allow recipients to receive all medically necessary care. The provider may request an extension of benefits for intervention services.

Beacon Health will review all extension of benefit requests. Extensions will be granted if the additional services are deemed to be medically necessary. Eliminated services can be obtained through equally effective alternative programs or methods.

**Comment:** Several parties commented that if behavioral health services are to be subject to an independent assessment, the individual performing the assessment must be a licensed professional with the knowledge and expertise to perform the assessment.

Providers currently use licensed individuals to perform assessments. A centralized state-managed or contracted assessment system should not rely on less qualified individuals.

Any independent assessment process must be held to strict compliance with appropriate and safe timeframes for assessments. Many individuals in need of behavioral health services cannot afford to wait for approval or assignment by an independent assessment.

A state-managed or contracted program of independent assessment for behavioral health services should not be used as a mechanism to ration or deny medically necessary care.

The state should consider the cost of the assessment process in terms of manpower, paperwork, and access to care and ensure that any assessment process actually add net value to the system. Otherwise, it will just be an additional paperwork burden for providers and the assessment entity alike.

**Response:** This comment is not applicable to RSPMI 2-16 which does not propose the use of an independent assessment.

**Comment:** Several parties questioned whether DMS had considered or conducted an access study pursuant to 42.C.F.R. 447.203 et seq? If not, what are the reasons for adopting this position?

**Response:** Access to care is being considered and DMS is consulting with CMS regarding this issue. A state plan amendment has been submitted to CMS.

**COMMENT:** As a matter of fundamental fairness in procedure, merely striking language from a provider manual is insufficient to remove an existing service from the state plan. Collateral interventions and speech therapy are services specifically enumerated in the state plan as approved by CMS. *See attachment 1, pp. 6a12-6a13, Arkansas State Plan.* To properly remove these services requires submission to CMS of a State Plan Amendment (SPA). States electing to make changes to Medicaid services, including optional services, must do so through a SPA which must comply with federal requirements governing Medicaid. Conversely, when a state wishes to make changes in a manner that deviates from federal requirements, it must do so by seeking a waiver.

Neither a SPA nor a waiver has been sought for these proposed changes. Given that the proposed effective date of the rule is October 1, 2016, it would appear that DMS has decided to completely forego the SPA process. However, notwithstanding that very short time frame, and even assuming DMS does plan to seek a SPA following the public comment period, the chosen manner of this promulgation still remains out of compliance with federal requirements and is improper.

**RESPONSE:** A State Plan Amendment has been submitted to CMS.

**COMMENT:**

Michael Harry, an attorney with the Bureau of Legislative Research, asked the following question:

A lot of the comments [at the public hearing] were referring to not having any replacement for doing away with the collateral services. Will there be anything to replace them or was it the determination that collateral services is obsolete in general.

**RESPONSE:**

The department is currently working on a replacement plan.

The proposed effective date is pending legislative approval.

**CONTROVERSY:** Although the provider associations recommended these changes, it is likely that individual providers will identify them as possible barriers to treatment.

**FINANCIAL IMPACT:** There will be a savings of \$14,850,000 in the current fiscal year (\$4,489,155 in general revenue and \$10,360,845 in federal funds) and \$19,800,000 in the next fiscal year (\$5,985,540 in general revenue and \$13,814,460 in federal funds).

**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 Becky Murphy  
 ADDRESS PO Box 1437, Slot S295, Little  
Rock, AR 72203  
 PHONE NO. 501-320-6429 FAX NO. 501-404-4619 E-MAIL becky.murphy@  
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, 5<sup>th</sup> Floor  
 Little Rock, AR 72201**

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- Rehabilitative Services for Persons with Mental Illness (RSPMI)
1. What is the short title of this rule? Update #2-16 & State Plan Amendment #2016-005
  
  2. What is the subject of the proposed rule? Eliminating Speech Therapy, Collateral Interventions and Reducing daily maximum units for Mental Health Professionals and Mental Health Paraprofessionals in the RSPMI Program.
  
  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? The purpose of the proposed rule is to eliminate Speech Therapy services to the RSPMI program which are duplicative to other programmatic services; eliminate costly collateral services which have been determined obsolete to the program; and to adjust daily benefit limits for interventions to the amount reasonably expected to be beneficial.

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: July 18, 2016

Time: 5:00 – 6:30 PM

Central Arkansas Library  
Darragh Center Auditorium  
100 Rock Street

Place: Little Rock, AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
July 26, 2016

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

January 1, 2017

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

If yes, please explain. Although the provider associations recommended these changes, it is likely individual providers will identify them as possible barriers to treatment.

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.

RSPMI provider agencies, Alliance for Health Care Improvement, Arkansas Behavioral Health Providers Association, Mental Health Council of Arkansas, Arkansas Hospital Association, NAMI of Arkansas.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services  
**DIVISION** Division of Medical Services  
**PERSON COMPLETING THIS STATEMENT** Lynn Burton  
**TELEPHONE NO.** 501-682-1857 **FAX NO.** 501-404-4619 **EMAIL:** lynn.burton@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** RSPMI 2-16 and State Plan Amendment #2016-005

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 \_\_\_\_\_

Total \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue	<u>(\$2,992,770)</u>
Federal Funds	<u>(\$6,907,230)</u>
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	<u>(\$9,900,000)</u>

General Revenue	<u>(\$ 5,985,540)</u>
Federal Funds	<u>(\$13,814,460)</u>
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	<u>(\$19,800,000)</u>

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**

**Next Fiscal Year**

\$ (2,992,770)

\$ (5,985,540)

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.