

1 State of Arkansas
2 90th General Assembly
3 Second Extraordinary Session, 2016
4

A Bill

DRAFT JMB/JMB
SENATE BILL

5 By: Senator <NA>
6 By: Representative <NA>
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE MEDICAID SERVICES REFORM ACT; TO
10 MODIFY CERTAIN ARKANSAS MEDICAID PROGRAM SERVICES;
11 AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO CREATE THE MEDICAID SERVICES REFORM
16 ACT; AND TO MODIFY CERTAIN ARKANSAS
17 MEDICAID PROGRAM SERVICES.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 27 – Medicaid Services Reform Act

25
26 20-77-2701. Title.

27 This subchapter shall be known and may be cited as the "Medicaid
28 Services Reform Act".
29

30 20-77-2702. Purpose.

31 The purpose of this subchapter is to:

32 (1) Reform the Arkansas Medicaid Program; and

33 (2) Require the Department of Human Services to:

34 (A) Promote independence across all Medicaid categories;

35 (B) Provide choice and dignity for all Medicaid

36 beneficiaries;

1 (C) Improve the quality of life and health of the Medicaid
 2 beneficiary population;

3 (D) Reduce fragmentation; and

4 (E) Implement an evidence-based and best-practice system
 5 that includes services and supports across all Medicaid categories that lead
 6 to positive outcomes and that are the most cost-effective approaches
 7 possible.

8
 9 20-77-2703. Definitions.

10 As used in this subchapter:

11 (1) "Assertive community treatment" means an evidence-based
 12 mental health service that is provided by a multidisciplinary team to an
 13 identified participant group in the community;

14 (2) "Brief intervention services" means short-term services for
 15 adults seeking assistance with high-risk behavioral health issues, including
 16 without limitation:

17 (A) Assessment and evaluation;

18 (B) Triage;

19 (C) Referral; and

20 (D) Time-limited outpatient services;

21 (3) "Child and Adolescent Needs and Strengths Assessment
 22 Instrument" means the multi-purposed instrument developed for services for
 23 children that is used to:

24 (A) Align the assessment process with an individualized
 25 plan of care;

26 (B) Supports decision-making of the level of care and
 27 service planning

28 (C) Facilitates the quality improvement initiatives; and

29 (D) Allow for the monitoring of outcomes;

30 (4) "Cost cap" means an upper limit on what the Arkansas
 31 Medicaid Program will pay for a specific service;

32 (5) "Developmental day treatment clinic services" means
 33 comprehensive day treatment services provided in a clinical setting to
 34 individuals with either a developmental disability or an intellectual
 35 disability;

36 (6) "Dialectical behavior therapy" means an evidence-based

1 cognitive behavioral therapy developed to improve the treatment of
 2 individuals with self-harming behaviors and borderline personality disorder
 3 by changing patterns of behavior and increasing the capacity of an individual
 4 to tolerate stress;

5 (7) "Early and periodic screening, diagnostic, and treatment"
 6 means the comprehensive array of prevention, diagnostic, and treatment
 7 services mandated for low-income infants, children, and adolescents under
 8 twenty-one (21) years of age under 42 U.S.C. § 1396d(r), as it existed on
 9 January 1, 2016;

10 (8) "Habilitation services" means services designed to help an
 11 individual gain skills to increase independence and improve the ability to
 12 live in a community, including without limitation:

13 (A) Prevocational services;

14 (B) Educational services; and

15 (C) Supported employment services;

16 (9) "Independent assessment" means a needs-based assessment
 17 conducted by a qualified professional, who does not have a financial interest
 18 in the care of a Medicaid eligible individual, to identify the needs, level
 19 of care, and cost to be addressed in a person-centered plan for the eligible
 20 individual;

21 (10) "Intermediate care facility for developmental disabilities"
 22 means a facility that provides comprehensive and individualized healthcare
 23 and habilitation services to individuals with developmental disabilities to
 24 promote independence and is :

25 (A) Available only for individuals in need of and
 26 receiving active treatment; and

27 (C) Based on the individualized program plan evaluated by
 28 an interdisciplinary team;

29 (11) "InterRai" means a modularized assessment specialized for
 30 long-term care that allows for the functional and clinical assessment of an
 31 individual living in a range of settings across the continuum of care;

32 (12) "Level of acuity" means the result of an assessment that
 33 determines the needs of an individual for healthcare services;

34 (13) "Level of Care Utilization System Assessment Instrument"
 35 means an assessment and level of care instrument designed by the American
 36 Association of Community Psychiatrists that addresses the needs of an

1 individual based on level of functionality, diagnosis, and psychiatric risk;

2 (14) "Multi-systemic therapy" means an intensive evidence-based
 3 therapy for youth and families that focuses on addressing all environment
 4 systems that impact a youth who either has a chronic mental health and
 5 violence issue or is at risk of a chronic mental health and violence issue;

6 (15) "Person-centered planning" means a process that addresses
 7 needed healthcare services and supports for an individual in a manner that
 8 reflects the personal preferences and goals of the individual;

9 (16) "Supports Intensity Scale" means an assessment instrument
 10 that measures the support needs of an individual in personal, work-related,
 11 and social activities to identify the types and intensity of the services and
 12 supports that the individual needs; and

13 (17) "Utilization review" means a system of review that
 14 determines the appropriate and efficient allocation of healthcare resources
 15 and medical services given or proposed to be given to a patient or group of
 16 patients.

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 18 20-77-2704. Long-term care and developmental disabilities.

19 (a) The Department of Human Services shall seek amendments to all
 20 federal waivers that serve individuals who have long-term care needs and
 21 individuals with developmental disabilities, including without limitation a
 22 home- and community-based waiver under § 1915(c) of the Social Security Act,
 23 42 U.S.C. § 1396n(c), as it existed on January 1, 2016, to include:

24 (1)(A) An independent assessment.

25 (B) The independent assessment under the federal waiver
 26 for individuals with long-term care needs shall be the most current InterRai.

27 (C) The independent assessments under the federal waiver
 28 for individuals with developmental disabilities shall be:

29 (i) The Supports Intensity Scale-Adults Version™ for
 30 individuals seventeen (17) years of age and older; and

31 (ii) The Supports Intensity Scale-Children's
 32 Version™ for individuals between five (5) and sixteen (16) years of age.

33 (D) The department may adopt by rule an independent
 34 assessment instrument for individuals five (5) years of age or younger.

35 (E) The department may by rule:

36 (i) Modify the independent assessment instruments

1 identified in subdivision (a)(1) of this section; or

2 (ii) Select a different independent assessment
3 instrument;

4 (2) The allocation of services for home- and community-based
5 services and supports, hours of service for home- and community-based
6 services and supports, and costs for home- and community-based services and
7 supports, based on the assessed need and level of acuity;

8 (3) Person-centered planning;

9 (4) Individual strengths and natural supports;

10 (5) Independent case management; and

11 (6) Dignity for the patient.

12 (b)(1) The federal waiver for individuals with long-term care needs
13 shall cover eligible individuals who are:

14 (A) Between twenty-one (21) and sixty-four (64) years of
15 age who have physical disabilities; and

16 (B) Over sixty-five (65) years of age.

17 (2) The federal waiver for individuals with developmental
18 disabilities shall cover eligible individuals with developmental disabilities
19 without regard to age.

20 (c)(1) Eligibility under the federal waivers shall be based on the
21 acuity level determined by the independent assessment as well as individual
22 safety and risk factors.

23 (2) The acuity level shall be established as follows:

24 (A) Acuity Level 1 refers to the level of nursing care
25 required for individuals who are currently residing in a nursing facility, a
26 human development center within the state, or an intermediate care facility;

27 (B) Acuity Level 2 refers to the level of nursing care
28 required for individuals who meet the criteria for either a nursing facility
29 or an intermediate care facility for developmental disabilities, but who
30 choose to receive home- and community-based services and supports; and

31 (C) Acuity Level 3 refers to the level of nursing care
32 required for individuals who do not meet the criteria for either a nursing
33 facility or an intermediate care facility for developmental disabilities, but
34 who need a moderate amount of home- and community-based services to delay or
35 prevent the immediate need for institutional care, as determined by the
36 department.

1 (3)(A) The average cost per person within an intermediate care
 2 facility for developmental disabilities shall be the cost cap on home- and
 3 community-based services.

4 (B) The department shall establish a cost cap for
 5 individuals in Acuity Level 3 by rule, upon consulting and review by the
 6 Arkansas Health Reform Legislative Task Force.

7 (d)(1) The department shall take into consideration, at the time of
 8 the independent assessment and the development of the plan of care, any
 9 additional services an eligible individual may be receiving to avoid
 10 duplication of service.

11 (2) The department shall strengthen and define program
 12 eligibility within the Medicaid state plan to ensure that eligibility for
 13 services under the state plan is based on defined criteria and that all
 14 approved services under the state plan meet the medical needs of the eligible
 15 individual so that additional waiver services are unnecessary.

16
 17 20-77-2705. Behavioral health and mental health services.

18 (a)(1) The Department of Human Services shall convert the existing
 19 behavioral health and mental health system to an evidence-based and best-
 20 practice system designed to address the needs of:

21 (A) Adults with serious and persistent mental illness; and

22 (B) Children and adolescents with serious emotional
 23 disturbance and related disorders as determined by the department.

24 (2) The department may apply for any necessary federal waivers
 25 or state plan amendments to implement this section.

26 (b)(1) The new evidence-based and best-practice system for adults
 27 shall include without limitation:

28 (A) Psychiatric emergency services;

29 (B) Brief intervention services;

30 (C) Illness management and recovery;

31 (D) Assertive community treatment for urban and rural
 32 areas;

33 (E) Day supportive services;

34 (F) Integrated dual disorders treatment;

35 (G) Identified cognitive behavioral therapies; and

36 (H) Dialectical behavioral therapy.

1 (2) The new evidence-based and best-practice system for children
2 and adolescents shall include without limitation:

3 (A) Cognitive behavioral therapies for specified
4 disorders;

5 (B) Multi-systemic individual therapy and family therapy;

6 (C) Trauma-informed therapy;

7 (D) Group therapy for specified disorders; and

8 (E) Services for children and adolescents in foster care.

9 (3) The department shall develop a schedule of psychiatric
10 diagnostic conditions to be covered patterned on the system established by
11 the Commonwealth of Virginia, as it existed on January 1, 2016.

12 (c) The department may contract with one (1) or more independent
13 entities for the new evidence-based and best-practice system, psychiatric
14 inpatient care, and residential treatment centers to provide:

15 (1) Eligibility determinations;

16 (2) Plans of care for a Medicaid beneficiary;

17 (3) Prior authorizations;

18 (4) Utilization review; and

19 (5)(A) Independent assessments for all behavioral health
20 services to determine eligibility and type, number, scope, and duration of
21 services needed.

22 (B) The independent assessments used shall be:

23 (i) The Level of Care Utilization System Assessment
24 Instrument for individuals who are eighteen (18) years of age or older; and

25 (ii) The Child and Adolescent Needs and Strengths
26 Assessment Instrument for individuals who are between six (6) and seventeen
27 (17) years of age.

28 (C) The department may by rule:

29 (i) Modify the independent assessment instruments
30 identified in subdivision (c)(5)(B) of this section;

31 (ii) Select a different independent assessment
32 instrument; or

33 (iii) Permit a participating provider to provide
34 emergency services to an adult or child in the absence of an independent
35 assessment.

36 (d) School-based services for children and adolescents shall not be

1 provided on the same day when school campus services are provided, except in:

2 (1) Emergency situations when risk to the child or to others is
3 present; or

4 (2) When prior authorization has been approved.

5 (e) Thirty (30) days before the submission of a federal waiver or a
6 state plan amendment, the department shall report to the Arkansas Health
7 Reform Legislative Task Force and the Legislative Council on individual case
8 coordination among:

9 (1) The existing behavioral health and mental health system
10 providers;

11 (2) Psychiatric inpatient services;

12 (3) Residential treatment centers;

13 (4) The Arkansas State Hospital; and

14 (5) The Division of Children and Family Services of the
15 Department of Human Services.

16
17 20-77-2706. Child health management services and developmental day
18 treatment clinic services.

19 (a)(1) The Department of Human Services shall develop a comprehensive
20 plan to improve:

21 (A) The identification of eligible infants, children, and
22 adolescents for inclusion in the Arkansas Medicaid Program;

23 (B) The accuracy of the assessment of need and appropriate
24 level of services; and

25 (C) The cost-effective delivery of necessary services that
26 measure medical outcomes.

27 (2) The department may apply for any necessary federal waivers
28 or state plan amendments to implement this section.

29 (b) The comprehensive plan shall include without limitation:

30 (1) Universal child independent standardized assessment by
31 primary care physicians during early and periodic screening, diagnostic, and
32 treatment visits;

33 (2) Clearly defined eligibility standards for habilitation,
34 speech, physical, and occupational therapies that augment the determination
35 process for medical necessity;

36 (3) Clearly defined developmental outcomes for all child health

1 management services and developmental day treatment clinic services to be
2 included in an annual treatment plan review and a biannual treatment plan
3 review to indicate the need for continued, adjusted, or reduced benefits for
4 each infant, child, or adolescent receiving services under the program;

5 (4)(A) A weekly cap on speech, physical, and occupational
6 service units, to be established at one hundred twenty (120) minutes for
7 individuals under six (6) years of age and ninety (90) minutes for
8 individuals between six (6) and twenty (20) years of age.

9 (B) Prior authorization by an independent physician is
10 required for services over the weekly cap;

11 (5) A weekly cap on developmental day treatment clinic service
12 hours and habilitation service hours based on a medically based independent
13 prior authorization process involving a physician prescribing the type,
14 number, scope, and duration of the services; and

15 (6) Alignment of the weekly caps described in subdivisions
16 (b)(4) and (5) of this section and prior authorization for services over the
17 weekly caps across child health management services, developmental day
18 treatment clinical services, independent Medicaid providers, and school-based
19 health services.

20
21 20-77-2707. Rulemaking and waiver authority.

22 (a) This subchapter does not preclude:

23 (1) The Department of Human Services from seeking to combine,
24 renew, or replace the federal waivers referenced within this subchapter if
25 the terms of the combined, renewed, or replacement waiver satisfies the
26 remaining requirements of this subchapter;

27 (2) The department from seeking new federal waivers to:

28 (A) Serve individuals not currently receiving services
29 under an existing federal waiver; or

30 (B) Provide services not currently provided under an
31 existing waiver; or

32 (3) The authority of the department to contract with a managed
33 care organization for medically necessary goods and services to serve
34 Medicaid beneficiaries through a comprehensive risk contract.

35 (b) Implementation of this subchapter is conditioned upon receipt and
36 continuation of the necessary waiver approvals by the Centers for Medicare

1 and Medicaid Services.

2 (c) The department may promulgate rules necessary to implement this
3 subchapter.

4
5 SECTION 2. DO NOT CODIFY. TEMPORARY LANGUAGE. Timeline for
6 implementation and reports.

7 Within sixty (60) days of the effective date of this act, the
8 Department of Human Services shall report to the Arkansas Health Reform
9 Legislative Task Force a detailed implementation plan of each section of this
10 act including without limitation:

11 (1) For each section of this act:

12 (A) A functional project management plan;

13 (B) A timeline of implementation;

14 (C) A list of challenges and needed resources;

15 (D) Estimated program savings and administrative savings;

16 and

17 (E) A list of barriers and solutions;

18 (2) A schedule, purpose, and timeline of short-term and long-
19 term rule changes, waiver amendments, or state plan amendments needed to
20 implement this act; and

21 (3) A contingency plan addressing short-term and long-term
22 saving targets if the department is unable to implement any section of the
23 act in a timely fashion.

24
25 SECTION 3. DO NOT CODIFY. TEMPORARY LANGUAGE. Reform to
26 rehabilitative services for persons with mental illness.

27 (a) The Department of Human Services shall:

28 (1) Work with existing providers of rehabilitative services for
29 persons with mental illness to develop actions and reforms that will decrease
30 any duplication of services and unnecessary cost; and

31 (2) Complete the revision of the benefit for rehabilitative
32 services for persons with mental illness before the conversion of the
33 existing behavioral health and mental health system to an evidence-based and
34 best-practice system and any other reform model enacted by the General
35 Assembly.

36 (b) The Office of Medicaid Inspector General shall assist the

1 department in completing the revision of the benefit for rehabilitative
2 services for persons with mental illness.

3 (c) On or before October 1, 2016, the department shall report to the
4 Arkansas Health Reform Legislative Task Force and the Legislative Council on
5 improvement strategies to be employed.

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