

RECEIVED

OCT 11 2018

BUREAU OF  
LEGISLATIVE RESEARCH

**PASSE Manual Public Comment Summary—SUPPLEMENT**

DHS's response to the following public comments are amended as follows:

**Summit Community Care**

**Comment:** Telemedicine— The definition of Telemedicine mixes the lawful professional use of telemedicine with coverage. The first paragraph is correct. But the excluded items A- D are excluded in Act 203 of 2017 only for purposes of mandated reimbursement. Summit asks that those activities be permitted as those are useful and effective methods of communication.

**Response:** ~~Exclusion from reimbursement in Act 203 does not prevent the PASSE from using those methods of communication, but it is not considered a medical service delivered via telemedicine~~ The Manual has been revised to be consistent with Acts 2017, No. 203.

**Comment:** Item A and B appear to run afoul of the requirement that the PASSEs comply with the "Any Willing Provider" Act (Patient Protection Act). Under Arkansas law, any provider that meets a PASSE's terms and conditions must be able to participate in that PASSE under AWP.

**Response:** ~~PASSEs must comply with all applicable federal, state regulations including the "Any Willing Provider" Act as DHS has consistently indicated throughout the development of the PASSE program~~ The Manual has been revised to be consistent with the Patient Protection Act of 1995, Arkansas Code Annotated § 23-99-201 et seq.

**DDPA**

**Comment:** Item A and B appear to run afoul of the requirement that the PASSEs comply with the "Any Willing Provider" Act (Patient Protection Act). Under Arkansas law, any provider that meets a PASSE's terms and conditions must be able to participate in that PASSE under AWP.

**Response:** ~~Previously Answered in response to Summit Community Care~~ The Manual has been revised to be consistent with the Patient Protection Act of 1995, Arkansas Code Annotated § 23-99-201 et seq.

**Robert Baratta and Bill Philips**

**Comment:** The Department of Human Resources, Division of Medical Services, has proposed a new rule to update its PASSE Manual that includes a faulty definition of telemedicine that does not follow the current statute. Note the highlighted section below in the definition section. Act 203 of the 2017 Regular Session amended the previous telemedicine statute. The definition of the telemedicine included in the proposed rule tracks with the current statute in §17-80-402(7)(A) & (B). However, the prohibitions listed apply only to the establishment of a professional relationship and not telemedicine in general. §17-80-403(c) states that "Professional relationship" does not include a relationship between a healthcare professional and a patient established only by the following: (1) An internet questionnaire; (2) An email message; (3) Patient-generated medical history; (4) Audio-only communication, including without limitation interactive audio; (5) Text messaging; (6) A facsimile machine; or (7) Any combination thereof; The Department is confused. In its proposed rule it is mixing what are acceptable technologies to diagnose and treat with those acceptable to establish the professional relationship (or first virtual visit). Moreover, the current statute at §17-80-404(a)(2) states "Once a professional relationship is established, a healthcare professional may provide healthcare services through telemedicine, including interactive audio, if the healthcare services are within the scope of practice for which the healthcare professional is licensed or certified and the healthcare services otherwise meet the requirements of this subchapter."

Accordingly, the proposed rule will put in place regulations on telemedicine for this state program that are more restrictive than both the current state telemedicine statute and governing Board of Medicine regulations.

While this proposed regulation is for a line of business we do not yet participate in, Teladoc Health should at a minimum raise the issue with of statutory conflict with the Department. Comments?

**Response:** ~~Exclusion from reimbursement in Act 203 does not prevent the PASSE from using those methods of communication, but it is not considered a medical service delivered via telemedicine~~ The Manual has been revised to be consistent with Acts 2017, No. 203.

### Gabe Freyaldenhoven

**Comment:** As we are approaching the final rules being put into place for Arkansas Medicaid PASSE providers, I would like to express my concern for the lack of an Any Willing Provider provision in the manual.

Throughout the legislative process of creating Act 775, legislative intent was expressed to make sure that patients could keep their providers of choice and that patients would not be forced to change providers.

As Phase I of this program has rolled out, there have been many instances of individual PASSE's encouraging their equity owner providers not to sign with other PASSE's. This atmosphere of exclusion has the potential for PASSE's to close their networks once network adequacy standards have been met, preventing Medicaid patients from seeing the very providers they wish to see. This atmosphere will only be made worse moving forward without an Any Willing Provider provision to protect providers seeking to join a PASSE and support access to care.

Without an Any Willing Provider provision, patients will struggle with access to care provided by the license professionals that these patients are comfortable working with. This will allow a PASSE to exclude providers when the provider is willing to accept the standard contract. This creates a one-sided negotiation if the proposed rule for an out of network provider receiving 80% of the allowable also goes into effect.

I appreciate having had the opportunity to provide my comments and am asking to see protections consistent with Arkansas' Any Willing Provider statute. This would include a regulation that does not give exclusions based on network adequacy.

**Response:** ~~PASSEs must comply with all applicable federal, state regulations including the "Any Willing Provider" Act as DHS has consistently indicated throughout the development of the PASSE program~~ The Manual has been revised to be consistent with the Patient Protection Act of 1995, Arkansas Code Annotated § 23-99-201 et seq.

### Seth Coulter

**Comment:** Including Any Willing Provider provisions in the final rules for PASSE Providers:

"I appreciate having the opportunity to provide comments and am asking for protections consistent with Arkansas Willing Provider Statute. This would provide regulation that does not give exclusions based on network adequacy"

**Response:** ~~PASSEs must comply with all applicable federal, state regulations including the "Any Willing Provider" Act as DHS has consistently indicated throughout the development of the PASSE program~~ The Manual has been revised to be consistent with the Patient Protection Act of 1995, Arkansas Code Annotated § 23-99-201 et seq.

## Bo Renshaw

Comment: Without the Any Willing Provider provision, patients will have limited access to care provided by licensed healthcare professionals of their choice. This will give a PASSE entity the ability to intentionally exclude providers despite their willingness to agree to the PASSE contract. This creates a one-sided negotiation if the proposed rule for an out of network provider receiving 80% of the allowable also goes into effect.

**Response:** ~~PASSEs must comply with all applicable federal, state regulations including the “Any Willing Provider” Act as DHS has consistently indicated throughout the development of the PASSE program~~ The Manual has been revised to be consistent with the Patient Protection Act of 1995, Arkansas Code Annotated § 23-99-201 et seq.

## Arkansas Hospital Association

### **Comment:** Provider Selection

We applaud DHS’s statement in section 245.000 that PASSEs may not discriminate against providers who “serve high-risk populations or specialize in conditions that require costly treatment.” Limiting risk avoidance on the part of the PASSEs is essential to ensuring a strong provider network and continued access to care. As well, we strongly encourage DHS to mirror similar language in section 245.100, Value-Based Payments. Adequate risk adjustment in pay-for-performance methodology may be difficult, but it is essential to avoid punishing providers serving higher-needs or disadvantaged populations.

In recognition of the state’s “any willing provider” law, we also request that the Department include a requirement that no PASSE may prohibit or limit a healthcare provider that is qualified and willing to accept the plan’s operating terms and conditions, schedule of fees, covered expenses, utilization regulations and quality standards from the opportunity to join the PASSE’s network. Arkansas law also requires that any measures designed to maintain quality or control costs be imposed equally on all providers in the same class. This statutory provision should be reflected in the PASSE manual.

**Response:** ~~DHS reiterates that the Arkansas “Any Willing Provider” laws apply in the PASSE Program and are incorporated by reference; therefore, we do not need to make additional changes to the manual~~ The Manual has been revised to be consistent with the Patient Protection Act of 1995, Arkansas Code Annotated § 23-99-201 et seq.

