

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.**

INTERIM STUDY PROPOSAL 2007-152

State of Arkansas

*As Engrossed: S3/15/07*

86th General Assembly

**A Bill**

Regular Session, 2007

SENATE BILL 944

By: Senators Womack, Critcher, Crumbly, Horn, Wilkins, Altes

By: Representatives R. Green, Key, Lamoureux, Ragland, Cooper, Davis

Referred to

Public Health, Welfare And Labor Committee - Senate

by the Arkansas Senate

on 04/03/2007

**For An Act To Be Entitled**

AN ACT TO PROVIDE FOR THE QUALIFICATIONS AND REIMBURSEMENT OF PROVIDERS OF MENTAL HEALTH CARE ASSISTANCE TO INDIGENT PERSONS; TO ESTABLISH CRITERIA FOR THE ADMISSION OF INDIGENT PERSONS TO MENTAL HEALTH CARE PROGRAMS; TO ENSURE NONDISCRIMINATION AND CHOICE; AND FOR OTHER PURPOSES.

**Subtitle**

TO PROVIDE FOR THE QUALIFICATIONS AND REIMBURSEMENT OF PROVIDERS OF MENTAL HEALTH CARE ASSISTANCE TO INDIGENT PERSONS AND TO ESTABLISH CRITERIA FOR THE ADMISSION OF INDIGENT PERSONS TO MENTAL HEALTH CARE PROGRAMS.

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

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

20-77-1801. Legislative findings and intent.

1       (a) The General Assembly finds that:

2               (1) Health care providers who serve Medicaid recipients are an  
3 indispensable and vital link in serving this state's needy citizens; and

4               (2) The Department of Health and Human Services already has made  
5 great progress in making behavioral health care services more accessible to  
6 this state's citizens who need such services.

7       (b) The General Assembly intends this subchapter to ensure that the  
8 department preserves its gains in the accessibility of cost-effective and  
9 high quality behavioral health care services through open competition among  
10 providers, freely-exercised consumer choice, and nationally-recognized  
11 quality standards for service providers.

12  
13       20-77-1802. Definitions.

14       (a) As used in this subchapter:

15               (1) "Consumer" means an individual who is authorized to consent  
16 to treatment and to select a service provider for an eligible recipient;

17               (2) "Consumer entity" means the local school district that  
18 arranges for the provision of mental health services for its students or its  
19 enrollees by contractual or other arrangement with a qualified program  
20 providers;

21               (3) "Department" means the Department of Health and Human  
22 Services;

23               (4) "Director" means the Director of the Department of Health  
24 and Human Services;

25               (5)(A) "Funding source" means funding for mental health services  
26 in an inpatient or an outpatient setting from whatever source derived,  
27 including state funds, federal funds, or Medicaid funds.

28               (B) "Funding source" does not include:

29                       (i) State assistance to a community mental health  
30 center;

31                       (ii) A mental health block grant fund that is  
32 mandated by federal statute or regulation to be used only for a community  
33 mental health center; or

34                       (iii) Acute mental health services per capita funds;

35               (6) "Government entity" means the State and any agency thereof,  
36 a county, a city, any special purpose district, and a school district or

1 local education cooperative; and

2 (7) "Program provider" means any individual, partnership,  
3 corporation, or other entity that:

4 (A) Provides psychiatric residential treatment services  
5 for children or outpatient mental health services for adults or children; and

6 (B) Is funded in whole or in part by a medical care  
7 program for indigents;

8 (8) "Qualified program provider" means a program provider that  
9 is willing and able to meet the terms and conditions for participation in the  
10 operation of a medical care program for indigents as established by federal  
11 or state law or federal or state regulation;

12 (9) "Qualified psychiatric residential treatment services  
13 provider" means a qualified program provider who provides psychiatric  
14 residential treatment services;

15 (10) "Qualified outpatient mental health provider" means a  
16 qualified program provider who provides outpatient mental health services;

17 (11)(A) "Single point of entry" means any entity, agency, group  
18 of individuals, or network that has the intent to act or the effect of acting  
19 as the gatekeeper for:

20 (i) Accessing or coordinating behavioral health  
21 services; or

22 (ii) Influencing the consumer's selection of a  
23 qualified program provider,

24 (B) "Single point of entry" does not include the  
25 federally-mandated utilization review process; and

26 (12) "Agency" means any state, county, or local governmental  
27 entity.

28  
29 20-77-1803. Consumer choice – Nondiscrimination.

30 (a)(1) Subject only to the minimum federal requirements for  
31 utilization review to determine the medical necessity of services, consumers  
32 and consumer entities have the right to select the qualified program provider  
33 of their choice free from the coercion or influence of any government entity.

34 (2) No person or agency may issue a policy or promulgate a  
35 regulation that has the intent or the effect of:

36 (A) Limiting, restricting, or influencing the right of a

1 consumer to select a qualified program provider; or

2 (B) Creating a single point of entry.

3 (b) No person or agency involved in the operation of a program of  
4 indigent medical care for mental health services may engage in any of the  
5 following discriminatory practices:

6 (1) Distributing a funding source to an individual program  
7 provider or to an identifiable class of program providers in a manner that  
8 favors or disfavors any program provider or identifiable class of program  
9 providers;

10 (2) Promulgating any regulation which has the effect of favoring  
11 or disfavoring any particular program provider or identifiable class of  
12 program providers;

13 (3) Distributing a funding source in a manner that enables or  
14 allows a government entity to compete with a privately-owned qualified  
15 program provider unless mandated by federal law or federal regulation;

16 (4) Requiring a consumer or a consumer entity to access services  
17 through a single point of entry other than the minimum federally-mandated  
18 requirements established for utilization review to establish medical  
19 necessity; or

20 (5) Requiring a qualified program provider to be a member of any  
21 network as a condition of participation in a program for medical care for  
22 indigents.

23 (c) A qualified program provider shall have access to all funding  
24 sources on a fee-for-service basis unless otherwise mandated by federal law  
25 or federal regulation.

26  
27 20-77-1804. Program provider reimbursement.

28 (a) Reimbursement under a program of indigent medical care for mental  
29 health services shall only be made to outpatient program providers that have  
30 been operating and accredited for one year by the Joint Commission, the  
31 Commission on Accreditation of Rehabilitation Facilities, or the Council on  
32 Accreditation except for:

33 (1) Medical doctors or psychologists; and

34 (2) Providers who have:

35 (A) Initiated the certification process before the  
36 effective date of this act; and

1 (B) Received full accreditation by July 1, 2008.

2 (b) A program provider who provides services in reliance on a prior  
3 authorization or a continuing care authorization is entitled to payment for  
4 its services.

5  
6 20-77-1805. Treatment decisions.

7 Unless limited by federal regulation or federal law and subject to  
8 medical necessity, a program provider physician or a program provider  
9 treatment team member has the right to make all treatment decisions,  
10 including the level of intensity, frequency, and type of treatment  
11 interventions, that he or she deems to be in the best interest of the  
12 patient.

13  
14 20-77-1806. Qualification for treatment in a psychiatric residential  
15 treatment facility.

16 (a) As used in this section, "medical necessity" means:

17 (1) The patient experiences significant impairment in  
18 psychological, emotional, or behavioral functioning that causes distress or  
19 disruption for the individual, family, educational personnel or immediate  
20 others;

21 (2) A condition that warrants an Axis I diagnosis from the  
22 Diagnostic and Statistical Manual of Mental Illness, as it existed on January  
23 1, 2007, and

24 (3) A condition that has not been or cannot be ameliorated with  
25 less restrictive interventions."

26 (b) Prior authorization for admission into an in-state qualified  
27 psychiatric residential treatment services provider shall require:

28 (1) A finding that medical necessity criteria are met; and

29 (2)(A) That the child should have been engaged in at least one  
30 (1) month of outpatient counseling with a therapist who provided a written or  
31 verbal assurance to the admitting facility that his or her client needed  
32 residential treatment; or

33 (B) A finding that the child will be endangered in the  
34 absence of residential treatment admission.

35 (c) Continuing care authorization in an in-state qualified psychiatric  
36 residential treatment services provider shall require:

- 1                   (1) A finding that services are medically necessary and  
2                   (2)(A) That the child's current level of functioning will  
3 continue to disrupt normal activities of daily living for the individual,  
4 family, educational personnel, or immediate others; or  
5                   (B) The patient will regress in a less restrictive  
6 setting.  
7                   (d) A participant in the Medicaid program is entitled to receive  
8 services from any willing in-state provider who is approved to participate in  
9 the program of indigent medical care for mental health services.  
10                  (e) A child who meets the definition of medical necessity shall not be  
11 denied prior or continuing care authorization if there is:  
12                   (1) Drug or alcohol use or abuse that is:  
13                    (A) Secondary to a psychological or emotional impairment;  
14 or  
15                    (B) A form of self-medication used to alleviate  
16 psychological distress;  
17                   (2) Evidence of developmental delay that contributes to symptoms  
18 of an Axis I psychiatric condition;  
19                   (3) A legal involvement which appears to be symptomatic of an  
20 Axis I psychiatric condition;  
21                   (4) A lack of parenting skills or functional abilities that  
22 interfere with lesser restrictive therapeutic improvements;  
23                   (5) A lack of current outpatient counseling attributable to the  
24 existence of barriers that prevent the juvenile from attending or progressing  
25 at an outpatient level of care; or  
26                   (6) A lack of a therapist referral attributable to the refusal  
27 of the therapist to cooperate or to provide a referral.  
28                  (f) If a juvenile is ordered by a court to receive psychiatric  
29 residential treatment, a program provider may make a request for prior and  
30 continuing care authorization for treatment in the following manner:  
31                   (1) The request for prior and continuing care authorization  
32 shall be reviewed within five (5) days after its submission and shall be  
33 granted if the criteria for a medical necessity are met, pending a  
34 determination of the eligibility of the recipient for the indigent care  
35 program; and  
36                   (2) If the applicant is found to be eligible for the indigent

1 care program, payment for services shall be authorized from the date of  
 2 preauthorization except no payment for services shall be made in the event  
 3 the resident is found ineligible for participation in the indigent care  
 4 program; and

5 (3) The provider who requests the authorization for a patient  
 6 who is not yet determined to be eligible for the indigent care program shall  
 7 repay Medicaid the rate contracted with the utilization review provider for  
 8 the prior authorization review if:

9 (A) Treatment is determined not medically necessary; or

10 (B) The patient is determined ineligible to participate in  
 11 the indigent care program.

12 (g) The department shall maintain records which indicate the number of  
 13 patients placed for treatment in a psychiatric residential treatment facility  
 14 outside the borders of the state and shall separately note all such  
 15 placements in which the facility is located more than fifty (50) miles from  
 16 the patient's residence.

17  
 18 20-77-1807. Conflict resolution.

19 In the event that any provision of this subchapter conflicts with any  
 20 portion of the Arkansas Medicaid State Plan or any waivers approved by the  
 21 federal government, the affected state agencies shall immediately seek to  
 22 resolve the conflict by amending the Medicaid State Plan or by seeking  
 23 federal approval for a change in any conflicting agreement to prevent or  
 24 minimize any loss of federal funding as a result of the conflict.

25  
 26 20-77-1808. Construction of subchapter.

27 Nothing in this subchapter shall be construed to prevent the sale,  
 28 merger, or transfer of stock or control of a company operating an outpatient  
 29 mental health care program, or limit its right to continuously contract with  
 30 Medicaid without interruption.

31  
 32 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
 33 General Assembly of the State of Arkansas that the regulatory process  
 34 applicable to program providers in its present form is not sufficiently  
 35 delineated, and that this uncertainty creates a condition in which delay in  
 36 the effective date of this act beyond the date approved by the Governor could

1 work irreparable harm upon the proper administration and provision of  
2 essential government programs. Therefore, an emergency is hereby declared to  
3 exist and this act being immediately necessary for the preservation of the  
4 public peace, health, and safety shall become effective on:

5 (1) The date of its approval by the Governor;

6 (2) If the bill is neither approved nor vetoed by the Governor,  
7 the expiration of the period of time during which the Governor may veto the  
8 bill; or

9 (3) If the bill is vetoed by the Governor and the veto is  
10 overridden, the date the last house overrides the veto.

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12 */s/ Womack*  
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