EXHIBIT H

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

<u>SUBJECT</u>: Outpatient Behavioral Health Services (OBHS) and School-Based Mental Health Services (SBMHS) Manuals

DESCRIPTION:

Statement of Necessity

The 93rd General Assembly enacted Act 886. Arkansas Medicaid shall not require a beneficiary to first obtain a referral from a primary care provider (PCP) before receiving the first ten (10) visits for mental health counseling. The Division of Medical Services (DMS) is revising Section 217.100 (Primary Care Physician (PCP) Referral) of the Outpatient Behavioral Health Services (OBHS) Provider Manual and Section 211.300 (Primary Care Physician (PCP) Referral) of the School-Based Mental Health Services (SBMHS) Manual to reflect changes enacted in Act 886.

Rule Summary

Outpatient Behavioral Health Services Manual, Section 217.100

- Replaced "three (3)" with "ten (10)"
- Added "...referral"

School-Based Mental Health Services Manual, Section 211.300

- Replaced "three (3)" with "ten (10)"

<u>PUBLIC COMMENT</u>: A public hearing was held on this rule on March 17, 2022. The public comment period expired on April 9, 2022. The agency provided the following public comment summary:

<u>Commenter's Name</u>: Joel P. Landreneau, Esq., on behalf of Arkansas Behavioral Health Council

COMMENT: We note that the proposed rule changes restate the provisions in Act 886. We also note that Act 886 became effective on or about July 28, 2021, and that the proposed rule changes do not address whether or not the claims for services that should have been payable under the act that were denied payment prior to February 19, 2022 are going to be payable.

Please find attached to this email a survey of Council members which indicates that there are at least \$100,000 in denied claims by only 11 Council members that should have been paid had Act 886 been given the force and effect of law.

Please indicate which provision of Arkansas law allows the Department to disregard the effectiveness of enacted legislation for over seven months. In the absence of said citation, please indicate how those providers who provided services to Medicaid beneficiaries in

good faith reliance on the passage of Act 886 can receive payment for the services they have rendered.

RESPONSE: Thank you for your comment. The Department of Human Services will retroactively implement this rule to July 28, 2021. Details and timeline for implementation will be provided via standard notification methods when available.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the total cost to implement this rule is \$286,512 for the current fiscal year (\$81,312 in general revenue and \$205,200 in federal funds) and \$3,438,149 for the next fiscal year (\$975,747 in general revenue and \$2,462,403 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$81,312 for the current fiscal year and \$975,747 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

To extend the number of mental health counseling visits a client may have prior to obtaining a PCP referral

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

To ensure the availability and quantity of mental health counseling sessions for Medicaid clients. This rule is required by Act 886 of 2021.

(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;

To ensure the availability and quantity of mental health counseling sessions for Medicaid clients. This rule is required by Act 886 of 2021. The cost is justified by allowing more outpatient mental health visits which reduces the need for inpatient stay.

(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;

None.

(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;

None at this time.

(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

N/A

(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.

The agency monitors state and federal rules and policies for opportunities to reduce and control costs.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 886 of 2021. The Act, sponsored by Representative Lee Johnson, prohibited requiring certain referrals from a primary care provider in order for a beneficiary in the Arkansas Medicaid Program to receive mental health counseling.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT	AGENCY	Human Servic	es				
DIVISION		Medical Service	ces		ŕ		
DIVISION DIRE	ECTOR	Elizabeth Pitm	an				
CONTACT PERSON		Mac Golden					
ADDRESS		P. O. Box 143	7, Slot S295 Lit	ttle Rock	, AR 72203-	1437	
PHONE NO.	501-563-76	34 FAX M	NO. <u>501-40</u>	4-4619	E-MAIL	Mac.E.Golden @dhs.arkansas.gov	
NAME OF PRESENTER AT COMMITTEE MEETING Elizabeth Pitman							
PRESENTER E-	MAIL Eli	zabeth.Pitman(Ødhs.arkansas.	gov	1 et en		

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:

Jessica C. Sutton **Administrative Rules Review Section Arkansas Legislative Council Bureau of Legislative Research** One Capitol Mall, 5th Floor Little Rock, AR 72201

Act 886 - Outpatient Behavioral Health Services (OBHS) and 1. What is the short title of this rule? School Based Mental Health Services (SBMHS) Manuals

- 2. What is the subject of the proposed rule? See Attached.

When does the emergency rule expire?

- 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?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Y

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Revised June 2019

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5. Is this a new rule? Yes No No If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes \square No \boxtimes 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 I 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."

See attached.

- 6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. <u>Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129</u>
- 7. What is the purpose of this proposed rule? Why is it necessary? See Attached.
- 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://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

 Date:
 March 17, 2022

 Time:
 2:00 PM

 https://us02web.zoom.us/j/87109354772

 Place:
 Webinar ID: 871 0935 4772

- 10. When does the public comment period expire for permanent promulgation? (Must provide a date.) April 9, 2022
- 11. What is the proposed effective date of this proposed rule? (Must provide a date.) June 1, 2022

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. <u>See Attached.</u>

- 13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). <u>See Attached.</u>
- 14. Please give the names of persons, groups, or organizations that you expect to comment on these rules?

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Special Revenue

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEP	PARTMENT	Human Servi	ces				
DIV	VISION Medical Services						
PER	RSON COMPL	ETING THIS	STATEMENT Ja	ason Callan			
ГEL	EPHONE 501	-320-6540	_FAX	EMAIL: Jason	.Callan@dhs.	arkansas.gov	
To o Stat	comply with Ai tement and file	k. Code Ann. { two copies wit	§ 25-15-204(e), plea h the questionnaire	ase complete the followi and proposed rules.	ng Financial	Impact	
SH RU	ORT TITLE (LE	OF THIS	Act 886 – Outpa School Based M	atient Behavioral Health Iental Health Services (S	Services (OE SBMHS) Mar	BHS) and muals	
1.	Does this prope	osed, amended,	, or repealed rule ha	ve a financial impact?	Yes 🖂	No 🗌	
	economic, or o	ther evidence a	easonably obtainabl and information ava d alternatives to the	e scientific, technical, ilable concerning the rule?	Yes 🖂	No 🗌	
3.	In consideratio by the agency	n of the alterna to be the least o	atives to this rule, w costly rule consider	as this rule determined ed?	Yes 🖂	No 🗌	
	If an agency is	proposing a m	ore costly rule, plea	ase state the following:			
	(a) How the additional benefits of the more costly rule justify its additional cost;						
	(b) The reaso	on for adoption	of the more costly	rule;			
		the more costly e explain; and;	y rule is based on th	ne interests of public hea	ulth, safety, or	welfare, and if	
	(d) Whether explain.	the reason is w	within the scope of t	he agency's statutory au	thority; and i	f so, please	
4.	If the purpose of	of this rule is to	implement a federal	rule or regulation, please	state the follo	wing:	
	(a) What is t	the cost to impl	lement the federal r	ule or regulation?			
<u>Cu</u>	irrent Fiscal Y	ear		Next Fiscal Year			
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Special Revenue

Revised June 2019

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- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs; To ensure the availability and quantity of mental health counseling sessions for Medicaid Clients. This rule is required by Arkansas Act 886 of 2021. The cost is justified by allowing more outpatient mental health visits which reduces the need for inpatient stay.
- (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; *None*
- (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; *None at this time*.
- (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 -N/A
- (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.

- The Agency monitors State and Federal rules and policies for opportunities to reduce and control costs.

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NOTICE OF RULE MAKING

The Director of the Division of Medical Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§20-76-201, 20-77-107, and 25-10-129.

Effective June 1, 2022:

The Director of the Division of Medical Services amends Section 217.100 of the Outpatient Behavioral Health Services Manual and Section 211.300 of the School-Based Mental Health Services Manual to comply with Act 886 of the 93rd General Assembly. Act 886 allows a beneficiary to receive the first ten (10) visits for mental health counseling without a referral from a primary care provider.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule at <u>https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/</u>. Public comments must be submitted in writing at the above address or at the following email address: <u>ORP@dhs.arkansas.gov</u>. All public comments must be received by DHS no later than April 9, 2022. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

A public hearing by remote access only through a Zoom webinar will be held on March 17, 2022, at 2:00 p.m. and public comments may be submitted at the hearing. Individuals can access this public hearing at <u>https://us02web.zoom.us/j/87109354772</u>. The webinar 1D is 871 0935 4772. If you would like the electronic link, "one-tap" mobile information, listening only dial-in phone numbers, or international phone numbers, please contact ORP at ORP@dhs.arkansas.gov.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-396-6428.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. 4502035775

Elizabeth itman, Director Division of Medical Services

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Statement of Necessity and Rule Summary Act 886 – Outpatient Behavioral Health Services (OBHS) Manual and School-Based Mental Health Services (SBMHS) Manual

Why is this change necessary? Please provide the circumstances that necessitate the change.

The 93rd General Assembly enacted Act 886. Arkansas Medicaid shall not require a beneficiary to first obtain a referral from a primary care provider (PCP) before receiving the first ten (10) visits for mental health counseling. The Division of Medical Services (DMS) is revising Section 217.100 (Primary Care Physician (PCP) Referral) of the Outpatient Behavioral Health Services (OBHS) Provider Manual and Section 211.300 (Primary Care Physician (PCP) Referral) of the School Based Mental Health Services (SBMHS) Manual, to reflect changes enacted in Act 886.

What is the change? Please provide a summary of the change.

Summary:

Outpatient Behavioral Health Services Manual Section 217.100 Primary Care Physician (PCP) Referral

- Replaced three (3) with ten (10).
- Added, "...referral."

School-Based Mental Health Services Manual Section 211.300 Primary Care Physician (PCP) Referral

• Replaced three (3) with ten (10).

Please attach additional documents if necessary

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211.300 Primary Care Physician (PCP) Referral

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Each beneficiary who receives School-Based Mental Health Services can receive a limited amount of services. Once those limits are reached, a Primary Care Physician (PCP) referral or Patient-Centered Medical Home (PCMH) approval will be necessary to continue treatment. This referral or approval must be retained in the beneficiary's medical record.

A beneficiary can receive three (3)ten (10) School-Based Mental Health Services before a PCP/PCMH referral is necessary. No services will be allowed to be provided without appropriate PCP/PCMH referral. The PCP/PCMH referral must be kept in the beneficiary's medical record.

The Patient-Centered Medical Home (PCMH) will be responsible for coordinating care with a beneficiary's PCP or physician for School-Based Mental Health Services. Medical responsibility for beneficiaries receiving School-Based Mental Health Services shall be vested in a physician licensed in Arkansas.

The PCP referral or PCMH authorization for School-Based Mental Health Services will serve as the prescription for those services.

See Section I of this manual for the PCP procedures. A PCP referral is generally obtained prior to providing service to Medicaid-eligible children. However, a PCP is given the option of providing a referral after a service is provided. If a PCP chooses to make a referral after a service has been provided, the referral must be received by the SBMH provider no later than 45 calendar days after the date of service. The PCP has no obligation to give a retroactive referral.

The SBMH provider may not file a claim and will not be reimbursed for any services provided that require a PCP referral unless the referral is received.

217.100 Primary Care Physician (PCP) Referral

6-1-213-1-19

Each beneficiary that receives only Counseling Level Services in the Outpatient Behavioral Health Services program can receive a limited amount of Counseling Level Services. Once those limits are reached, a Primary Care Physician (PCP) referral or PCMH approval will be necessary to continue treatment. This referral or approval must be retained in the beneficiary's medical record.

A beneficiary can receive three (3)ten (10) Counseling Level services before a PCP/PCMH referral is necessary. Crisis Intervention (Section 255.001) does not count toward the three (3)ten (10) counseling level services. No services, except Crisis Intervention, will be allowed to be provided without appropriate PCP/PCMH referral. The PCP/PCMH referral must be kept in the beneficiary's medical record.

The Patient Centered Medical Home (PCMH) will be responsible for coordinating care with a beneficiary's PCP or physician for Counseling Level Services. Medical responsibility for beneficiaries receiving Counseling Level Services shall be vested in a physician licensed in Arkansas.

The PCP referral or PCMH authorization for Counseling Level Services will serve as the prescription for those services.

Verbal referrals from PCPs or PCMHs are acceptable to Medicaid as long as they are documented in the beneficiary's chart as described in Section 171.410.

See Section I of this manual for an explanation of the process to obtain a PCP referral.

211.300 Primary Care Physician (PCP) Referral

6-1-22

Each beneficiary who receives School-Based Mental Health Services can receive a limited amount of services. Once those limits are reached, a Primary Care Physician (PCP) referral or Patient-Centered Medical Home (PCMH) approval will be necessary to continue treatment. This referral or approval must be retained in the beneficiary's medical record.

A beneficiary can receive ten (10) School-Based Mental Health Services before a PCP/PCMH referral is necessary. No services will be allowed to be provided without appropriate PCP/PCMH referral. The PCP/PCMH referral must be kept in the beneficiary's medical record.

The Patient-Centered Medical Home (PCMH) will be responsible for coordinating care with a beneficiary's PCP or physician for School-Based Mental Health Services. Medical responsibility for beneficiaries receiving School-Based Mental Health Services shall be vested in a physician licensed in Arkansas.

The PCP referral or PCMH authorization for School-Based Mental Health Services will serve as the prescription for those services.

See Section I of this manual for the PCP procedures. A PCP referral is generally obtained prior to providing service to Medicaid-eligible children. However, a PCP is given the option of providing a referral after a service is provided. If a PCP chooses to make a referral after a service has been provided, the referral must be received by the SBMH provider no later than 45 calendar days after the date of service. The PCP has no obligation to give a retroactive referral.

The SBMH provider may not file a claim and will not be reimbursed for any services provided that require a PCP referral unless the referral is received.

Outpatient Behavioral Health Services

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Primary Care Physician (PCP) Referral

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A beneficiary can receive ten (10) Counseling Level services before a PCP/PCMH referral is necessary. Crisis Intervention (Section 255.001) does not count toward the ten (10) counseling level services. No services, except Crisis Intervention, will be allowed to be provided without appropriate PCP/PCMH referral. The PCP/PCMH referral must be kept in the beneficiary's medical record.

The Patient Centered Medical Home (PCMH) will be responsible for coordinating care with a beneficiary's PCP or physician for Counseling Level Services. Medical responsibility for beneficiaries receiving Counseling Level Services shall be vested in a physician licensed in Arkansas.

The PCP referral or PCMH authorization for Counseling Level Services will serve as the prescription for those services.

Verbal referrals from PCPs or PCMHs are acceptable to Medicaid as long as they are documented in the beneficiary's chart as described in Section 171.410.

See Section I of this manual for an explanation of the process to obtain a PCP referral.

Stricken language would be deleted from and underlined language would be added to present law. Act 886 of the Regular Session

1	State of Arkansas As Engrossed: H4/7/21 A Bill
2	
3	Regular Session, 2021 HOUSE BILL 1862
4	D. D. Harris I. Jahreen
5	By: Representative L. Johnson
6	For An Act To Be Entitled
7	AN ACT TO PROHIBIT REQUIRING CERTAIN REFERRALS FROM A
8	PRIMARY CARE PROVIDER IN ORDER FOR A BENEFICIARY IN
9	THE ARKANSAS MEDICAID PROGRAM TO RECEIVE MENTAL
10 11	HEALTH COUNSELING; AND FOR OTHER PURPOSES.
12	HEALTH COURSELING, IND TOR OTHER TORIODEDT
12	
14	Subtitle
15	TO PROHIBIT REQUIRING CERTAIN REFERRALS
16	FROM A PRIMARY CARE PROVIDER IN ORDER FOR
17	A BENEFICIARY IN THE ARKANSAS MEDICAID
18	PROGRAM TO RECEIVE MENTAL HEALTH
19	COUNSELING.
20	
21	
22	BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23	
24	SECTION 1. Arkansas Code Title 20, Chapter 77, Subchapter 1, is
25	amended to add an additional section to read as follows:
26	20-77-142. Prohibition on referrals for mental health counseling.
27	The Arkansas Medicaid Program shall not require a beneficiary to first
28	obtain a referral from a primary care provider before receiving mental health
29	counseling for the first ten (10) visits for mental health counseling.
30	
31	/s/L. Johnson
32	
33	
34	APPROVED: 4/25/21
35	
36	



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