

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

**Division of Developmental Disabilities Services (DDS)
COVID-19 Response Manual**

~~July 1, 2021~~ January 1, 2022

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200.000 OVERVIEW

201.000 Authority

The following rules are duly adopted and promulgated by the Division of Developmental Disabilities Services (DDS) of the Department of Human Services (DHS) under the authority of Arkansas Code Annotated §§ ~~20-48-101 et seq, 20-48-601 et seq, 20-48-606-20-48-1001 et seq, 20-48-1003~~ and 25-10-129.

Applicable Guidance:

Families First Coronavirus Response Act (Public Law 116-127 – March 18, 2020)

CMS Families First Coronavirus Response Act – Increased FMAP FAQ (question 6):
<https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf>

Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136 – March 27, 2020)

202.000 Purpose

In response to the COVID 19 pandemic, DDS identified programs and services that required additional flexibility or changes to adapt to ensuring the health and safety of our clients. This manual details them so that DHS may render uninterrupted assistance and services to our clients.

203.000 Appeals

Appeal requests for the Covid response policies must adhere to the policy set forth in the Medicaid Provider Manual Section 160.000 Administrative Reconsideration and Appeals which can be accessed at <https://medicaid.mmis.arkansas.gov/Provider/Docs/all.aspx>.

204.000 Severability

Each section of this manual is severable from all others. If any section of this manual is held to be invalid, illegal, or unenforceable, such determination shall not affect the validity of other sections in this manual and all such other sections shall remain in full force and effect. In such an event, all other sections shall be construed and enforced as if this section had not been included therein.

240.000 DEVELOPMENTAL DISABILITIES AND DELAYS

~~26242.000 — Adult Developmental Day Treatment and Early Intervention Day Treatment Nursing Services Outside Clinic~~

~~In response to the COVID-19 outbreak in Arkansas and consistent with CMS's coverage and payment for COVID-19, DMS/DDS is suspending the prohibition on use of nursing services to be provided outside of an Early Intervention Day Treatment (EIDT) Clinic and an Adult Development Day Treatment (ADDT) Clinic setting (49), limited to provider type 24 only for services provided to established patients during the COVID-19 outbreak and the declaration of public health emergency. This addendum expands allowable services to be done in a home setting (12) provided by licensed Registered Nurses and Licensed Practical Nurses.~~

~~This service will be available until December 31, 2021.~~

~~Nursing services are defined as the following, or similar, activities:~~

- ~~A. — Assisting ventilator dependent beneficiaries~~
- ~~B. — Tracheostomy: suctioning and care~~
- ~~C. — Feeding tube: feeding, care and maintenance~~
- ~~D. — Catheterizations~~
- ~~E. — Breathing treatments~~
- ~~F. — Monitoring of vital statistics, including diabetes sugar checks, insulin, blood draws, and pulse ox~~
- ~~G. — Administration of medication~~

~~Billing Information:~~

~~T1002 — Registered Nurse, services up to 15 minutes~~

~~T1003 — Licensed Practical Nurse, services up to 15 minutes~~

~~243.000 — Prescription and Evaluation Extensions~~

~~In response to the COVID-19 outbreak, DMS/DDS will allow extensions on re-evaluations and treatment prescriptions for ADDT, EIDT, ABA, OT, PT, Speech, and Developmental Therapy. This exemption will be available until December 31, 2021. Extensions are limited to the following:~~

- ~~• — Evaluations that expired on or after March 1, 2020.~~
- ~~• — Prior Authorizations will be extended in 90-day increments from the date the re-evaluation was/is due.~~

~~Guidelines for requesting an extension:~~

- ~~A. Provide a copy of the expired or expiring evaluation/prescription to the DDS representative via email.~~
- ~~B. DDS will reply with an email providing you with an extension letter for your records.~~
- ~~C. If a Prior Authorization is needed, you will enclose this letter with your request to eQHealth of the re-evaluation extension. Billing procedures will remain the same.~~

247.000 ~~Well Checks and Attendance Payments for Adult Developmental Day Treatment and Early Intervention Day Treatment~~

~~In response to COVID-19, well check services are allowable if the beneficiary is unable to attend the clinic setting. The well check services are not allowable if the beneficiary has attended in person at the clinic at least one day that week. Attendance payments are allowable if a beneficiary attends the clinic in person that day.~~

~~Well Check services are available for vulnerable children and adults with developmental disabilities and delays who meet the state-determined medical necessity criteria for the programs.~~

~~The service is typically a 15-30 minute check-in visit, either by phone or in the home, that ensures the beneficiary's needs are being met for overall health and well-being, such as their nutritional status, medication regimen and any emerging health issues, while the beneficiary is unable to attend their day treatment program where these activities are part of the daily onsite services provided. The services must be recommended by a physician or other licensed practitioner who must determine the services are medically necessary.~~

~~The beneficiaries are eligible to receive two (2) well checks per week, one by telemedicine (including telephone) and one face-to-face. Beneficiaries under age twenty-one (21) may get an extension of benefits upon a showing of medical necessity as determined by the state. The well check may be provided in the home or using telemedicine.~~

~~Billing Instructions:~~

~~T1027 Family Training and Counseling~~

~~T1027 U1 in person, one 30-minute unit encounter for \$15.00, place of service (12)~~

~~T1027 U2 telephonic (by phone), one 15-minute unit encounter for \$7.50, place of service (02).~~

~~Providers cannot bill two well checks on the same day.~~

~~Beneficiaries are eligible for two well check services a week, so providers can bill either one "face-to-face" or telephonic. Example: IF U1 is provided and billed on Monday, you cannot provide and bill for U2 on Monday. U2 will have to be provided and billed another day during the week to meet the 2 call per week check-in requirement.~~

~~Attendance payments are available allowable for beneficiaries who attend the clinic setting in person that day.~~

If a child or an adult attends an EIDT/ ADDT clinic, providers may bill one 15-minute unit encounter for \$15.00, Place of Service (49), per beneficiary Monday – Friday. ~~If a beneficiary attends a clinic at least one day during the week, a well check service cannot be billed for that same week.~~

These services will be available until ~~December 31, 2021~~ the termination of the federal public health emergency, including any extensions.

~~0.0~~248.000 Community and Employment Support Waiver

In response to COVID-19 DMS/DDS will temporarily modify provider types to all Qualified Behavioral Health Paraprofessionals employed by Outpatient Behavioral Health Service Agencies to provide Supportive Living Services, including Supplemental Supports to PASSE members.

DMS/DDS further amended the CES Waiver to allow an extension for reassessments and reevaluations for up to one year past the due date; allow the option to conduct evaluations, assessments, and person-centered service planning meetings virtually/remotely in lieu of face-to-face meetings; and allow an electronic method of signing off on required documents such as the person-centered service plan.

These services will be available until ~~December 31, 2021~~ the termination of the federal public health emergency, including any extensions.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Developmental Disabilities Services (DDS)

PERSON COMPLETING THIS STATEMENT Jason Callan

TELEPHONE (501) 320-6540 **FAX** _____ **EMAIL:** Jason.Callan@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 Division of Developmental Disabilities Services (DDS) Manual Extension

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	<u>\$0</u>
Federal Funds	<u>\$0</u>
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	<u>\$0</u>

Next Fiscal Year

General Revenue	<u>\$0</u>
Federal Funds	<u>\$0</u>
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	<u>\$0</u>

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

Current Fiscal Year

General Revenue	\$0
Federal Funds	\$0
Cash Funds	
Special Revenue	
Other (Identify)	
Total	\$ 0

Next Fiscal Year

General Revenue	\$0
Federal Funds	\$0
Cash Funds	
Special Revenue	
Other (Identify)	
Total	\$ 0

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

\$ 0

Next Fiscal Year

\$ 0

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

\$ 0

Next Fiscal Year

\$ 0

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.

Statement of Necessity and Rule Summary

Division of Developmental Disabilities Services Manual Extension

Statement of Necessity

The rule was initially promulgated to sunset on December 31, 2021; however, the public health emergency is ongoing, therefore the Division of Developmental Disabilities Services amends the termination date to extend the sunset date to the end of the federal public health emergency, including any extensions.

Summary

The Director of the Division of Developmental Disabilities Services (DDS) amends the COVID-19 Response Manual to extend the sunset date of three provisions from December 31, 2021 to the end of the federal public health emergency, including any extensions. The suspension of rules for the Adult Developmental Day Treatment and Early Intervention Day Treatment concerning attendance payments is extended. The community and employment support waiver rules that are suspended temporarily modify provider types to all Qualified Behavioral Health Paraprofessionals employed by Outpatient Behavioral Health Service Agencies to provide Supportive Living Services, including Supplemental Supports to PASSE members. Also, the suspended rules allow an extension for reassessments and reevaluations for up to one year past the due date as well as allow the planning meeting to occur virtually/remotely and allow an electronic method of sign-off on required documents. Lastly, DDS allows the suspended rules concerning Well Checks to end on December 31, 2021. Extensions on re-valuations and treatment prescriptions will sunset on December 31, 2021. Lastly, the suspension on prohibition of using nursing services provided outside Early Intervention Day Treatment Clinic and an Adult Development Day Treatment Clinic and the expansion of allowable services to be done in a home setting will end on December 31, 2021.

NOTICE OF RULE MAKING

The Director of the Division Developmental Disabilities 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 rules under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-76-201, 20-77-107, 25-10-129.

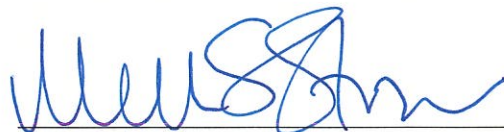
Effective January 1, 2022:

The Director of the Division of Developmental Disability Services (DDS) amends the COVID-19 Response Manual to remove the sunset date of December 31, 2021, to align with the termination of the federal public health emergency, including any extensions. DDS extends the sunset date for attendance payments for Adult Developmental Day Treatment and Early Intervention Day Treatment as well as community and employment support waiver rules concerning provider types and reassessments and reevaluations. The rule suspensions concerning Well Checks, treatment prescriptions, and the use of nursing services used outside of Early Intervention Day Treatment and Adult Development Day Treatment clinical setting remain unchanged and will sunset on December 31, 2021.

The proposed rules are 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 rules at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than November 8, 2021. 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.

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



Melissa Stone, Director
Division of Developmental Disabilities Services