

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

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Little Rock, Arkansas 72201-1094

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Behavioral Health Services

Contact Robert Nix E-mail robert.nix@dhs.arkansas.gov Phone 501-686-9871

Statutory Authority for Promulgating Rules Arkansas Code Annotated 20-76-201

Rule Title: Rehabilitative Services for Persons with Mental Illness Moratorium Amendment 8

Intended Effective Date

(Check One)

☒ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

N/A

N/A

07/01/2017

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Becky Murphy becky.murphy@dhs.arkansas.gov

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

(501) 686-9164

Phone Number

Signature

Ray Hill
ray.hill@dhs.arkansas.gov

E-mail Address

Interim Director

Title

5-18-17

Date

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Behavioral Health Services

PERSON COMPLETING THIS STATEMENT Robert Nix

TELEPHONE 686-9871 **FAX** 404-4619 **EMAIL:** robert.nix@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 Rehabilitative Services for Persons with Mental Illness (RSPMI) Moratorium Amendment 8

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 Does this proposed, amended, or repealed rule have a financial impact?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 _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$0

Total \$0

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

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$0

Next Fiscal Year

General Revenue _____
Federal Funds _____
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.

Summary

Rehabilitative Services for Persons with Mental Illness (RSPMI) Moratorium Amendment 8

The purpose of the proposed rule is to extend the current RSPMI moratorium, which expires on June 30th, until August 1, 2017 at which time ACT 699 will become effective and put into effect a RSPMI moratorium until January 1, 2018.

This update is necessary so that DBHS maintains control over the amount of RSPMI sites that are certified to provide behavioral health services by DBHS. To enroll as a Medicaid provider, RSPMI sites must be certified by DBHS. DBHS has no information that any eligible Medicaid beneficiary experiences difficulty obtaining medically necessary RSPMI care and services.

DIVISION OF BEHAVIORAL HEALTH SERVICES
REHABILITATION SERVICES FOR PERSONS WITH MENTAL ILLNESS
PROVIDER CERTIFICATION

AMENDMENT 8

Findings.

- (1) There are over 275 outpatient service sites in the state for the delivery of Rehabilitation Services for Persons With Mental Illness (RSPMI). The Division of Behavioral Health Services has no information that any eligible Medicaid beneficiary experiences difficulty obtaining medically necessary RSPMI care and services.
- (2) Medicaid pays for RSPMI on a fee-for-service basis. Uncontrolled expansion of RSPMI sites will increase provider costs for staff and infrastructure. These inefficiencies will pressure providers to find ways to deliver more services and thereby unnecessarily increase costs to the Arkansas Medicaid Program.
- (3) The Arkansas Medicaid Program projects that there will be insufficient state general revenues available to maintain the current level of Medicaid services beginning in state fiscal year 2014.
- (4) Among other things, the Medicaid Program is seeking ways to improve efficiency, reduce costs, and maximize the use of federal funds as required under Ark. Code Ann. § 25-10-129. However, no federal funding incentives are available for the expansion of the RSPMI program.
- (5) For the above reasons it is necessary that the moratorium on new RSPMI sites remain intact as amended below.

As stated in Section VI of the DBHS RSPMI Certification Rule, DBHS will process all certification requests within ninety calendar days of receiving all information that is necessary to review and process the certification request. DBHS will notify each prospective provider/provider in writing of its determination and furnish a copy to DMS.

1. There is a moratorium on the certification of new RSPMI sites. "New site" means any site not certified as an RSPMI site as of October 31, 2008, except:
 - (i) Sites for which a pending application was under review by the Division of Behavioral Health Services on October 31, 2008;
 - (ii) Replacement sites opened by an existing provider to provide ongoing continuity of RSPMI services when the provider is terminating services at a currently certified and operating RSPMI site;
 - (iii) Sites in continuous lawful operation furnishing RSPMI services since May 31, 2008.
2. The moratorium shall be in effect until **August 1, 2017**, unless altered by amendment of this rule.
3. If the Director of the Division of Behavioral Health Services determines that the moratorium is causing an undue hardship to persons with mental illness, the Director may authorize a reasonable accommodation. An undue hardship may exist if medically necessary services become unavailable due to closure of a site or an RSPMI provider ceasing operations.

4. This moratorium shall not prohibit existing RSPMI providers from delivering RSPMI services in public schools under § III(T) of the RSPMI Certification Manual.

Mark Up

DIVISION OF BEHAVIORAL HEALTH SERVICES
REHABILITATION SERVICES FOR PERSONS WITH MENTAL ILLNESS
PROVIDER CERTIFICATION

| AMENDMENT 78

Findings.

- (1) There are over 275 outpatient service sites in the state for the delivery of Rehabilitation Services for Persons With Mental Illness (RSPMI). The Division of Behavioral Health Services has no information that any eligible Medicaid beneficiary experiences difficulty obtaining medically necessary RSPMI care and services.
- (2) Medicaid pays for RSPMI on a fee-for-service basis. Uncontrolled expansion of RSPMI sites will increase provider costs for staff and infrastructure. These inefficiencies will pressure providers to find ways to deliver more services and thereby unnecessarily increase costs to the Arkansas Medicaid Program.
- (3) The Arkansas Medicaid Program projects that there will be insufficient state general revenues available to maintain the current level of Medicaid services beginning in state fiscal year 2014.
- (4) Among other things, the Medicaid Program is seeking ways to improve efficiency, reduce costs, and maximize the use of federal funds as required under Ark. Code Ann. § 25-10-129. However, no federal funding incentives are available for the expansion of the RSPMI program.
- (5) For the above reasons it is necessary that the moratorium on new RSPMI sites remain intact as amended below.

As stated in Section VI of the DBHS RSPMI Certification Rule, DBHS will process all certification requests within ninety calendar days of receiving all information that is necessary to review and process the certification request. DBHS will notify each prospective provider/provider in writing of its determination and furnish a copy to DMS.

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 - (iii) Sites in continuous lawful operation furnishing RSPMI services since May 31, 2008.

- | 2. The moratorium shall be in effect until ~~June 30, 2017~~ August 1, 2017, unless altered by amendment of this rule.

3. If the Director of the Division of Behavioral Health Services determines that the moratorium is causing an undue hardship to persons with mental illness, the Director may authorize a reasonable accommodation. An undue hardship may exist if medically necessary services become unavailable due to closure of a site or an RSPMI provider ceasing operations.

4. This moratorium shall not prohibit existing RSPMI providers from delivering RSPMI services in public schools under § III(T) of the RSPMI Certification Manual.