

# 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 \_\_\_\_\_

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** \_\_\_\_\_

**DIVISION** \_\_\_\_\_

**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_

**TELEPHONE NO.** \_\_\_\_\_ **FAX NO.** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

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** \_\_\_\_\_

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 Does this proposed, amended, or repealed rule have a financial impact?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 \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

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

**Current Fiscal Year**

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

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**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_

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**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_

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**  
**Behavioral Health Agency Certification Manual Update pursuant to Act 760**

**Statement of Necessity:**

This rule implements the requirements of Act 760. Act 760 allows outpatient behavioral health agencies to co-locate with other facility types.

**Summary:**

The Division of Provider Services and Quality Assurance updates the Behavioral Health Agency Certification Manual by amending the definition of “Site” to include adjunct and colocated sites such as schools, a daycare facility, a long-term care facility, or the office or clinic of a physician or psychologist. DPSQA also updates website information with hyperlinks to the appropriate webpage.

## NOTICE OF RULE MAKING

The Director of the Division of Provider Services and Quality Assurance 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: §§ 20-10-203, 20-10-705, 20-76-201, 20-77-107, and 25-10-129.

### **Effective June 1, 2022:**

The Director of the Division of Provider Services and Quality Assurance amends the Behavioral Health Agency Certification Manual Rule to comply with Act 760 of the 93<sup>rd</sup> General Assembly. Act 760 allows outpatient behavioral health agencies to co-locate with other facility types, including adjunct and collocated sites such as schools, day care facilities, long-term care facilities, or the office or clinic of a physician or psychologist. DPSQA also updates website information with hyperlinks to the appropriate webpage.

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 <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](mailto:ORP@dhs.arkansas.gov). 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.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-534-4138.

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**



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Martina Smith, Director  
Division of Provider Services and Quality Assurance



# Arkansas Department of Human Services

## Behavioral Health Agency Certification Manual

Revised: ~~7/1/17~~

6/1/22

Provider

Services & Quality

Assurance - Arkansas

Department of Human

Services[www.arkansas.gov](http://www.arkansas.gov)

/dhs/dhs



Y. “Qualified Behavioral Health Provider” means a person who:

1. Does not possess an Arkansas license to provide clinical behavioral health care;
2. Works under the direct supervision of a mental health professional;
3. Has successfully completed prescribed and documented courses of initial and annual training sufficient to perform all tasks assigned by a mental health professional;
4. Acknowledges in writing that all qualified behavioral health provider services are controlled by client care plans and provided under the direct supervision of a mental health professional.

Z. “Quality assurance (QA) meeting” means a meeting held at least quarterly for systematic monitoring and evaluation of clinic services and compliance. See also, Medicaid Outpatient Behavioral Health Services Manual, § 212.000.

AA. “Reviewer” means a person employed or engaged by:

1. DHS or a division or office thereof;
2. An entity that contracts with DHS or a division or office thereof.

BB. “Site” means a distinct place of business dedicated to the delivery of Outpatient Behavioral Health Services within a fifty (50) mile radius. Each site must be a bona fide Behavioral Health Agency, meaning a behavioral health outpatient clinic providing all the services specified in this rule and the Medicaid Outpatient Behavioral Health Services Manual. ~~Sites may not be~~ This includes sites DHS may certify when adjuncts to aor ~~collocated with non-behavioral healthcare services or facilities-different activity~~ such as a school, a day care facility, a long-term care facility, or the office or clinic of a physician or psychologist.

CC. “Site relocation” means closing an existing site and opening a new site no more than a fifty (50) mile radius from the original site.

DD. “Site transfer” means moving existing staff, program, and clients from one physical location to a second location that is no more than a fifty (50) mile radius from the original site.

EE. “Supervise” as used in this rule means to direct, inspect, observe, and evaluate performance.

FF. “Supervision documentation” means written records of the time, date, subject(s), and duration of supervisory contact maintained in the provider’s official records.



#### **IV. COMPLIANCE TIMELINE:**

- A. Entities currently certified as Rehabilitative Services for Persons with Mental Illness (RSPMI) providers will be grandfathered in as certified Behavioral Health Agencies. Current RSPMI agency recertification procedures are based upon national accreditation timelines. Behavioral Health Agency recertification will also be based upon national accreditation timelines.
- B. All entities in operation as of the effective date of this rule must comply with this rule within forty-five (45) calendar days in order to maintain certification.
- C. DHS may authorize temporary compliance exceptions for new accreditation standards that require independent site surveys and specific service subset accreditations. Such compliance exceptions expire at the end of the provider's accreditation cycle and may not be renewed or reauthorized.

#### **V. APPLICATION FOR DHS BEHAVIORAL HEALTH AGENCY CERTIFICATION:**

- A. New Behavioral Health Agency applicants must complete DHS BEHAVIORAL HEALTH AGENCY CERTIFICATION Form 100, DHS BEHAVIORAL HEALTH AGENCY FORM 200, and DHS BEHAVIORAL HEALTH AGENCY Form 210
- B. DHS BEHAVIORAL HEALTH AGENCY CERTIFICATION Form 100, DHS BEHAVIORAL HEALTH AGENCY FORM 200, and DHS BEHAVIORAL HEALTH AGENCY Form 210 can be found at the following website: [Provider Services & Quality Assurance - Arkansas Department of Human Serviceswww.arkansas.gov/dhs/dhs](http://www.arkansas.gov/dhs/dhs/Provider%20Services%20&%20Quality%20Assurance)
- C. Applicants must submit the completed application forms and all required attachments for each proposed site to:

Department of Human Services  
Division of Provider Services and Quality Assurance  
ATTN: Licensure and Certification  
P.O. Box 1437 S-530  
Little Rock, AR 72203

- D. Each applicant must be an outpatient behavioral health care agency:
  - 1. Whose primary purpose is the delivery of a continuum of outpatient behavioral health services in a free standing independent clinic;
  - 2. That is independent of any DHS certified Behavioral Health Agency.
- E. Behavioral Health Agency certification is not transferable or assignable.
- F. The privileges of a Behavioral Health Agency certification are limited to the certified site.

may obtain up to ten (10) additional days based on a showing of good cause.

6. DHS will furnish site-specific certificates via postal or electronic mail within ten (10) calendar days of issuing a site certification.

B. Survey Components: An outline of site survey components is available on the DHS website: [Provider Services & Quality Assurance - Arkansas Department of Human Serviceswww.arkansas.gov/dhs/dhs](http://www.arkansas.gov/dhs/dhs) –and is located in appendix # 7.

C. Determinations:

1. Application approved.
2. Application returned for additional information.
3. Application denied. DHS will state the reasons for denial in a written response to the applicant.

## **VII. DHS Access to Applicants/Providers:**

- A. DHS may contact applicants and providers at any time;
- B. DHS may make unannounced visits to applicants/providers.
- C. Applicants/providers shall provide DHS prompt direct access to applicant/provider documents and to applicant/provider staff and contractors, including, without limitation, clinicians, paraprofessionals, physicians, administrative, and support staff.
- D. DHS reserves the right to ask any questions or request any additional information related to certification, accreditation, or both.

## **VIII. ADDITIONAL CERTIFICATION REQUIREMENTS:**

A. Care and Services must:

1. Comply with all state and federal laws, rules, and regulations applicable to the furnishing of health care funded in whole or in part by federal funds; to all state laws and policies applicable to Arkansas Medicaid generally, and to Outpatient Behavioral Health Services specifically, and to all applicable Department of Human Services (“DHS”) policies including, without limitation, DHS Participant Exclusion Policy § 1088.0.0. The Participant Exclusion Policy is available online at [Provider Services & Quality Assurance - Arkansas Department of Human Serviceshttps://dhsshare.arkansas.gov/DHS%20Policies/Forms/By%20Policy.aspx](https://dhsshare.arkansas.gov/DHS%20Policies/Forms/By%20Policy.aspx)
2. Conform to professionally recognized behavioral health rehabilitative treatment models.
3. Be established by contemporaneous documentation that is accurate and demonstrates compliance. Documentation will be deemed to be contemporaneous if recorded by the end of the performing provider’s first work period following the provision of the care or services to be documented, or as provided in the Outpatient Behavioral Health Services manual, § 252.110, whichever is longer.

expiration month if there is no interruption in the accreditation. (The six-month extension is to give the Behavioral Health Agency time to receive a final report from the accrediting organization, which the provider must immediately forward to DHS.)

B. Providers must furnish DHS a copy of:

1. Correspondence related to the provider's request for re-accreditation:
  - a. Providers shall send DHS copies of correspondence from the accrediting agency within five (5) business days of receipt;
  - b. Providers shall furnish DHS copies of correspondence to the accrediting organization concurrently with sending originals to the accrediting organization.
2. An application for provider and site recertification:
  - a. DHS must receive provider and site recertification applications at least fifteen (15) business days before the DHS Behavioral Health Agency certification expiration date;
  - b. The Re-Certification form with required documentation is DHS BEHAVIORAL HEALTH AGENCY Form 230 and is available at [Provider Services & Quality Assurance - Arkansas Department of Human Services](http://www.arkansas.gov/dhs/dhs-Provider%20Services%20&%20Quality%20Assurance).[www.arkansas.gov/dhs/dhs-Provider Services & Quality Assurance - Arkansas Department of Human Services](http://www.arkansas.gov/dhs/dhs-Provider%20Services%20&%20Quality%20Assurance).

C. If DHS has not recertified the provider and site(s) before the certification expiration date, certification is void beginning 12:00 a.m. the next day.

**XIV. MAINTAINING DHS BEHAVIORAL HEALTH AGENCY CERTIFICATION:**

A. Providers must:

1. Maintain compliance;
2. Assure that DHS certification information is current, and to that end must notify DHS within thirty (30) calendar days of any change affecting the accuracy of the provider's certification records;
3. Furnish DHS all correspondence in any form (e.g., letter, facsimile, email) to and from the accrediting organization to DHS within thirty (30) calendar days of the date the correspondence was sent or received except:
  - a. As stated in § XII;
  - b. Correspondence related to any change of accreditation status, which providers must send to DHS within three (3) calendar days of the date the correspondence was sent or received.
  - c. Correspondence related to changes in service delivery, site location, or organizational structure, which providers must send to DHS within ten (10) calendar days of the date the correspondence was sent or received.
4. Display the Behavioral Health Agency certificate for each site at a prominent public