

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



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 _____

TOC required**212.200 FQHC Core Services****10-13-2203**

Covered FQHC core services are:

- A. Physician services;
- B. Services and supplies ~~incident~~incidental to physician services (including drugs and biologicals that cannot be self-administered);
- C. Pneumococcal vaccine and its administration and influenza vaccine and its administration;
- D. Services provided by physician assistants, nurse practitioners, clinical psychologists, ~~and~~ clinical social workers, licensed certified social workers, licensed professional counselors, licensed mental health counselors, and licensed marriage and family therapists;
- E. Services and supplies ~~incident~~incidental to physician assistant, nurse practitioner, clinical psychologist, ~~and~~ clinical social worker, licensed certified social worker, licensed professional counselor, licensed mental health counselor, and licensed marriage and family therapist services as would otherwise be covered if furnished by or ~~incident~~incidental to physician services; and
- F. Part-time or intermittent nursing care and related medical supplies to a homebound individual, in the case of those FQHCs that are located in an area in which the Secretary of the Department of Health and Human Services has determined there is a shortage of home health agencies.

212.260 Licensed Certified Social Worker**1-1-22**

- A. The services of licensed certified social workers working within the scope of their State licenses are covered if the services would be covered when furnished by a physician or incidental to physician services.
- B. Supplies and services incidental to a licensed certified social worker's services are covered if they would be covered incidental to a physician's services.

212.270 Licensed Professional Counselor**1-1-22**

- A. The services of licensed professional counselors working within the scope of their state licenses are covered if the services would be covered when furnished by a physician or incidental to physician services.
- B. Supplies and services incidental to a licensed professional counselor's services are covered if they would be covered incidental to a physician's services.

212.280 Licensed Mental Health Counselor**1-1-22**

- A. The services of licensed mental health counselors working within the scope of their state licenses are covered if the services would be covered when furnished by a physician or incidental to physician services.
- B. Supplies and services incidental to a licensed mental health counselor's services are covered if they would be covered when incidental to a physician's services.

212.290 Licensed Marriage and Family Therapist**1-1-22**

- A. The services of licensed marriage and family therapists working within the scope of their state licenses are covered if the services would be covered when furnished by a physician or incidental to physician services.
- B. Supplies and services incidental to a licensed marriage and family therapist's services are covered if they would be covered when incidental to a physician's services.

214.100

Definition of an FQHC "Core Service" Encounter

40-13-031-
1-22

A Federally Qualified Health Center (FQHC) "core service" encounter is a face-to-face contact between a patient of the FQHC and a physician, physician assistant, nurse practitioner, licensed clinical psychologist ~~or, licensed clinical social worker, licensed professional counselor, licensed mental health counselor, or licensed marriage and family therapist~~ and includes services and supplies incidental to the face-to-face contact.

- A. ~~Contacts with more than one of these health care professionals and multiple contacts with the same health care professional, which take place on the same day at a single location, constitute a single encounter except when the patient, after a first encounter, suffers illness or injury requiring additional diagnosis or treatment.~~
 - 1. ~~A patient of the FQHC may have a separate family planning encounter during the same visit to the FQHC for a core service encounter; however, a family planning visit is not covered separately when it takes place on the same day as a family planning surgical procedure.~~
 - 2. ~~An FQHC encounter is not covered separately on the same day as an obstetric or gynecologic procedure that the FQHC reports by CPT procedure code unless the encounter is for a different disorder or condition.~~
- B. ~~See Section 220.000 for information regarding FQHC core service encounter benefit limits.~~

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM
STATE ARKANSAS

ATTACHMENT 3.1-B
Page 2eee

AMOUNT, DURATION AND SCOPE OF
SERVICES PROVIDED

Revised: January 1, ~~1994~~2022

MEDICALLY NEEDY

- 2.c. Federally Qualified Health Center (FQHC) services and other ambulatory services that are covered under the plan and furnished by a FQHC in accordance with Section 4231 of the State Medicaid Manual (HCFA - Pub. 45-4). (Continued)

Covered FQHC core services are defined as follows:

- physician services;
- services and supplies incident to physician's services (including drugs and biologicals that cannot be self-administered);
- pneumococcal vaccine and its administration and influenza vaccine and its administration;
- physician assistant services;
- nurse practitioner services;
- clinical psychologist services;
- clinical social worker services;
- licensed certified social worker services;
- licensed professional counselor services;
- licensed mental health counselor services;
- licensed marriage and family therapist services;
- services and supplies incident to clinical psychologist, ~~and~~ clinical social worker services, licensed certified social worker, licensed professional counselor, licensed mental health counselor and licensed marriage and family therapist services as would otherwise be covered if furnished by or incident to physician services; and
- part-time or intermittent nursing care and related medical supplies to a homebound individual, in the case of those FQHCs that are located in an area in which the Secretary has determined there is a shortage of home health agencies.

FQHC ambulatory services are defined as any other ambulatory service included in the Medicaid State Plan if the FQHC offers such a service, (e.g. dental, etc.). The "other ambulatory services" that are provided by the FQHC will count against the limit established in the plan for that service.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM
STATE ARKANSAS

ATTACHMENT 3.1-A
Page 1eee

AMOUNT, DURATION AND SCOPE OF
SERVICES PROVIDED

Revised:

January 1, ~~1994~~2022

CATEGORICALLY NEEDY

- 2.c. Federally Qualified Health Center (FQHC) services and other ambulatory services that are covered under the plan and furnished by a FQHC in accordance with Section 4231 of the State Medicaid Manual (HCFA - Pub. 45-4). (Continued)

Covered FQHC core services are defined as follows:

- physician services;
- services and supplies incident to physician's services (including drugs and biologicals that cannot be self-administered);
- pneumococcal vaccine and its administration and influenza vaccine and its administration;
- physician assistant services;
- nurse practitioner services;
- clinical psychologist services;
- clinical social worker services;
- licensed certified social worker services;
- licensed professional counselor services;
- licensed mental health counselor services;
- licensed marriage and family therapist services;
- services and supplies incident to clinical psychologist, ~~and~~ clinical social worker, licensed certified social worker, licensed professional counselor, licensed mental health counselor, and licensed marriage and family therapist services as would otherwise be covered if furnished by or incident to physician services; and
- part-time or intermittent nursing care and related medical supplies to a homebound individual, in the case of those FQHCs that are located in an area in which the Secretary has determined there is a shortage of home health agencies.

FQHC ambulatory services are defined as any other ambulatory service included in the Medicaid State Plan if the FQHC offers such a service, (e.g. dental, etc.). The "other ambulatory services" that are provided by the FQHC will count against the limit established in the plan for that service.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

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 SPA 21-0011; FQHC 2-21; FQHC Mental Health Clinicians added

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	\$ 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

\$ _____

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

\$ 0

Next Fiscal Year

\$ 0

Budget Neutral

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
State Plan Amendment 2021-0011, Federally Qualified Health Center 2-21

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

Act 764 of the 2021 Legislative Session requires Arkansas Department of Human Services, Division of Medical Services, to apply for a State Plan Amendment and revise Medicaid rule to allow four (4) additional types of professionally licensed clinicians to provide core services in Federally Qualified Health Centers (FQHCs).

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

To comply with Act 764, Arkansas must submit a Medicaid State Plan amendment by revising Attachment 3.1-A page 1eee and Attachment 3.1-B page 2eee to include:

- Licensed certified social worker.
- Licensed professional counselor.
- Licensed mental health counselor.
- Licensed marriage and family therapist.

The FQHC provider manual has been updated to include these licensed professionals in Sections 212.200 and 214.100. Also, four (4) new sections have been added to the manual to instruct each type of clinician regarding the services and incidental supplies and services covered for them. Those sections are 212.260, 212.270, 212.280, and 212.290.

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: §§ 25-10-129, 20-76-201, and 20-77-107.

Effective January 1, 2022:

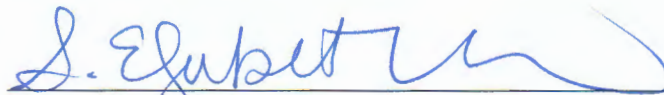
The Director of the Division of Medical Services (DMS) amends the Medicaid State Plan and the Federally Qualified Health Centers (FQHC) provider manual. Act 764 of the 93rd General Assembly requires DMS to revise the Medicaid rule and allow four additional types of professionally licensed clinicians to provide core services in FQHCs. Core services provided by licensed certified social workers, licensed professional counselors, licensed mental health counselors and licensed marriage and family therapists are added to the FQHC core services.

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. All public comments must be received by DHS no later than November 8th, 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.

A public hearing by remote access only through a Zoom webinar will be held on October 20th, 2021, at 11:30 a.m. and public comments may be submitted at the hearing. Individuals can access this public hearing at <https://us02web.zoom.us/j/86263838370>. The webinar ID is 862 6383 8370. 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 Pitman, Director
Division of Medical Services