

ARKANSAS REGISTER

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Proposed Rule Cover Sheet

Secretary of State

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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 _____

211.300 Primary Care Physician (PCP) Referral**7-1-176-1-
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 ~~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**6-1-223-4-
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.

State of Arkansas

As Engrossed: H4/7/21

93rd General Assembly

A Bill

Regular Session, 2021

HOUSE BILL 1862

By: Representative L. Johnson

For An Act To Be Entitled

AN ACT TO PROHIBIT REQUIRING *CERTAIN REFERRALS* FROM A
PRIMARY CARE PROVIDER IN ORDER FOR A BENEFICIARY IN
THE ARKANSAS MEDICAID PROGRAM TO RECEIVE MENTAL
HEALTH COUNSELING; AND FOR OTHER PURPOSES.

Subtitle

*TO PROHIBIT REQUIRING CERTAIN REFERRALS
FROM A PRIMARY CARE PROVIDER IN ORDER FOR
A BENEFICIARY IN THE ARKANSAS MEDICAID
PROGRAM TO RECEIVE MENTAL HEALTH
COUNSELING.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 77, Subchapter 1, is
amended to add an additional section to read as follows:

20-77-142. Prohibition on referrals for mental health counseling.
The Arkansas Medicaid Program shall not require a beneficiary to first
obtain a referral from a primary care provider before receiving mental health
counseling for the first ten (10) visits for mental health counseling.

/s/L. Johnson

APPROVED: 4/25/21



FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Human Services

DIVISION 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 Act 886 – OBHS and SBHMS Manuals

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	\$81,312
Federal Funds	\$205,200
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$286,512

Next Fiscal Year

General Revenue	\$975,747
Federal Funds	\$2,462,403
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$3,438,149

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

\$ 81,312

Next Fiscal Year

\$ 975,747

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; - *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 Arkansas 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 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.*

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

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 <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 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 <https://us02web.zoom.us/j/87109354772>. The webinar ID 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 Pitman, Director
Division of Medical Services