

Behavioral Health Counseling Code Rate Increase – Zoom Public Hearing Transcript 11/01/23 @ 10:00 CST

Mac Golden: Welcome everyone to a public hearing on a rule regarding behavioral health counseling code rate increase. Anita Castleberry, the Division of Medical Services Business Operations Manager will be announcing the Notice of Rule Making and then we will open the floor for public comments. If you wish to make a public comment, please utilize the raise hand feature via zoom and you will be recognized to give a public comment on the record. All official responses to public comments will appear on the DHS proposed rules website after the public comment period concludes. Ms. Castleberry will now announce the notice of rulemaking.

Anita Castleberry: Thank you. This is the Notice of Rule Making.

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.

Good quality, easily accessible counseling services utilized for early intervention can prevent beneficiaries' needs for higher cost, longer-term home and community-based or institutional services. Based upon a study of outpatient behavioral health rates conducted in 2022, the Division of Medical Services (DMS) issues a rule amending counseling rates and removing the primary care provider referral requirement to receive behavioral counseling services. The Medicaid State Plan amendment proposes to make permanent the increase to individual counseling rates that was instituted during the pandemic and to rebalance group rates as recommended in the rate study. Beginning January 1, 2024, the updates to the Behavioral Health Counseling are as follows: Individual Behavioral Health Counseling, Marital or Family Behavioral Health Counseling (both with and without the client present), and Mental Health Diagnosis will be calculated at eighty percent (80%) of the 2022 Medicare non-rural rate for the State of Arkansas; and Group Behavioral Health Counseling and Multi-Family Behavioral Health Counseling will be calculated at one hundred percent (100%) of the 2022 Medicare non-rural rate for the State of Arkansas. The rate changes were set using a state comparison methodology based on the Medicare rate. As a result, individual counseling rates that were below 80% of the Medicare rate were raised to 80% and the group and multi-group family therapy rates that were well above 100% of the Medicare rate were lowered to 100%. The projected annual cost of this change for State fiscal year (SFY) 2024 is \$3,610,316.00 (federal share of \$2,599,427.00) and for SFY 2025 is \$7,220,632.00 (federal share of \$5,198,855.00).

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 ar.gov/dhs-proposed-rules. This notice also shall be posted at the local office of the Division of County Operations (DCO) of DHS in every county in the state.

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 12, 2023. 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 501-320-6428.

Mac Golden: Thank you, Miss Castleberry. Please let the record reflect we have seven attendees for today's public hearing. It appears we have one attendee that would like to make a public comment. Mr. Joel Landreneau you are recognized to give your comment on the record.

Joel Landreneau: I am Joel Landreneau. I am Executive Director of the Arkansas Council for Behavioral Health and the Council has some comment to make about the rule proposal. First, the Council notes that the stated goal of the rule amendments are to provide good quality, easily accessible counseling services to eliminate or reduce the need for higher cost institutional care, and the Council believes that some of the proposed changes accomplish that, and the Council believes that other changes run a completely counter to that stated goal. For one thing, the PCP referral requirement was never a good idea. So, it is obviously a good idea to get rid of it. The PCP referral was never anything more than a procedural hurdle that acted as a barrier to access to care. We at the Council had asked for the removal of it for adults and were pleased to see that the Department has seemed fit to get rid of it for all behavioral health clients, and we believe that this is a positive change. The individual and marital and family counseling rates were a concern to us as well. Back in May the Council had the pleasure of hosting an in person meeting with Secretary Putnam, and with Assistant Director Janet Mann and Paula Stone, and they at that time assured the Council that the Department was working on a complete overhaul of Medicaid rates and a search for service gaps. They called it the Medicaid sustainability review process. Our observation at this date, November 1st, 2023, is that that process has only barely begun, if it has begun. And the plan was to have the process completed by the end of the year. The promise there was to look at the service gaps and to plug those gaps with newly designed services to make sure that there was a seamless continuum of care. The Council doesn't believe that has happened. But at the very least, we were gratified to see the temporary disaster SPA rates for individual and marital and family being made permanent. That was a concern. With the NSRP not advancing at the initial pace of change, it was a concern that that might revert back to the old rates, and it is gratifying to see that that is not the case. However, we don't share our enthusiasm for the reduction in the group therapy rates. And here's why. It is true that group therapy rates are out of line with group therapy rates with Medicare, and the adjustment of it to 100% of Medicare does align it with Medicare. The problem with this approach is that it doesn't take into consideration the role the group therapy plays in our service continuum. It's been our observation that rates tend to get looked at in isolation for that particular service and there's no evidence that I can see that there's been a consideration for the role that the rate plays in the entire service continuum. We are concerned that there are chronically, mentally ill adults who need to be seen multiple times a week who attend day rehab programs for whom this group therapy rate is an integral part. And it's an integral part of making those services economical to provide. Our concern is that there are programs that simply won't continue that programming if this rate cut is put into effect. Now, I understand that this is just a rate change for the behavioral services manual. This is tier one. The problem though, is that we know that the Passes tend to look at the Medicaid rate, not only as the floor, but also as the ceiling. And our concern is that there are tier 2 and tier 3 clients who will not be seen, because these programs won't be able to continue because the PASSES will mirror the rate in the fee schedule that's proposed here. We believe that's gonna be a harm to those clients' long term and it's going to result in more institutional care because a lot of these people are hanging on a thread. We've had this conversation with DHS before, and I think DHS has acknowledged that there is a service gap between the residential services in a level two therapeutic community and just being out on your own and that there's a middle ground where there's really nothing there for people and this fulfills that role. And we've talked about maybe a level 3 therapeutic community or act teams, or some other intervening force that's between residential and on your own. But without that in place it seems unwise to the Council to get rid of the stop gap measure, that you have to meet that need without proposing something and implementing something to take its place. We believe, therefore, that the group therapy rate is cut is premature without those services to be put into place, to fulfill the function it is currently fulfilling. And we would ask that DHS delay that rate or at the very least bear upon the PASSES to not pass it on for the tier 2 and tier 3 clients. We think that access to care and the prevention of institutionalized care would require that we provide services in this space in the continuum without disrupting what's happening at the present time. Thank you.

Mac: Thank you, sir, for your lengthy comment. We will respond after the public comment period concludes. I'll pause now for a moment to give anyone else an opportunity to make a public comment. Please use the raise hand feature.

It does not appear anyone else wishes to make a public comment today. We thank everyone for attending, and we will let the public hearing close now and go off the record. Thank you.