DHS Responses to Public Comments Regarding OBHS Rule Revisions for Extensions

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Joel Landreneau, JD

Crochet & Landreneau, PLLC Attorneys at Law

Comment: Okay, I have two comments to make about the proposed rules, the proposed changes in 252 and the billing codes for outpatient behavioral health services. During the COVID pandemic and the emergency rule suspensions that were put into place during that time, there were somewhat different treatment for different codes, with respect to audio only telemedicine, some and the COVID emergency promulgated manual that came out in early April, also, made a specific provision, say, for example, for marital and family counseling which could be done audio only, but then some of the other telemedicine approved services, such as crisis intervention, made no specific mention of audio only and whether or not audio only was or was not permitted. And so individual therapy was also one that was not specifically addressed in that manual and it isn't here either, and so I would request that if there is going to be an allowance for audio only for some or all of the billing codes, that the manual would reflect, that so that unless that's addressed somewhere else I don't see it here, it looks like telemedicine is just that, a term is just used. I guess the definition of that term would be as Arkansas law now defines telemedicine. I think it's act 829 that allowed audio only, but then it has a qualification in it that says, "if it meets the standards for the service," or something along those lines, it looks like it might be a payor decision whether or not audio only does or does not substantially meet the standards for that service, so I would request that clarification be made. I get that question a lot. I'm sorry, I didn't even introduce myself, I'm Joel Landreneau, I'm Executive Director of Behavioral Health Providers Association and I get this question a lot, "is audio only allowed or not allowed for this or that service," and it would be very helpful if that was clarified.

Response:

Thank you for your comment and questions. The comments and questions related to Act 829 and other telemedicine acts will be reviewed separately from this rule. We will consider what revisions may need to be promulgated and implemented during that review.

Comment: The second comment I would like to make is, with respect to who the authorized performing providers are. The proposed changes allow for, say, for example, individual behavioral health counseling 90832, 90834, 90837, have modifiers for substance abuse U4 and U5 and those services can be in our judgment, delivered by people who hold the AADC credential. These are master's degree therapists who are specifically trained and supervised in the delivery of substance abuse services. It doesn't appear, I think, historically, they haven't been permitted to provide individual psychotherapy, even when substance abuse is the primary diagnosis, and I would request that the AADC's, of which there are little more than 100 in the state who have that credential. It is a nationally recognized credential and it is, it qualifies them to render substance abuse services, so it would, I think that would appear to individual behavioral health counseling the 90832, 34, 37, U4 and U5 modifiers, it would also apply to the group behavioral health counseling and 90853 U4 and U5 and marital and family, there's a substance abuse

modifier at 90847. So I would request, some of the AADC's also have LPC and LCSW credentials, which would enable them to do this, but not all of them do, but all a AADC's have Master's degrees and to the extent that there are those out there who have Master's degrees and the requisite training in substance abuse treatment, they should be reimbursed for Medicaid, when they render substance abuse treatment.

And that concludes my remarks.

Response:

Thank you for your comments. Your request is outside the scope of this proposed rule change. No changes were proposed regarding allowed performing providers. For a list of currently authorized providers see section 211.200 Staff Requirements in Section II of the Outpatient Behavioral Health Services manual.

Joel Landreneau, JD on behalf of the Behavioral Health Providers' Association

Comment: The removal of the telemedicine modifier from certain codes is a welcome development. It has been a needless effort by providers and a needless expense for the state to require separate authorizations for the same service according to delivery modality. Our understanding of this change is that one authorization will be required for a service, which will then be interchangeable between face-to-face and telemedicine, and identifiable by the place of service codes. Please confirm that this understanding is correct.

Response:

Under the proposed change, one authorization will be required for a service to be provided. Separate authorizations for face-to-face or telemedicine provision of services will not be required.

Comment: There needs to be a distinction made clear between those services that can be delivered via telemedicine audio-only, and those that cannot. Act 829 of 2021 amended the definition of "telemedicine" to read as follows:

> (C) For the purposes of this subchapter, "telemedicine" does not include the use of:
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> (i)(a) Audio-only communication, ~~including without limitation interactive audio~~ unless the audio-only communication is real-time, interactive, and substantially meets the requirements for a healthcare service that would otherwise be covered by the health benefit plan.

This definition of "telemedicine" applies to each and every service. In all cases, telephone-only is "real-time" and "interactive." These rules should establish bright-line rules for when a service "substantially meets the requirements for a healthcare service that would otherwise be covered by the health benefit plan." Our reading of this language is that the payors determine when audio-only "substantially meets the requirements for a healthcare service." The present rules, as enacted and as proposed, do not make these determinations, leaving providers uncertain regarding when audio-only can or cannot be used in service delivery. Act 829 had an emergency clause, and thus it has been law since April 21, 2021. These rules should be revised to clarify when audio-only is permitted or prohibited.

Response:

Thank you for your comment and questions. Comments and questions related to Act 829 and other telemedicine acts will be reviewed separately from this rule. We will consider what revisions may need to be promulgated and implemented during that review.

Comment: Codes with Substance-Abuse modifiers should add LADAC's and AADC's to the list of Allowable Performing Providers. Behavioral Health Agencies ("BHA's") in this state are facing great difficulties in recruiting and retaining Independently Licensed Practitioners who are willing to do the work required of therapists in BHA's, such as supervision of paraprofessionals. Some agencies are in such straits that they are unable to assign a therapist to a new patient for weeks at a time. There are strong incentives for therapists to leave BHA's and establish independent practices, including a billing rate that is equal to that paid to BHA's, but without the added, uncompensated responsibilities therapists are need for in agencies. There are several policy changes that are needed to address this situation, which is beginning to approach crisis levels. One simple change that could be made in this draft is for Medicaid to recognize Licensed Alcoholism and Drug Abuse Counselors (LADAC's) and Advanced Certified Alcohol Drug Counselor (AADC's) for those codes that have a Substance Abuse modifier, and recognize these practitioners for services requiring that modifier. LADAC's and AADC's both require a Master's Degree in a Behavioral Science or Human Services field with a clinical application from an accredited university. AADC's require a 300-hour supervised practicum and 2,000 hours of supervised work experience under a Master's Level supervisor. LADAC's likewise require a Master's degree in a health or behavioral services field, along with 3 years' clinically supervised work experience in the field of Substance Abuse and Mental Health. Many of these professionals also hold certifications as LCSW's or LPC's, but there is a sizeable number within the state that do not. This means that Medicaid will not pay for a certified substance abuse practitioner with a Master's Degree to render Individual Therapy to SUD-primary patients, even though they are qualified to do so within the scope of their practice. As of July 13, 2021, there are presently 120 AADC's in the State of Arkansas who are qualified to serve SUD patients, but who are not reimbursed by Medicaid for doing so unless they also hold an LCSW or an LPC. There is no public policy reason who Master's-level treatment professionals should be excluded from serving Medicaid patients, especially in this time when recruiting and retaining LCSW's and LPC's is so difficult for BHA's. I would ask that this request be treated as a request for rule promulgation under Ark. Code Ann. § 25-15-204(d).

Response:

Your request is outside the scope of this proposed rule change. No changes were proposed regarding allowed performing providers. For a list of currently authorized providers see section 211.200 Staff Requirements in Section II of the Outpatient Behavioral Health Services manual.

Comment: Mental Health Diagnosis should be increased to a maximum of two hours per encounter. Mental Health Diagnosis was reduced in rate in the 2018 transformation to an equivalent of one hour of service in the old rate. Practitioners routinely tell me that they take about two (2) hours at a minimum to do a thorough intake, which they regard as vital to arrive upon an accurate diagnosis and well-informed plan of care. The one single encounter, at the rate at which it is paid, is not sufficient to meet the needs of the patient, and more often than not, the practitioners simply perform the thorough intake anyway, and accept the inadequate payment. I would ask that this request be treated as a request for rule promulgation under Ark. Code Ann. § 25-15-204(d).

Response:

Thank you for your comment. Your requested change is outside of the scope of this proposed rule change. This proposed rule change does not address the encounter or rate for Mental Health Diagnosis service but is limited only to changes regarding telemedicine service for Medicaid beneficiaries who are under age 21.