

Stricken language would be deleted from and underlined language would be added to present law.
Act 1035 of the Regular Session

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S4/4/19
A Bill

HOUSE BILL 1651

By: Representatives Ladyman, C. Cooper

By: Senators Irvin, K. Hammer

For An Act To Be Entitled

AN ACT TO AMEND AND UPDATE THE LAWS REGARDING
TREATMENT FOR INDIVIDUALS WITH INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES; TO ENSURE RESPECTFUL
LANGUAGE IS USED WITHIN THE ARKANSAS CODE REGARDING
INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL
DISABILITIES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND AND UPDATE THE LAWS REGARDING
TREATMENT FOR INDIVIDUALS WITH
INTELLECTUAL AND DEVELOPMENTAL
DISABILITIES; AND TO ENSURE RESPECTFUL
LANGUAGE IS USED WITHIN THE ARKANSAS
CODE.

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

SECTION 1. Arkansas Code § 4-88-201(b), concerning the definition of "disabled person" under deceptive trade practices, is amended to read as follows:

(b) "~~Disabled person~~ Person with a disability" means a person who has a physical or mental impairment which substantially limits one (1) or more of such person's major life activities.

(1) As used in this subsection, "physical or mental impairment" means any of the following:

(A) Any physiological disorder or condition, cosmetic



disfigurement, or anatomical loss substantially affecting one (1) or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(B) Any mental or psychological disorder, ~~such as mental retardation~~ including intellectual and developmental disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, spina bifida, Down syndrome, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, ~~mental retardation~~ intellectual and developmental disabilities, and emotional illness.

SECTION 2. Arkansas Code §§ 4-88-202 through 4-88-207 are amended to read as follows:

4-88-202. Civil penalty – Disposition of funds.

(a) If any person is found to have violated any provision of this chapter, including unlawful practices related to charitable solicitations, and the violation is committed against ~~elder or disabled persons~~ an elder person or a person with a disability, in addition to any civil penalty otherwise set forth or imposed, the court may impose an additional civil penalty not to exceed ten thousand dollars (\$10,000) for each violation.

(b) The civil penalties imposed pursuant to subsection (a) of this section shall be deposited with the Treasurer of State and placed into the Elder Person and ~~Disabled~~ Person with a Disability Victims Fund, a special fund created in the State Treasury and administered by the Attorney General for the investigation and prosecution of deceptive acts against ~~elder and disabled persons~~ an elder person or a person with a disability and for consumer education initiatives.

4-88-203. Determination of civil penalty.

In determining whether to impose an enhanced civil penalty under this subchapter and the amount thereof, the court shall consider the extent to which one (1) or more of the following factors are present:

(1) Whether the defendant's conduct was in disregard of the rights of the ~~elder or disabled person~~ elder person or person with a disability;

(2) Whether the defendant knew or should have known that the defendant's conduct was directed to an ~~elder person or disabled person~~ elder person or person with a disability;

(3) Whether the ~~elder or disabled person~~ elder person or person with a disability was more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability than other persons and whether the ~~elder or disabled person~~ elder person or person with a disability actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct;

(4) Whether the defendant's conduct caused an ~~elder or disabled person~~ elder person or person with a disability to suffer any of the following:

(A) Mental or emotional anguish;

(B) Loss of or encumbrance upon a primary residence of the ~~elder or disabled person~~ elder person or person with a disability;

(C) Loss of or encumbrance upon the elder or disabled person's principal employment or principal source of income;

(D) Loss of funds received under a pension or retirement plan or a government benefits program;

(E) Loss of property set aside for retirement or for personal or family care and maintenance; or

(F) Loss of assets essential to the health and welfare of the ~~elder or disabled person~~ elder person or person with a disability; or

(5) Any other factors the court deems appropriate.

4-88-204. Cause of action.

An ~~elder or disabled person~~ elder person or person with a disability who suffers damage or injury as a result of an offense or violation described in this chapter has a cause of action to recover actual damages, punitive damages, if appropriate, and reasonable attorney's fees. Restitution ordered pursuant to this section has priority over a civil penalty imposed pursuant to this subchapter.

4-88-205. Education initiatives.

The Attorney General shall, pursuant to the funds allocated in this subchapter, develop and implement statewide educational initiatives to inform ~~elder persons and disabled persons~~ an elder person and a person with a disability, law enforcement agencies, the judicial system, social services professionals, and the general public as to the prevalence and prevention of consumer crimes against ~~elder and disabled persons~~ an elder person or person with a disability, the provisions of this chapter, the penalties for violations of this chapter, and the remedies available for victims of violations.

4-88-206. Referrals for abuse, neglect, and exploitation.

The Attorney General shall establish and maintain referral procedures with the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services in order to provide any necessary intervention and assistance to ~~elder or disabled persons~~ an elder person or person with a disability who may have been victimized by violations of this chapter.

4-88-207. Elder Person and ~~Disabled~~ Person with a Disability Victims Fund created.

The "Elder Person and ~~Disabled~~ Person with a Disability Victims Fund" is hereby created and established on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State and shall consist of those special funds as may be provided by law. This fund shall be used for the investigation and prosecution of deceptive acts against ~~elder and disabled persons~~ an elder person or person with a disability and for consumer education initiatives directed toward ~~elder and disabled persons~~ an elder person or person with a disability, law enforcement officers, the judicial system, social services professionals, and the general public on the provisions of this chapter and related statutes.

SECTION 3. Arkansas Code § 5-4-618 is amended to read as follows:

5-4-618. ~~Mental retardation~~ Defendants with intellectual disabilities.

(a)(1) As used in this section, "~~mental retardation~~" "intellectual disabilities" means:

- (A) Significantly ~~subaverage~~ below average general

intellectual functioning accompanied by a significant deficit or impairment in adaptive functioning manifest in the developmental period, but no later than age eighteen (18) years of age; and

(B) A deficit in adaptive behavior.

(2) There is a rebuttable presumption of ~~mental retardation~~ intellectual disabilities when a defendant has an intelligence quotient of sixty-five (65) or below.

(b) No defendant with ~~mental retardation~~ intellectual disabilities at the time of committing capital murder shall be sentenced to death.

(c) The defendant has the burden of proving ~~mental retardation~~ intellectual disabilities at the time of committing the offense by a preponderance of the evidence.

(d)(1) A defendant on trial for capital murder shall raise the special sentencing provision of ~~mental retardation~~ intellectual disabilities by motion prior to trial.

(2)(A) Prior to trial, the court shall determine if the defendant has ~~mental retardation~~ an intellectual disability.

(B)(i) If the court determines that the defendant does not have ~~mental retardation~~ an intellectual disability, the defendant may raise the question of ~~mental retardation~~ an intellectual disability to the jury for determination de novo during the sentencing phase of the trial.

(ii) At the time the jury retires to decide mitigating and aggravating circumstances, the jury shall be given a special verdict form on ~~mental retardation~~ an intellectual disability.

(iii) If the jury unanimously determines that the defendant had ~~mental retardation~~ an intellectual disability at the time of the commission of capital murder, then the defendant will automatically be sentenced to life imprisonment without possibility of parole.

(C) If the court determines that the defendant has ~~mental retardation~~ an intellectual disability, then:

(i) The jury is not "death qualified"; and

(ii) The jury shall sentence the defendant to life imprisonment without possibility of parole upon conviction.

(e) However, this section is not deemed to:

(1) Require unanimity for consideration of any mitigating circumstance; or

(2) Supersede any suggested mitigating circumstance regarding mental defect or disease currently found in § 5-4-605.

SECTION 4. Arkansas Code § 9-28-402(12)(F) and (G), concerning the definition of "exempt child welfare agency" under the Child Welfare Agency Licensing Act, are amended to read as follows:

(F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to the Location Act for Community Homes for ~~Developmentally Disabled Persons~~ Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

(G) Any facility licensed as a family home pursuant to the Location Act for Community Homes for ~~Developmentally Disabled Persons~~ Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

SECTION 5. Arkansas Code § 9-28-402(12)(M), concerning the definition of "exempt child welfare agency" under the Child Welfare Agency Licensing Act, is amended to read as follows:

(M) Any intellectual or other developmental disabilities services waiver provider licensed under § 20-48-208 or the Location Act for Community Homes for ~~Developmentally Disabled Persons~~ Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

SECTION 6. Arkansas Code § 10-3-203(3)(A)(iii), concerning the subject matter jurisdiction of the House Committee on Public Health, Welfare, and Labor, is amended to read as follows:

(iii) House Committee on Public Health, Welfare, and Labor – matters pertaining to public health, mental health, ~~mental retardation~~ intellectual and other developmental disabilities, public welfare, human relations and resources, environmental affairs, water and air pollution, labor and labor relations, similar legislation, and resolutions germane to the subject matter of the House Committee on Public Health, Welfare, and Labor;

SECTION 7. Arkansas Code § 10-3-203(3)(B)(i), concerning the subject matter jurisdiction of the Senate Committee on Public Health, Welfare, and

Labor, is amended to read as follows:

(i) Senate Committee on Public Health, Welfare, and Labor – matters pertaining to public health, mental health, ~~mental retardation~~ intellectual and other developmental disabilities, public welfare, human relations and resources, the aged and problems of the aging, environmental affairs, water and air pollution, labor and labor relations, and similar legislation;

SECTION 8. Arkansas Code § 12-12-1513(a)(2), concerning status as a registered sex offender, is amended to read as follows:

(2) Certain agencies are mandated to perform background checks on persons who work with children, elderly persons, and ~~developmentally disabled persons~~ individuals with intellectual or other developmental disabilities;

SECTION 9. Arkansas Code § 12-12-1603(7), concerning the definition of "individuals with disabilities" within the Criminal History for Volunteers Act, is amended to read as follows:

(7) "Individuals with disabilities" means ~~mentally ill or developmentally disabled~~ individuals with mental illness or intellectual or other developmental disabilities or with physical or mental impairments that substantially limit one (1) or more of the major life activities of the individual;

SECTION 10. Arkansas Code § 17-82-701(5), concerning the definition of "public settings" in the dental hygienist collaborative care program, is amended to read as follows:

- (5) "Public settings" means:
- (A) Adult long-term care facilities;
 - (B) Charitable health clinics that provide free or reduced-fee services to low-income patients;
 - (C) County incarceration facilities;
 - (D) Facilities that primarily serve ~~developmentally disabled persons~~ individuals with intellectual or other developmental disabilities;
 - (E) Head Start programs;

(F) Homes of homebound patients who qualify for in-home medical assistance;

(G) Hospital long-term care units;

(H) Local health units;

(I) Schools;

(J) Community health centers; and

(K) State correctional institutions; and

SECTION 11. Arkansas Code § 20-8-109(d), concerning the approval of certain new projects by the Health Services Permit Agency, is amended to read as follows:

(d)(1) The Health Services Permit Agency shall process all applications or certificates of need for intermediate care facilities for ~~the~~ individuals with intellectual or other developmental disabilities with fifteen (15) or fewer beds ~~which~~ that were pending on April 4, 1987, and shall for a period of thirty (30) days after April 4, 1987, accept additional applications for such facilities.

(2) The applications shall be processed utilizing the criteria and procedures in existence before April 4, 1987, and in addition the Health Services Permit Agency shall consider as a primary factor the experience of each applicant in serving ~~the developmentally disabled population~~ individuals with intellectual or other developmental disabilities.

SECTION 12. Arkansas Code § 20-10-802(12), concerning the exceptions from licensing requirements for home healthcare services, is amended to read as follows:

(12) Persons providing services to one (1) or more ~~developmentally disabled persons~~ individuals with intellectual or other developmental disabilities, as defined in § 20-48-101, under a license or certificate from the Division of Developmental Disabilities Services of the Department of Human Services.

SECTION 13. Arkansas Code § 20-15-302(c)(1), concerning the testing of newborns relating to phenylketonuria, hypothyroidism, and sickle-cell anemia, is amended to read as follows:

(c)(1) The department shall establish and maintain a program of

reviewing and following up on positive cases so that measures may be taken to prevent intellectual and other developmental disability or other permanent disabilities.

SECTION 14. Arkansas Code § 20-46-502(1), concerning the definition of "adults with long-term severe mental illness" as to intensive residential treatment, is amended to read as follows:

(1)(A) "Adults with long-term severe mental illness" means a person, eighteen (18) years of age or over, who meets criteria for service eligibility as defined by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(B) Individuals whose sole disability results from alcoholism, drug abuse, or intellectual or other developmental disability are excluded from this definition; and

SECTION 15. Arkansas Code § 20-47-202(12), concerning the definition of "mental illness" related to commitment and treatment of persons with mental illness, is amended to read as follows:

(12)(A) "Mental illness" means a substantial impairment of emotional processes, the ability to exercise conscious control of one's actions, or the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions.

(B) Mental illness does not include impairment solely caused by:

- (i) Epilepsy;
- (ii) ~~Developmental~~ Intellectual or other developmental disability;
- (iii) Continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs; or
- (iv) Dependence upon or addiction to any substance such as alcohol or drugs;

SECTION 16. Arkansas Code § 20-47-406(a) and (b), concerning Department of Human Services agreements for medical care of indigent mentally ill or tubercular, are amended to read as follows:

(a) The Arkansas State Hospital and other state institutions are authorized to enter into agreements with the Department of Human Services to establish and maintain a medical care program for the indigent mentally ill, ~~mentally retarded~~ individuals with intellectual and developmental disabilities, and tubercular at the Arkansas State Hospital and any other state institution and to transfer funds to the Department of Human Services Fund pursuant to the agreement.

(b) The agreement made between the Arkansas State Hospital or other institution and the department shall be in compliance with federal law and shall meet qualifications necessary for federal funds to be paid for the care of indigent mentally ill, ~~mentally retarded~~ intellectually and developmentally disabled, and tubercular in the Arkansas State Hospital or other institution.

SECTION 17. Arkansas Code § 20-48-101(2) and (3), concerning the definitions of "developmental disability" and "existing operations" regarding the treatment of individuals with developmental disabilities, are amended to read as follows:

(2) "~~Developmental~~ Intellectual and developmental disability" means a disability of a person that:

(A)(i) Is attributable to ~~intellectual disability, an~~ impairment of general intellectual functioning or adaptive behavior, including cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

(ii) Is attributable to any other condition of a person found to be closely related to intellectual and developmental disability because the condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability or requires treatment and services similar to that required for a person with an intellectual and developmental disability; or

(iii) Is attributable to dyslexia resulting from a disability described in subdivision (2)(A)(i) ~~of this section~~ or subdivision (2)(A)(ii) of this section;

(B) Originates before the person attains twenty-two (22) years of age;

(C) Has continued or can be expected to continue

indefinitely; and

(D) Constitutes a substantial ~~handicap~~ impairment to the person's ability to function without appropriate support services, including, but not limited to, planned recreational activities, medical services such as physical therapy and speech therapy, and ~~possibilities for~~ sheltered employment or job training;

(3) "Existing operations" means the provision by a qualified ~~nonprofit~~ community provider of one (1) or more of the following services without regard to order:

(A) ~~A developmental day treatment clinic services preschool program or adult development program~~ A licensed early intervention day treatment program or adult developmental day treatment program;

(B) A licensed developmental disability services group home in operation and recognized by the ~~division~~ Division of Developmental Disabilities Services of the Department of Human Services on or before July 1, 1995;

(C) An intermediate care facility ~~for the persons with intellectual disabilities program with fifteen (15) beds or less~~ for individuals with intellectual disabilities that has fifteen (15) beds or fewer beds; or

(D) An apartment complex in operation and serving individuals with developmental disabilities on or before January 1, 2008;

SECTION 18. Arkansas Code § 20-48-104 is amended to read as follows:

20-48-104. Intermediate Care Facility for Persons with Intellectual and Developmental Disabilities program – Administration.

(a) The operation of the community-based Intermediate Care Facility for Persons with Intellectual and Developmental Disabilities program will be subject to the oversight of a five-member committee composed of three (3) members of the House of Representatives to be appointed by the Speaker of the House of Representatives and two (2) members of the Senate to be appointed by the President Pro Tempore of the Senate.

(b) The committee shall provide oversight for the operation of the program and make recommendations, within the appropriate federal regulations and guidelines, to the Division of Developmental Disabilities Services and the Office of Long-Term Care to establish and clarify the mission, goals,

levels of services, and scope of the program and to provide consistency in state ~~regulations~~ rules, guidelines, standards, and policies.

(c) The committee shall also make recommendations for adequate funding to ensure the fiscal integrity of the program to allow it to be operated pursuant to the state rules and federal regulations, guidelines, standards, and policies.

SECTION 19. Arkansas Code § 20-48-201 and 20-48-202 are amended to read as follows:

20-48-201. Title.

This subchapter shall be known and may be cited as the “Arkansas Intellectual and Developmental Disabilities Act”.

20-48-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

~~(1) “Board” means the Board of Developmental Disabilities Services;~~

~~(2) “Center” means a human development center;~~

~~(3)~~(1) “Community” means either region or locality;

~~(4)~~(2)(A) “Coordinate” means to ~~bring resources to bear~~ utilize resources in appropriate sequence and relationship to provide the proper services for individuals with intellectual and developmental disabilities.

(B) “Coordinate” implies a working relationship with, but not administrative authority over, public agencies providing services to individuals with intellectual and developmental disabilities;

~~(5) “Director” means the Director of the Department of Human Services;~~

~~(6) “Division” means the Division of Developmental Disabilities Services of the Department of Human Services or the appropriate division as determined by the Director of the Department of Human Services;~~

~~(7)~~(3) “Individual” means a person without regard to chronological age;

(4) “Intellectual and developmental disability” means the same as defined in § 20-48-603(1)(A);

~~(8)~~(5) “Locality” means a geographical area defined by the ~~division~~ Division of Developmental Disabilities of the Department of Human

Services or the appropriate division as determined by the Director of the Department of Human Services usually consisting of a municipality or county but not excluding other areas within easy commuting distance;

~~(9)~~(6) “Services for individuals with intellectual disabilities” or “services” means all services pertaining to and incidental to the prevention, detection, diagnosis, evaluation, treatment, care, custody, education, training, rehabilitation, or supervision of individuals with intellectual disabilities;

~~(10)~~(7) “Private organizations” means organizations, persons, firms, individuals, corporations, or associations;

~~(11)~~(8) “Public agencies” means all agencies, departments, boards, institutions, commissions, officers, officials, political subdivisions and agencies thereof, and school districts of this state;

~~(12)~~(9) “Region” means a geographical area defined by the division, usually consisting of all or parts of two (2) or more counties, which is created to provide services for individuals with intellectual and developmental disabilities when the services cannot be provided feasibly or practically at the local level;

~~(13)~~(10)(A) “Individual with intellectual and developmental disabilities” means:

~~(A)~~(i) A person with a mental deficit requiring him or her to have special evaluation, treatment, care, education, training, supervision, or control in his or her home or community, or in a state institution for persons with intellectual disabilities; or

~~(B)~~(ii) A person with intellectual and developmental disabilities who may not exhibit an intellectual deficit on standard psychological tests but who, because of other handicaps, functions as a person with intellectual disabilities.

(B) "Individual with intellectual and developmental disabilities" does not include ~~Not included is~~ a person whose primary ~~problem condition~~ is caused by mental illness, emotional disturbance, physical handicap, or sensory defect; and

~~(14)~~(11) “Superintendent” means the chief administrative officer assigned full-time to a human development center.

SECTION 20. Arkansas Code § 20-48-205 is amended to read as follows:

20-48-205. Board of Developmental Disabilities Services – Powers and duties.

(a) The Board of Developmental Disabilities Services:

(1) Shall:

(A) Have have charge of the properties used for the purposes of the human development centers;

~~(2) Shall exercise supervision over the appointment, performance of duties which includes such matters as off-premises assignments for educational or training purposes, removal of all employees, and the fixing of their compensation~~

(B) Supervise:

(i) Appointment of employees;

(ii) Performance of duties by employees, including off-premises assignments for educational or training purposes;

(iii) Removal of employees; and

(iv) Fixing of employee compensation; and

~~(3)(C) Shall exercise supervision over~~ Supervise expenditures of the human development centers; and

~~(4)(2)~~ May:

(A) accept Accept and hold in trust real, personal, or mixed property received by grant, gift, will, or otherwise;

~~(5)(B) May make purchases of~~ Purchase land or receive grants or gifts of land and take deeds therefor in the name of the State of Arkansas;

~~(6)(C) May accept~~ Accept grants or gifts of money from any source whatever and use the money for any of ~~its~~ the powers and purposes of the board; and

~~(7)(D) May take~~ Take all action and execute all documents necessary or desirable to carry out ~~its~~ the powers and purposes of the board.

(b) The board may make ~~such regulations respecting~~ rules regarding the care, custody, training, and discipline of individuals with intellectual and developmental disabilities in the human development centers or receiving services for individuals with intellectual and developmental disabilities and respecting the management of the human development centers and ~~their~~ the affairs as ~~it~~ the board may deem necessary or desirable to the proper performance of ~~its~~ powers and purposes of the board.

(c) The board is prohibited from promulgating any rule ~~or regulation~~ that would set the salary of any employee at the local level unless specifically required to do so by the United States Government.

SECTION 21. Arkansas Code § 20-48-206(b), concerning the powers and duties of the Board of Developmental Disabilities Services regarding human development centers, is amended to read as follows:

(b)(1) ~~In this regard, admissions~~ Admissions to the institutional facilities of the human development centers shall be on the basis of a determination by the board that:

(A) The individual involved ~~is intellectually disabled~~ has an intellectual and developmental disability;

(B) His or her parent or guardian has resided in the state not less than three (3) years before the date of the filing of the petition for his or her admission, or the individual involved is a dependent and a public charge or ward of the state or a political subdivision thereof;

(C) The welfare of the individual involved requires the special care, training, or education provided by institutional facilities of the human development center; and

(D) The board has adequate funds and institutional facilities available for the care, training, or education of the individual.

(2)(A) ~~Also, the~~ The determination of whether an individual ~~is intellectually disabled~~ has an intellectual and developmental disability shall be made after there has been an investigation ~~which shall include that~~ includes an examination by an evaluation team appointed by the board.

(B) The team shall be composed of two (2) or more physicians, psychiatrists, psychologists, or other persons found by the board to be professionally qualified on the basis of training and experience in services for individuals with intellectual and developmental disabilities to make a determination as to whether the individual involved ~~is intellectually disabled~~ has an intellectual and developmental disability.

SECTION 22. Arkansas Code § 20-48-207 is amended to read as follows:

20-48-207. Board of Developmental Disabilities Services – Contracts for provision of services.

(a) If and to the extent necessary to accomplish the intended purpose

of this subchapter to make available the broadest and most effective provision of intellectual and developmental disabilities services to those in need of the services, the Board of Developmental Disabilities Services is authorized to contract for the providing of intellectual and developmental disabilities services by other public agencies or private organizations.

(b) In this regard, the board ~~is authorized to promulgate regulations~~ may promulgate rules and fix standards necessary to properly ensure that such intellectual and developmental disabilities services are furnished in a proper and reasonable manner and on an economical basis.

SECTION 23. Arkansas Code § 20-48-208(a) and (b), concerning the license for facilities and institutions providing services for individuals with developmental disabilities, are amended to read as follows:

(a) The Board of Developmental Disabilities Services shall:

(1) Regulate ~~regulate~~ the providing of intellectual and developmental disabilities services by private organizations and public agencies; and

(2) ~~The board shall promulgate regulations~~ Promuglate rules covering the issuance, suspension, and revocation of licenses and fixing the standards for construction, reconstruction, maintenance, and operation of institutions and facilities, or parts thereof, operated primarily for the providing of intellectual and developmental disabilities services, unless the facilities or institutions in their entirety are licensed by the Office of Long-Term Care.

(b) ~~No~~ A public agency or private organization shall not operate any institution or facility for the provision of intellectual and developmental disabilities services unless ~~it~~ the private agency or private organization has a license in effect.

SECTION 24. Arkansas Code §§ 20-48-209 – 20-48-212 are amended to read as follows:

20-48-209. Board of Developmental Disabilities Services – Planning and implementation.

(a)(1) The Board of Developmental Disabilities Services is designated as the single state agency for the purpose of full participation under any federal act requiring the designation of a single state agency concerning

planning, formulation, and implementation of programs, construction and operation of facilities, financing of facilities and programs, or otherwise pertaining to the obtaining and rendition of intellectual and developmental disabilities services.

(2) However, ~~this shall not be construed as depriving subdivision (a)(1) of this section does not deprive~~ other public agencies of jurisdiction over or the right to plan for and control and operate programs that pertain to intellectual and developmental disabilities services but which fall within the primary jurisdiction of other public agencies such as programs administered by the Arkansas School for the Deaf, Arkansas School for the Blind, Career Education and Workforce Development Board, State Board of Education, Department of Health, and the Department of Human Services.

(b)(1) The Board of Developmental Disabilities Services ~~is authorized to~~ may coordinate the planning and implementation of intellectual and developmental disabilities programs and institutional and community activities of all public agencies.

(2) However, ~~this shall not be construed as depriving subdivision (b)(1) of this section does not deprive~~ other public agencies of jurisdiction over or the right to plan for and control and operate programs that pertain to intellectual and developmental disabilities services but which fall within the primary jurisdiction of other public agencies such as programs administered by the Arkansas School for the Deaf, Arkansas School for the Blind, Career Education and Workforce Development Board, State Board of Education, Department of Health, and the Department of Human Services.

(c)(1) Effective planning and coordination is essential to the public interest.

(2) In order to achieve this to the fullest extent possible, the Board of Developmental Disabilities Services ~~is authorized to~~ may establish and promulgate ~~regulations~~ rules fixing standards for intellectual and developmental disabilities programs and activities and ~~to~~ evaluate intellectual and developmental disabilities programs and activities of public agencies.

20-48-210. Deputy Director of Division of Developmental Disabilities Services.

(a)(1) There is created the office of the Deputy Director of the

Division of Developmental Disabilities Services of the Department of Human Services.

(2) The deputy director shall:

(A) ~~Be~~ Be appointed by and shall serve at the pleasure of the Board of Developmental Disabilities Services;

~~(b)~~(B) ~~The deputy director shall be~~ Be a person of proven administrative ability and professional qualifications, preferably holding a Ph.D. or equivalent, but including at least a master's degree in psychology, education, social service, or other field of study approved by the board and shall have at least five (5) years' experience in intellectual and developmental disabilities services;

~~(c)~~(C) ~~The deputy director shall be~~ Be the executive secretary of the board and shall maintain an official set of minutes of all board action; and

~~(d)~~(D) ~~The deputy director shall be~~ Be the executive officer of the Division of Developmental Disabilities Services and shall operate and manage the division, subject to the control of the board.

~~(e)~~(b) The board may delegate to the deputy director any powers of the board upon such terms and for such duration as the board shall specify.

20-48-211. Board of Developmental Disabilities Services – Community centers.

(a)(1) The Board of Developmental Disabilities Services ~~is authorized to~~ may take the necessary action to establish and maintain, or to cause to be established and maintained, community centers, alone or together with public agencies or private organizations, at localities determined to be appropriate for the better providing of or for assistance in the providing of intellectual and developmental disabilities services ~~for~~ in any region or locality ~~in~~ of the state.

(2) Community centers may be organized on a formal or informal basis as shall be determined to best suit the circumstances at any particular region or locality, including without limitation organization under the provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206 and 4-28-209 – 4-28-224.

(b)(1) Within the limits of available funds, a program for furnishing intellectual and developmental disabilities services shall be developed for each community center which may include a state grants-in-aid program.

~~(2) In this regard, the board is authorized to~~ The board may promulgate ~~regulations~~ rules covering the establishment and operation of community centers, the formulation and implementation of intellectual and developmental disabilities programs and activities for community centers, and the funding of the programs and activities.

(c) The board is prohibited from promulgating any rule ~~or regulation~~ that would set the salary of any employee of a community-based program unless specifically required to do so by the United States Government.

20-48-212. Amount requested for ~~Arkansas~~ Special Olympics Arkansas.

(a) The Board of Developmental Disabilities Services, when preparing its biennial budget request for submission to the Governor and the Legislative Council, shall consult with Special Olympics Arkansas concerning the amount which is to be submitted as the request for each year of the forthcoming biennium for a grant to Special Olympics Arkansas.

(b) The amount ~~as may be~~ determined by Special Olympics Arkansas shall be submitted as the ~~Division of Developmental Disabilities~~ board's request to the Governor and to the Legislative Council.

SECTION 25. Arkansas Code § 20-48-301 is amended to read as follows:

20-48-301. Purpose.

~~It is the~~ The purpose of this subchapter is to permit the Board of Developmental Disabilities Services, ~~a division of the Department of Human Services,~~ to cooperate with public agencies or private nonprofit organizations of adjoining states to provide services for residents of Arkansas ~~who are intellectually disabled or developmentally disabled~~ with intellectual and other developmental disabilities.

SECTION 26. Arkansas Code § 20-48-302(a), concerning the authority to participate in cooperative agreements, is amended to read as follows:

(a) Subject to the conditions and limitations contained in this subchapter, the Board of Developmental Disabilities Services may enter into agreements with public agencies, private nonprofit organizations, or combinations thereof from adjoining states for the purpose of performing its responsibility to the residents of Arkansas ~~who are intellectually disabled or developmentally disabled~~ with intellectual and other developmental

disabilities.

SECTION 27. Arkansas Code §§ 20-48-403 and 20-48-404 are amended to read as follows:

20-48-403. Human development centers – Creation.

(a) There are created and there shall be maintained institutions for the care, custody, treatment, and training of ~~developmentally disabled~~ individuals with intellectual and other developmental disabilities to be known as human development centers.

(b) For the purposes of the institutions, the Board of Developmental Disabilities Services is charged with the care and training of ~~developmentally disabled~~ individuals with intellectual and other developmental disabilities.

20-48-404. Eligibility for admission.

(a) An individual may be deemed eligible for admission to a human development center if+

~~(1)~~ due ~~due~~ to intellectual or other developmental disability, the person is incapable of managing his or her affairs and the person's welfare requires the special care, training, and treatment provided at a human development center.

~~(2)~~ (b) The examining physicians provided for in § 20-48-406 shall use standard mental and psychological tests and physical examinations in determining that the individual ~~is developmentally disabled~~ has intellectual or other developmental disabilities and is in need of special training ~~which~~ that is provided for in this subchapter.

SECTION 28. Arkansas Code § 20-48-405(a), concerning the petition for admission into a human development center, is amended to read as follows:

(a) A parent or guardian of an ~~intellectually disabled~~ individual with intellectual and developmental disabilities may file with the Board of Developmental Disabilities Services a verified petition requesting that the individual be admitted to the human development center.

SECTION 29. Arkansas Code § 20-48-413 is amended to read as follows:

20-48-413. Emotionally disturbed individuals with co-occurring

intellectual disabilities and behavioral health disabling conditions.

(a) The Board of Developmental Disabilities Services ~~is authorized to~~ may establish and operate an appropriate facility at such location in the state as it shall determine for the care and treatment of ~~emotionally disturbed intellectually disabled~~ individuals with co-occurring intellectual disabilities and behavioral health disabling conditions, and persons with disorganized behavior, including hyperkinetic, hyperactive, or aggressive behaviors ~~who, because of their problem,~~ function as ~~intellectually disabled~~ individuals with co-occurring intellectual disabilities and behavioral health disabling conditions.

(b) The board ~~is authorized to~~ may make ~~such rules and regulations~~ regarding eligibility for admission to the facility, care and treatment of the individuals, discharge from and return to the facility, charges for the maintenance, care, and training of individuals admitted to the facility, and such other matters as the board shall deem necessary to carry out the most effective program for the care and treatment of ~~emotionally disturbed intellectually disabled~~ individuals with co-occurring intellectual disabilities and behavioral health disabling conditions of this state.

SECTION 30. Arkansas Code § 20-48-416 is amended to read as follows:

20-48-416. Designation as state agency for carrying out federal acts.

(a) The Board of Developmental Disabilities Services is designated as the single state ~~agency~~ entity for carrying out ~~the purposes of any act of the United States Congress~~ any federal act or law pertaining to individuals with intellectual disabilities and other forms of developmental disabilities.

(b) The board ~~is authorized to~~ may take all action of every nature whatever necessary or desirable in complying with the requirements of any federal act or law and accomplishing the purposes thereof, including, without limitation:

(1) The receiving, handling, and disbursing of grants and funds appropriated by any federal act or law;

(2) The making of provisions to assure full consideration of all aspects of services essential to planning for comprehensive state and community action to combat the effects of intellectual and developmental disabilities and provide service for individuals with intellectual and developmental disabilities, including services in the fields of education,

employment, rehabilitation, habilitation, welfare, health, and the law, and services provided through community programs for and institutions for individuals with intellectual and developmental disabilities;

(3) The preparing and submitting of plans for expenditure of such grants and funds and providing the assurance required by any federal act or law as to carrying out the purposes of any federal act or law;

(4) The preparing and submitting of reports of the activities of ~~the center~~ human developmental centers in carrying out the purposes of any federal act or law in such form and containing such information as may be required by any federal act or law and keeping ~~such~~ records and affording access ~~thereto necessary~~ to the records in order to assure correctness and verification of such reports as may be required by any federal act or law;

(5) The providing for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for grants and funds paid to the human development center in accordance with the requirements of any federal act or law; and

(6) The doing of all things and taking of all action to carry out any plans for expenditures of the grants and funds in accordance with and for the accomplishment of the purposes of any federal act or law.

(c)(1) This section shall be liberally construed.

(2) The enumeration of any object, purpose, power, manner, method, and thing ~~shall not be deemed to~~ does not exclude like or similar objects, purposes, powers, manners, methods, or things.

(3) This section ~~shall be construed as being~~ is supplementary to any existing purposes and powers authorized to be accomplished by the human development centers or the board.

SECTION 31. Arkansas Code §§ 20-48-601 and 20-48-602 are amended to read as follows:

20-48-601. Title.

This subchapter shall be known as the "Location Act for Community Homes for ~~Developmentally Disabled Persons~~ Individuals with Intellectual and Developmental Disabilities".

20-48-602. Purpose.

(a) The General Assembly declares that it is the goal of this

subchapter to improve the quality of life of all ~~developmentally disabled persons~~ individuals with intellectual or other developmental disabilities and to integrate ~~developmentally disabled persons~~ individuals with intellectual or other developmental disabilities into the mainstream of society by ensuring them the availability of community residential opportunities in the residential areas of this state.

(b) In order to implement this goal, this subchapter should be liberally construed toward that end.

SECTION 32. Arkansas Code § 20-48-603(1) and (2), concerning the definition of "developmental disability" and "developmentally disabled person" regarding the Location Act for Community Homes for Developmentally Disabled Persons, are amended to read as follows:

(1)(A) "~~Developmental~~ Intellectual and developmental disability" means a disability of a person that:

(i) Is attributable to ~~intellectual disability, an~~ impairment of general intellectual functioning or adaptive behavior, including cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

(ii) Is attributable to any other condition of a person found to be closely related to intellectual and developmental disability because ~~it~~ the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with intellectual and developmental disabilities or requires treatment and services similar to those required for the persons;

(iii) Is attributable to dyslexia resulting from intellectual and developmental disability, cerebral palsy, epilepsy, or autism; and

(iv) Has continued or can be expected to continue indefinitely.

(B) "~~Developmental~~ Intellectual and developmental disability" does not refer to other forms of mental disease or defect not defined in this section;

(2) "~~Developmentally disabled person~~ Individual with an intellectual and developmental disability" means a person with ~~a~~ an intellectual and developmental disability as defined in this section;

SECTION 33. Arkansas Code § 20-48-605(a), concerning the issuance and renewal of licenses for the Location Act for Community Homes for Developmentally Disabled Persons, is amended to read as follows:

(a) For the purposes of safeguarding the health and safety of ~~developmentally disabled persons~~ individuals with intellectual or other developmental disabilities and avoiding over-concentration of Family Homes I and Family Homes II, either alone or in conjunction with similar community-based residences, the Division of Developmental Disabilities Services shall inspect and license the operation of family homes and may renew or revoke their licenses.

SECTION 34. Arkansas Code § 20-48-611(a), concerning the voidness of restrictions by private property agreement for the Location Act for Community Homes for Developmentally Disabled Persons, is amended to read as follows:

(a) Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property ~~which~~ that would permit residential use of property but prohibit the use of the property as a Family Home I or Family Home II for ~~developmentally disabled persons~~ individuals with intellectual or other developmental disabilities, to the extent of the prohibition, shall be void as against the public policy of this state and shall be given no legal or equitable force or effect.

SECTION 35. Arkansas Code § 20-48-703 is amended to read as follows:
20-48-703. Eligibility.

(a)(1) Eligibility for services and appropriate placement in the least restrictive environment for individuals with intellectual and developmental disabilities under any of the service models included in the state's Medicaid plan with the Centers for Medicare & and Medicaid Services or for services covered from state general revenue dollars shall be made by the interdisciplinary team composed in keeping with federal and state laws pertaining to individuals with special needs.

(2) ~~This Subdivision (a)(1) of this~~ section does not negate nor preclude the rights of individuals with intellectual and developmental disabilities under existing federal and state laws.

(b)(1) Subject to approval by the Centers for Medicare & and Medicaid

Services, the Department of Human Services will accept an individualized family service plan or an individualized program plan developed in conformity with all applicable state and federal laws as prior authorization for Medicaid-covered therapies provided to persons with intellectual and developmental disabilities.

(2) Prior authorization does not preclude postpayment reviews or other utilization control measures.

(c)(1) For individuals with intellectual and developmental disabilities who, pursuant to the diagnosis, evaluation, and assessments conducted by the interdisciplinary team, in conformity with all applicable federal and state laws, are found to fall within the eligibility guidelines adopted pursuant to this subchapter, and where the individual's primary care physician, independent of the service provider, serves as the gatekeeper and prescribes ~~day treatment~~ early intervention day treatment or adult developmental day treatment services, ~~or both, referred to as developmental day treatment services under the present developmental day treatment clinic services model,~~ prior approval is not required for up to five (5) hours of daily services.

(2) ~~Should~~ If the funding model for the ~~day treatment~~ early intervention day treatment and adult developmental day treatment services ~~be~~ is changed in the state's Medicaid plan with the Centers for Medicare & and Medicaid Services, the five (5) hours per day shall remain the ~~floor~~ minimum number of hours to afford those families who choose to keep their ~~developmentally disabled~~ child or adult with an intellectual or other developmental disability in the community, thereby bearing a considerable responsibility for the care and expenses related to the treatment and care.

SECTION 36. Arkansas Code § 20-48-704(b), concerning the code system of reimbursement for certain services, is amended to read as follows:

(b) ~~In the event that it is evident that the developmental day treatment clinic~~ If the early intervention day treatment or adult developmental day treatment services codes, ~~or both, are will be~~ excluded by the Centers for Medicare & and Medicaid Services, the Division of Medical Services of the Department of Human Services shall take all necessary steps to apply to the administration for approval of a service model that will continue to provide an array of community-based service options for children

and adults comparable to or greater than those under the present ~~developmental day treatment clinic~~ early intervention day treatment and adult developmental day treatment services model.

SECTION 37. Arkansas Code § 20-48-705 is amended to read as follows:
20-48-705. Membership of nonprofit organizations.

A nonprofit organization licensed or certified by the Division of Developmental Disabilities Services of the Department of Human Services to serve adults shall include an individual with intellectual or other developmental disabilities as an ex officio member of the nonprofit organization's board of directors or other governing body.

SECTION 38. Arkansas Code § 20-48-812(a), concerning the definitions regarding required criminal history records checks for service providers of services for individuals with developmental disabilities, is amended to read as follows:

(a) As used in this section:

(1) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure or certification as a service provider or employment with a service provider to provide care as defined in § 20-38-101; and

(2) "Service provider" means any of the following:

(A) ~~An Alternative Community Services Waiver Program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services~~ A Community and Employment Supports Services waiver provider;

(B) ~~An early intervention program provider certified by the division~~ A First Connections provider; or

(C) ~~A nonprofit community program as defined by § 20-48-101~~ An early intervention day treatment or adult developmental day treatment provider.

SECTION 39. Arkansas Code § 20-48-901(1) and (2), concerning the definitions of "gross receipts" and "intermediate care facility for individuals with developmental disabilities", are amended to read as follows:

(1)(A) “Gross receipts” means all compensation paid to intermediate care facilities for individuals with intellectual and developmental disabilities for services provided to residents, including without limitation client participation.

(B) “Gross receipts” does not include charitable contributions;

(2)(A) “Intermediate care facility for individuals with intellectual and developmental disabilities” means a residential institution maintained for the care and training of persons with intellectual and developmental disabilities, ~~including without limitation intellectual disabilities.~~

~~(B) “Intermediate care facility for individuals with developmental disabilities” has the same meaning as “intermediate care facility for the mentally retarded” or “ICF/MR” under federal law.~~

~~(C)~~(B) “Intermediate care facility for individuals with intellectual and developmental disabilities” does not include:

- (i) Offices of private physicians and surgeons;
- (ii) Residential care facilities;
- (iii) Assisted living facilities;
- (iv) Hospitals;
- (v) Institutions operated by the United States Government;
- (vi) Life care facilities;
- (vii) Nursing facilities; or
- (viii) A facility which is conducted by and for those who rely exclusively upon treatment by prayer for healing in accordance with tenets or practices of a recognized religious denomination; and

SECTION 40. Arkansas Code § 20-48-902 is amended to read as follows:
20-48-902. Calculation of provider fee.

(a)(1) There is levied a provider fee on intermediate care facilities for individuals with intellectual or other developmental disabilities to be calculated in accordance with this section.

(2)(A) The provider fee shall be an amount calculated by the Division of Medical Services of the Department of Human Services to produce an aggregate provider fee payment equal to six percent (6%) of the aggregate

gross receipts of all intermediate care facilities for individuals with intellectual or other developmental disabilities.

(B) Aggregate provider fees shall not equal or exceed an amount measured on a state fiscal year basis that may cause a reduction in federal financial participation in Medicaid.

(b)(1)(A) The provider fee of an intermediate facility for individuals with intellectual or other developmental disabilities shall be payable in monthly payments.

(B) Each monthly payment shall be due and payable for the previous month by the thirtieth day of each month.

(2) The division shall seek approval from the Centers for Medicare & and Medicaid Services to treat the provider fee of an intermediate care facility for individuals with intellectual or other developmental disabilities as an allowable cost for Medicaid reimbursement purposes.

(c) ~~No~~ An intermediate care facility for individuals with intellectual or other developmental disabilities ~~shall be~~ is not guaranteed, expressly or otherwise, that any additional moneys paid to the intermediate care facility for individuals with intellectual or other developmental disabilities will equal or exceed the amount of its provider fee.

(d)(1) The division shall ensure that the rate of assessment of the provider fee established in this section maximizes federal funding to the fullest extent possible.

(2) If the division determines that the rate of assessment of the provider fee established in this section equals or exceeds the maximum rate of assessment that federal law allows without reduction in federal financial participation in Medicaid, the division shall lower the rate of assessment of the provider fee to a rate that maximizes federal funding to the fullest extent possible.

SECTION 41. Arkansas Code § 20-48-904(a)(3), concerning the use of funds regarding intermediate care facilities, are amended to read as follows:

(3) The designated account moneys in the Arkansas Medicaid Program Trust Fund and the matching federal financial participation under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2009, shall be used only for:

(A) Continued operation of and rate increases for:

(i) Intermediate care facilities for individuals with intellectual and developmental disabilities;

(ii) ~~Developmental day treatment clinic services provided to persons with developmental disabilities by providers licensed by the Division of Developmental Disabilities Services of the Department of Human Services under this chapter~~ Early intervention day treatment and adult developmental day treatment service providers; and

(iii) Services provided to persons with developmental disabilities under the ~~Alternative Community Services Waiver Program by providers certified to provide waiver services by the Division of Developmental Disabilities Services of the Department of Human Services~~ Community and Employment Supports Services waiver;

(B) Expansion of the ~~Alternative Community and Employment Supports~~ Services Waiver Program to serve more persons with developmental disabilities than is approved under the waiver program ~~as of March 1, 2009~~;

(C) The Division of Medical Services of the Department of Human Services; and

(D) Public guardianship of adults.

SECTION 42. Arkansas Code § 20-48-904(b), concerning the use of funds regarding intermediate care facilities, are amended to read as follows:

(b)(1) The designated account moneys in the Arkansas Medicaid Program Trust Fund from the provider fee on intermediate care facilities for individuals with intellectual or other developmental disabilities that are unused at the end of a fiscal year shall be carried forward.

(2) The designated account moneys in the Arkansas Medicaid Program Trust Fund from the provider fee on intermediate care facilities for individuals with intellectual or other developmental disabilities may not be used to supplant other local, state, or federal funds.

SECTION 43. Arkansas Code § 20-48-1001(1) and (2), concerning the definitions of "Alternative Community Services Waiver Program" and "gross receipts" relating to the Alternative Community Services Waiver Program provider fee, are amended to read as follows:

(1) "~~Alternative Community and Employment Supports~~ Services Waiver Program" means the home and community-based waiver program authorized

by the Centers for Medicare & and Medicaid Services under section 1915(c) of the Social Security Act, 42 U.S.C. § 1396 et seq., and administered by the Division of Developmental Disabilities Services of the Department of Human Services;

(2)(A) "Gross receipts" means compensation paid to a provider for services provided through, or identical to those provided under, the ~~Alternative~~ Community and Employment Supports Services Waiver Program.

(B) "Gross receipts" does not include charitable contributions; and

SECTION 44. Arkansas Code § 20-48-1002(a)(1), concerning the Alternative Community Services Waiver Program provider fee, is amended to read as follows:

(a)(1) There is imposed a provider fee on services provided through, or identical to those provided under, the ~~Alternative~~ Community and Employment Supports Services Waiver Program to be calculated in accordance with this section.

SECTION 45. Arkansas Code § 20-48-1002(c), concerning the Alternative Community Services Waiver Program provider fee, is amended to read as follows:

(c) A provider of services under the ~~Alternative~~ Community and Employment Supports Services Waiver Program shall not be guaranteed, expressly or otherwise, that any additional moneys paid to the provider for services under the ~~Alternative~~ Community and Employment Supports Services Waiver Program will equal or exceed the amount of its provider fee.

SECTION 46. Arkansas Code § 20-48-1004(a)(3)(A), concerning the use of funds relating to the Alternative Community Services Waiver Program provider fee, is amended to read as follows:

(A) For the amount resulting from the first five and one-half percent (5.5%) of the provider fee:

(i) A minimum of fifty percent (50%) shall be used for the support and enhancement of services under the ~~Alternative~~ Community and Employment Supports Services Waiver Program to persons with developmental disabilities; and

(ii) An amount not to exceed fifty percent (50%) may be used by the Division of Medical Services of the Department of Human Services; and

SECTION 47. Arkansas Code §§ 20-48-1101 – 20-48-1103 are amended to read as follows:

20-48-1101. Legislative intent.

The intent of this subchapter is to avoid unnecessary expansion in Medicaid costs and services related to ~~child health management services and developmental day treatment clinic~~ early intervention day treatment services for children or any successor program providing early intervention day treatment to children.

20-48-1102. Definitions.

As used in this subchapter:

(1) “Accredited entity” means a corporate entity that:

(A) Has successfully completed an ongoing accreditation process that is offered by a national accrediting organization and is related to the delivery of early intervention day treatment services; and

~~(i) Related to the delivery of child health management services;~~

~~(ii) Related to the delivery of developmental day treatment clinic services for children; or~~

~~(iii) Related to the delivery of early intervention day treatment services provided by a successor program; and~~

~~(B) One (1) or more of the following:~~

~~(i) Satisfies all certification criteria established by the Department of Human Services for child health management services;~~

~~(ii) Satisfies all licensure criteria for developmental day treatment clinic services for children established by the Division of Developmental Disabilities Services of the Department of Human Services; or~~

~~(iii) Satisfies all certification and licensure criteria established by a regulatory entity governing any successor program;~~

(B) Satisfies all certification and licensure criteria established by the Department of Human Services for the delivery of early

intervention day treatment services;

~~(2) “Child health management services” means an array of clinic services for children;~~

~~(A) Intended to provide full medical multidiscipline diagnosis, evaluation, and treatment of developmental delays in Medicaid recipients; and~~

~~(B) That is diagnostic, screening, evaluative, preventive, therapeutic, palliative, or rehabilitative services, including early intervention day treatment services;~~

~~(3)(A) “Child health management services operated by an academic medical center” means an academic medical center program specializing in developmental pediatries that is administratively staffed and operated by an academic medical center and under the direction of a board-certified or board-eligible developmental pediatrician.~~

~~(B) An academic medical center consists of a medical school and its primary teaching hospitals and clinical programs.~~

~~(C) For a child health management services program operated by an academic medical center, services may be provided at different sites operated by the academic medical center as long as the child health management services program falls under one (1) administrative structure within the academic medical center;~~

~~(4) “Developmental day treatment clinic services for children” means early intervention day treatment provided to children by a nonprofit community program that:~~

~~(A) Is licensed to provide center-based community services by the Division of Developmental Disabilities Services; and~~

~~(B) Serves as a quasi-governmental instrumentality of the state by providing support and services to persons who have a developmental disability or delay and would otherwise require support and services through state-operated programs and facilities;~~

~~(5)(A)(2)(A)~~ “(2)(A) “Early intervention day treatment” means services provided by a pediatric day treatment program run by early childhood specialists, overseen by a physician, and serving children with developmental disabilities, developmental delays, or a medical condition that puts them at risk for developmental delay.

(B) Early intervention day treatment includes without

limitation diagnostic, screening, evaluative, preventive, therapeutic, palliative, and rehabilitative and habilitative services, including speech, occupational, and physical therapies and any medical or remedial services recommended by a physician for the maximum reduction of physical or mental disability and restoration of the child to the best possible functional level.

(C) ~~Child health management services and developmental day treatment clinic services~~ Early intervention day treatment or a successor program ~~constitute~~ constitutes the state's early intervention day treatment program;

(3)(A) "Early intervention day treatment services operated by an academic medical center" means an academic medical center program specializing in developmental pediatrics that is administratively staffed and operated by an academic medical center and under the direction of a board-certified or board-eligible developmental pediatrician.

(B) An academic medical center consists of a medical school and its primary teaching hospitals and clinical programs.

(C) "Early intervention day treatment services operated by an academic medical center" may be provided at different sites operated by the academic medical center if the early intervention day treatment services program falls under one (1) administrative structure within the academic medical center;

~~(6)(4)~~ (4) "Existing operations" means services provided by a ~~child health management services program or a developmental day treatment clinic~~ an early intervention day treatment services program that has submitted a completed application to the Division of Medical Services of the Department of Human Services to serve as a Medicaid provider no later than July 1, 2013;

~~(7)(5)~~ (5) "Medicaid" means the medical assistance program authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and established under § 20-77-101 et seq., that provides for payments for medical goods or services on behalf of indigent families with dependent children and of ~~aged, blind, or disabled~~ aged, blind, or disabled individuals who are aged, blind, or disabled and whose income and resources are insufficient to meet the cost of necessary medical services;

~~(8)(6)~~ (6) "National accrediting organization" includes without limitation:

(A) The CARF International; or
 (B) Any other similar national accrediting organization recognized by the Division of Developmental Disabilities Services; and

~~(9)~~(7) “Successor program” means a program:

(A) That provides early intervention day treatment to children;

(B) That is created as a replacement for, combination of, or derived in whole or in part from the ~~child health management services program and the developmental day treatment clinic~~ early intervention day treatment services program for children; and

(C) In which the for-profit and nonprofit providers from ~~child health management services programs and developmental day treatment clinic~~ early intervention day treatment services programs are eligible to participate.

20-48-1103. Prerequisites for certification and licensure.

(a)(1)~~(A)~~ Certification and licensure are required for operation as a ~~child health management services~~ an early intervention day treatment program.

~~(B)~~(2) Certification shall be granted on a county-wide basis.

~~(2)~~(b) Before obtaining certification, a ~~child health management~~ an early intervention day treatment services program is required to apply to and obtain the approval of the Division of Developmental Disabilities Services of the Department of Human Services to implement new ~~child health management~~ early intervention day treatment services under the criteria established under this subchapter.

~~(3)~~(c) A certified ~~child health management~~ early intervention day treatment services program with existing operations on July 1, 2013, shall not be required to obtain the approval of the division to continue existing operations.

~~(b)(1)(A)~~ Licensure from the division is required for operation of a ~~developmental day treatment clinic for children.~~

~~(B)~~ The division shall grant licensure on a county-wide basis.

~~(2)~~ Before obtaining licensure, a nonprofit community program seeking to operate ~~developmental day treatment clinic services for children~~

~~is required to apply to and obtain the approval of the division to implement new developmental day treatment clinic services for children under the criteria established under this subchapter.~~

~~(3) A licensed nonprofit community program providing developmental day treatment clinic services for children with existing operations on July 1, 2013, shall not be required to obtain the approval of the division to continue existing operations.~~

~~(c)(1)(A) Licensure or certification from the regulatory authority governing a successor program is required for operation as a successor program.~~

~~(B) Licensure or certification shall be granted on a county-wide basis.~~

~~(2) Before obtaining licensure or certification, a successor program is required to apply to and obtain the approval of the division to implement new successor program services under the criteria established in this subchapter.~~

~~(3) A successor program that was a certified child health management services program with existing operations on July 1, 2013, or a licensed nonprofit community program providing developmental day treatment clinic services for children with existing operations on July 1, 2013, shall not be required to obtain the approval of the division to continue operations that were in existence on July 1, 2013, but shall be subject to certification or licensure surveys and rules applicable to the successor program.~~

SECTION 48. Arkansas Code § 20-49-101(3), concerning the definition of "incompetent" regarding sterilization of mental incompetents, is amended to read as follows:

(3) "Incompetent person" shall mean a person as to whom it is proved:

(A) He or she is incapable of caring for himself or herself by reason of intellectual and developmental disability, mental illness, imbecility, idiocy, or other mental incapacity;

(B) He or she manifests sexual inclinations which make it probable that he or she will procreate children unless he or she is rendered incapable of procreation; and

(C) There is no probability that his or her condition will

improve so that he or she will become capable of caring for himself or herself.

SECTION 49. Arkansas Code § 21-15-101(7), concerning the definition of "developmentally disabled person" as to criminal background checks for public officers and employees, is amended to read as follows:

(7) ~~"Developmentally disabled person"~~ "Individual with an intellectual or developmental disability" means a person with a disability that is attributable to:

(A) ~~Mental retardation,~~ Impairment of general intellectual functioning or adaptive behavior, including without limitation cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

(B) Dyslexia resulting from a disability associated with ~~mental retardation~~ intellectual and developmental disabilities, cerebral palsy, epilepsy, or autism; or

(C) Any other condition found to be closely related to ~~mental retardation~~ intellectual and developmental disabilities as described in subdivision (7)(A) of this section because it results in an impairment of general intellectual functioning or adaptive behavior similar to those of ~~mentally retarded~~ persons with intellectual and developmental disabilities or requires treatment and services similar to those required for ~~mentally retarded~~ persons with intellectual and developmental disabilities;

SECTION 50. Arkansas Code § 23-75-111(b)(1), concerning subscription contracts relating to hospital and medical service corporations, is amended to read as follows:

(b)(1) In any hospital service corporation contract, any medical service corporation contract, or any hospital and medical service corporation contract, whether group or individual, that contains a provision whereby coverage of a dependent in a family group terminates at a specified age, there shall also be a provision that coverage of an unmarried dependent who is incapable of sustaining employment by reason of ~~mental retardation~~ intellectual and developmental disability or physical disability, who became so incapacitated prior to the attainment of nineteen (19) years of age and who is chiefly dependent upon the contract holder or certificate holder for support and maintenance, shall not terminate, but coverage shall continue so

long as the contract or certificate remains in force and so long as the dependent remains in such a condition.

SECTION 51. Arkansas Code § 23-85-131(b)(1), concerning age limits and exceptions to age limits relating to accident and health insurance, is amended to read as follows:

(b)(1) In any accident and health insurance contract that contains a provision whereby coverage of a dependent in a family group terminates at a specified age, there shall also be a provision that coverage of an unmarried dependent who is incapable of sustaining employment by reason of ~~mental retardation~~ intellectual and developmental disability or physical disability, who became so incapacitated prior to the attainment of nineteen (19) years of age, and who is chiefly dependent upon the policyholder for support and maintenance shall not terminate, but coverage shall continue so long as the contract remains in force and so long as the dependent remains in such condition.

SECTION 52. Arkansas Code § 23-86-102(c)(8)(A), concerning blanket accident and health insurance required provisions, is amended to read as follows:

(8)(A) In any contract that contains a provision whereby coverage of a dependent in a family group terminates at a specified age, there shall also be a provision that coverage of an unmarried dependent who is incapable of sustaining employment by reason of ~~mental retardation~~ intellectual and developmental disability or physical disability, who became so incapacitated prior to the attainment of nineteen (19) years of age, and who is chiefly dependent upon the employee for support and maintenance shall not terminate, but coverage shall continue so long as the contract remains in force and so long as the dependent remains in such condition.

SECTION 53. Arkansas Code § 23-86-108(4)(A), concerning group accident and health insurance required provisions, is amended to read as follows:

(4)(A) In any contract that contains a provision whereby coverage of a dependent in a family group terminates at a specified age, there shall also be a provision that coverage of an unmarried dependent who is incapable of sustaining employment by reason of ~~mental retardation~~

intellectual and developmental disability or physical disability, who became so incapacitated prior to the attainment of nineteen (19) years of age and who is chiefly dependent upon the employee for support and maintenance, shall not terminate, but coverage shall continue so long as the coverage of the employee or member remains in force and so long as the dependent remains in such condition.

SECTION 54. Arkansas Code § 25-10-113(b), concerning the disposition of direct services funds by the Department of Human Services, is amended to read as follows:

(b) It is the specific intent of this act to prevent the diversion of community grant-in-aid line funds for any purpose that would not provide direct services to ~~developmentally disabled~~ clients with intellectual or other developmental disabilities in community programs.

/s/Ladyman

APPROVED: 4/16/19