

Stricken language would be deleted from and underlined language would be added to present law.
Act 644 of the Regular Session

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: H3/18/19
A Bill

HOUSE BILL 1471

By: Representative C. Fite

By: Senator Bond

For An Act To Be Entitled

AN ACT TO CREATE THE MENTAL HEALTH FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING BILL OF RIGHTS ACT; TO ESTABLISH STANDARDS OF CARE FOR MENTAL HEALTH SERVICES FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING; TO PROVIDE CULTURALLY AFFIRMATIVE MENTAL HEALTH SERVICES AND LINGUISTICALLY APPROPRIATE MENTAL HEALTH SERVICES TO INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE MENTAL HEALTH FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING BILL OF RIGHTS ACT.

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

SECTION 1. Arkansas Code Title 20, Chapter 47, is amended to add an additional subchapter to read as follows:

Subchapter 10 – Mental Health for Individuals who are Deaf or Hard of Hearing
Bill of Rights Act

20-47-1001. Title.

This subchapter shall be known and may be cited as the "Mental Health for Individuals who are Deaf or Hard of Hearing Bill of Rights Act".

20-47-1002. Legislative findings.



The General Assembly finds that:

(1) Individuals who are deaf or hard of hearing, as a group, represent an underserved population in many respects, particularly in regard to access to mental health services;

(2) Individuals who are deaf or hard of hearing often require highly specialized mental health services due to communication barriers and other complex needs;

(3) Research shows that individuals who are deaf or hard of hearing are subject to significantly more risks to their mental health than individuals who are able to hear, due to many factors, including without limitation lack of:

(A) Communication access, in general, as well as lack of or impaired communication with family members, educators, and treating healthcare professionals; and

(B) Access to:

(i) Appropriate educational services; and

(ii) Culturally affirmative and linguistically appropriate physical and mental health services;

(4)(A) Some individuals who are deaf or hard of hearing may have secondary disabilities that impact the type and manner of mental health services that are needed.

(B) Individuals who are deaf and blind often have diverse ways of communicating, including without limitation tactile sign language;

(5)(A) Being deaf or hard of hearing affects the most basic human needs, which include the ability to communicate with other human beings.

(B)(i) Many individuals who are deaf or hard of hearing use sign language, which may be their primary communication method, while other individuals who are deaf or hard of hearing receive language orally and aurally, with or without visual signs or cues.

(ii) However, other individuals who are deaf or hard of hearing lack any significant language skills or suffer from language deprivation, or both;

(6)(A) Individuals who are deaf or hard of hearing have highly diverse communication skills and challenges.

(B) The nature and timing of a hearing loss, the

helpfulness of medical or therapeutic remediation efforts, and the accessibility of sign language or spoken language at home, school, and other settings shape the way that hearing loss impacts individuals who are deaf or hard of hearing.

(C)(i) Depending on the circumstances of an individual's hearing loss, his or her innate abilities, and the degree to which he or she has been supported in language acquisition, individuals who are deaf or hard of hearing can range in their communication ability from being multilingual, with fluency in more than one (1) communication method, to being alingual, with fluency in no communication method.

(ii) However, poorly developed language skills in both sign language and spoken language are common;

(7) It is essential that individuals who are deaf or hard of hearing:

(A) Have access to appropriate mental health services that are provided:

(i) In the primary communication method of the individual, as determined by the preference of the individual who is deaf or hard of hearing or by an appropriate communication assessment, or both; and

(ii) By mental health professionals such as psychiatrists, psychologists, therapists, counselors, social workers, and other personnel who:

(a) Are fluent in the primary communication method of the individual who is deaf or hard of hearing;

(b) Understand the unique nature of being deaf or hard of hearing; and

(c) Possess the knowledge and training to:

(1) Work effectively with individuals who are deaf or hard of hearing;

(2) Provide culturally affirmative mental health services and linguistically appropriate mental health services to individuals who are deaf or hard of hearing; and

(3) Collaborate skillfully with interpreters;

(B) Have access to mental health professionals who are familiar with the unique culture and needs of individuals who are deaf or

hard of hearing since mental health professionals may misdiagnose individuals who are deaf or hard of hearing if the mental health professionals are unaware of the special needs of individuals who are deaf or hard of hearing or lack training in working with individuals who are deaf or hard of hearing;

(C) Are involved in determining the scope, content, and purpose of mental health services tailored for delivery to individuals who are deaf or hard of hearing; and

(D) Have access to:

(i) Mental health services that provide appropriate one-on-one access to a full continuum of mental health services, including without limitation all modes of therapy and evaluation; and

(ii) Specialized mental health services that are recommended as best practice and use appropriate curricula, staff, and outreach to support the unique mental health needs of individuals who are deaf or hard of hearing;

(8) Individuals who are deaf or hard of hearing should have access to a resource guide listing the mental health services in this state that offer the best access and provide the most specialized mental health services for clients; and

(9) Individuals who are deaf or hard of hearing would benefit from the development and implementation of state and regional services to provide for the mental health needs of individuals who are deaf or hard of hearing.

20-47-1003. Definitions.

As used in this subchapter:

(1) "Certified mental health professional" means a psychiatrist, psychologist, advanced practice registered nurse, therapist, counselor, or social worker licensed in this state and certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as:

(A) Fluent in one (1) or more primary communication methods;

(B) A specialist who is trained and experienced in working skillfully with interpreters; and

(C) Knowledgeable of the cultural needs of clients;

(2) "Client" means an individual who is deaf or hard of hearing

and who is in need of mental health services;

(3) "Communication method" means any of the following systems of communication used by clients:

(A) American Sign Language;

(B) An English-based manual or sign system;

(C) A highly visually oriented and minimal sign language system to communicate, including without limitation a home-sign-based system, idiosyncratic signs, a sign system or language of another country, or non-linguistic or semi-linguistic communication systems designed to meet the needs of language-deprived or dysfluent individuals; or

(D) An oral, aural, or speech-based sign system;

(4) "Culturally affirmative mental health services" means the full continuum of mental health services that are sensitive to, and in support of, the diverse cultural affiliations, including the affiliation with the deaf community and culture, and needs of the client that are delivered by certified mental health professionals and ancillary staff;

(5) "Deaf" means:

(A) The condition of having sustained a hearing loss that is so severe that the individual has difficulty in processing linguistic information through hearing, regardless of amplification or other assistive technology; and

(B) The unique culture, community, and identity of an individual who is deaf that has a set of beliefs, values, and traditions;

(6) "English-based manual or sign system" means a sign system that uses manual signs in English word order, sometimes with added affixes that are not present in American Sign Language;

(7) "Fluent" means a score of "Advanced" or higher for certified mental health professionals and "Intermediate Plus" for other licensed and nonlicensed ancillary staff qualified to work in a mental health setting on a sign language communication skills assessment, including without limitation the Sign Language Proficiency Interview assessment and other communication skills assessments;

(8) "Hard of hearing" means the condition of having sustained a hearing loss, whether permanent or fluctuating, that may be corrected by amplification or other hearing assistive technology, but yet presents challenges in processing linguistic information through hearing;

(9) "Interpreter" means a licensed qualified interpreter or a licensed provisional interpreter as defined under § 20-14-802;

(10) "Linguistically appropriate mental health services" means the full continuum of mental health services that are made available in the communication method preferred by the client or in the communication method that is determined to be most effective by a communication assessment;

(11) "Oral, aural, or speech-based system" means a communication system that uses the speech or residual hearing, or both, of an individual who is deaf or hard of hearing, regardless of technology or cued assistance; and

(12) "Primary communication method" means the communication method preferred by the individual who is deaf or hard of hearing that will be most effective, as determined by the preference of the individual who is deaf or hard of hearing or by an appropriate communication assessment, or both.

20-47-1004. Discrimination.

(a) A certified mental health professional shall:

(1) Offer culturally affirmative mental health services and linguistically appropriate mental health services to a client in the client's primary communication method; and

(2) Not deny access to culturally affirmative mental health services and linguistically appropriate mental health services to a client in the client's primary communication method to a client due to the client's having:

(A) Residual hearing ability, whether or not supported by amplification or other hearing assistive technology; or

(B) Previous experience with some other communication method.

(b) This section does not:

(1) Prevent a client from receiving mental health services in more than one (1) communication method; or

(2) Require a client to receive culturally affirmative mental health services and linguistically appropriate mental health services.

20-47-1005. Statewide mental health services.

The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall:

(1) Implement and maintain culturally affirmative mental health services and linguistically appropriate mental health services for any client in his or her primary communication method;

(2) Recruit, develop, and maintain an adequate number of certified mental health professionals and other licensed and nonlicensed ancillary staff qualified to work in settings where mental health services are provided to clients to ensure the delivery of culturally affirmative mental health services and linguistically appropriate mental health services one-on-one to any client in his or her primary communication method;

(3) Monitor all culturally affirmative mental health services and linguistically appropriate mental health services to ensure that clients of all ages are adequately served;

(4) Provide adequate supplemental funding to all culturally affirmative mental health services and linguistically appropriate mental health services and incentives for certified mental health professionals;

(5) Establish a certification process for mental health professionals who meet all standards and guidelines, as determined by the division, to provide culturally affirmative mental health services and linguistically appropriate mental health services to clients; and

(6) Develop and implement strategies for ensuring access to culturally affirmative mental health services and linguistically appropriate mental health services by clients in geographic areas where there is a lack or shortage of certified mental health professionals, including without limitation the authorization of treatment:

(A) In a different location by certified mental health professionals; or

(B) Through telemedicine or other remote technology that allows a client to be provided culturally affirmative mental health services and linguistically appropriate mental health services from certified mental health professionals.

20-47-1006. Deaf Services Coordinator – Advisory committee.

(a) In order to provide culturally affirmative mental health services and linguistically appropriate mental health services to clients, the

Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall employ the Deaf Services Coordinator to coordinate and oversee the implementation of these mental health services statewide.

(b) The coordinator shall:

(1) Be competent and have extensive experience in providing mental health services to clients;

(2) Be fluent in American Sign Language and possess a thorough understanding of the deaf community and culture;

(3) Have at least three (3) years of experience providing one-on-one services to clients;

(4) Possess:

(A) A master's degree or higher in a behavioral health or clinical field; and

(B) The skill, knowledge, and experience in adapting and developing policies and procedures based on the actual service needs of individuals who are deaf or hard of hearing; and

(5) Know and understand applicable state laws and rules and federal laws and regulations.

(c) The coordinator shall:

(1) Ensure that:

(A) Culturally affirmative mental health services and linguistically appropriate mental health services are accessible statewide; and

(B) The provision of appropriate consultation, training, and technical assistance is accessible to mental health professionals in various settings, including without limitation inpatient, outpatient, and residential programs;

(2) Serve as a professional liaison to other state agencies or boards for the collaboration needed to maximize the use of in-state resources and joint planning;

(3) Develop a model for a statewide system of care for culturally affirmative mental health services and linguistically appropriate mental health services for clients that includes without limitation:

(A) Standards of care for individuals who are deaf or hard of hearing, including standards for American Sign Language fluency required in providing care in mental health settings;

(B) Guidelines to measure the proficiency of a mental health professional in any communication method; and

(C) A partnership with the Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf;

(4) Collaborate with state and private mental health professionals throughout the state to assist and ensure compliance with federal and state laws relating to mental health services for clients;

(5) Collect and evaluate clinical and programmatic outcome data from mental health professionals serving individuals who are deaf or hard of hearing;

(6) Distribute funds or grants to public and private mental health professionals to achieve optimum service delivery within the system of care; and

(7) Provide:

(A) Reports as requested by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services; and

(B) Clinical and administrative case consultation to mental health professionals when appropriate regarding culturally affirmative mental health services and linguistically appropriate mental health services to clients.

(d)(1) The coordinator shall establish an advisory committee to make recommendations and provide advice and assistance concerning the implementation of this subchapter.

(2)(A) The advisory committee shall consist of ten (10) individuals appointed by the Director of the Department of Human Services.

(B) The advisory committee shall consist of:

(i) Individuals who are deaf or hard of hearing;

(ii) Parents or legal guardians of individuals who are deaf or hard of hearing;

(iii) Certified mental health professionals;

(iv) Interpreters; and

(v) Educators who are licensed in this state to teach individuals who are deaf or hard of hearing.

(C) At least fifty-one percent (51%) of the advisory

committee shall be individuals who are deaf or hard of hearing.

(D) The members shall serve a two-year term and may be reappointed.

(3)(A) The coordinator shall call the first meeting within thirty (30) days of establishing the advisory committee.

(B) The advisory committee shall meet at least quarterly after the first meeting is held.

(4)(A) Members of the advisory committee are voluntary and shall not receive compensation, wages, or salary due to membership on the advisory committee.

(B)(i) Members of the advisory committee may receive reimbursement for travel and other expenses under § 25-16-902 with the approval of the coordinator.

(ii) However, the coordinator shall use technology and other available resources to avoid excessive and unnecessary costs related to member reimbursement.

20-47-1007. Basic standards of care for mental health services for individuals who are deaf or hard of hearing.

(a) A client who is admitted for mental health treatment shall have access to culturally affirmative mental health services and linguistically appropriate mental health services.

(b)(1) A mental health professional shall work with the Deaf Services Coordinator as appropriate to ensure that culturally affirmative mental health services and linguistically appropriate mental health services are made accessible to clients.

(2) A client shall have access to one-on-one culturally affirmative mental health services and linguistically appropriate mental health services from a certified mental health professional who is fluent in the communication method that is preferred by the client or recommended by a communication assessment, or both.

(3) If one-on-one culturally affirmative mental health services and linguistically appropriate mental health services by a certified mental health professional are not available within a reasonable geographical area, as determined by the coordinator, for an client, the client shall be offered:

(A) An appropriate referral to a certified mental health

professional who can provide culturally affirmative mental health services and linguistically appropriate mental health services through telemedicine or other remote technology; or

(B)(i) At no cost to the client, culturally affirmative mental health services and linguistically appropriate mental health services through the use of an interpreter.

(ii) If an interpreter cannot be physically present in a timely manner, the services of an interpreter may be offered to the client through telemedicine or other remote technology.

(4) If an interpreter is offered to a client, the client:

(A) May voluntarily decline to accept or use the mental health services through the interpreter without a penalty to the client; and

(B) Shall be offered any other assistance and services as required by federal and state law, including without limitation a different interpreter or hearing assistive technology.

(5) If a client refuses all culturally affirmative mental health services and linguistically appropriate mental health services that are offered, the mental health professional shall:

(A) Secure from the client a signed waiver of the right to receive culturally affirmative mental health services and linguistically appropriate mental health services and place the waiver in the file of the client;

(B) Notify the coordinator of the refusal of culturally affirmative mental health services and linguistically appropriate mental health services; and

(C) Allow the coordinator to review the culturally affirmative mental health services and linguistically appropriate mental health services offered to ensure that all the mental health services were appropriate.

/s/C. Fite

APPROVED: 4/1/19