

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
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As Engrossed: H3/21/13  
**A Bill**

HOUSE BILL 2227

By: Representative H. Wilkins

By: Senator J. Hutchinson

### **For An Act To Be Entitled**

*AN ACT TO AVOID UNNECESSARY EXPANSION IN MEDICAID COSTS AND SERVICES RELATED TO EARLY INTERVENTION DAY TREATMENT FOR CHILDREN; TO CLARIFY THAT ARKANSAS CODE §§ 20-48-101 AND 20-48-105 APPLY TO PROGRAMS FOR ADULTS WITH DEVELOPMENTAL DISABILITIES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

### **Subtitle**

*TO AVOID UNNECESSARY EXPANSION IN MEDICAID COSTS AND SERVICES RELATED TO EARLY INTERVENTION DAY TREATMENT FOR CHILDREN; AND TO DECLARE AN EMERGENCY.*

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

*SECTION 1. Arkansas Code Title 20, Chapter 48, is amended to add an additional subchapter 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 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:

(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 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;

(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 are diagnostic, screening, evaluation, 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 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) 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 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;

(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) "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, evaluation, preventive, therapeutic, palliative, 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 or a successor program constitute the state's early intervention day treatment program;

(6) "Existing operations" means services provided by a child health management services program or a developmental day treatment clinic 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) "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 individuals whose income and resources are

insufficient to meet the cost of necessary medical services;

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

(A) The Commission on Accreditation of Rehabilitation Facilities; or

(B) Any other similar national accrediting organization recognized by the Division of Developmental Disabilities; and

(9) "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 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 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 program.

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

(2) Before obtaining certification, a child health management 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 services under the criteria established under this subchapter.

(3) A certified child health management services program with existing operations on the effective date of this act 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 of Developmental Disabilities shall grant licensure on a county-wide basis.

(2) Before obtaining licensure, a nonprofit community program seeking to operate a 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 the effective date of this act 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 the effective date of this act or a licensed nonprofit community program providing developmental day treatment clinic services for children with existing operations on the effective date of this act shall not be required to obtain the approval of the division to continue operations that were in existence on the effective date of this act, but shall be subject to certification or licensure surveys and rules applicable to the successor program.

20-48-1104. Determination of underserved status for expansion of services.

(a) An expansion of early intervention day treatment services in a county is necessary when the Division of Developmental Disabilities Services determines that a county is underserved with regard to:

(1) Early intervention day treatment services; or

(2) A specific category of early intervention day treatment services currently offered to children with developmental disabilities or delays.

(b) As a condition of the issuance of a new certification to operate a child health management services program, a new license to operate a

developmental day treatment clinic services program for children, or a new certification or license for a successor program, the division must determine that a county of the state is underserved in accordance with subsection (a) of this section.

(c)(1) The division shall have sixty (60) days from the date of an application for expansion of early intervention day treatment services in which to determine whether a county is underserved under subsection (a) of this section.

(2)(A) The division shall provide the applicant with a written report of its findings and conclusions by certified mail.

(B) The division shall provide a copy of the report to the appropriate licensing or certification authority of the applicant.

(3) If the division determines that the county is not underserved under subsection (a) of this section, the applicant shall have thirty (30) days from the date of the applicant's receipt of the written report in which to appeal the determination to the Office of Appeals and Hearings of the Department of Human Services under the Arkansas Administrative Procedure Act, § 20-15-201 et seq.

20-48-1105. Order of priority for granting approval.

(a) When considering an application for approval under this subchapter for expansion of early intervention day treatment services, including child health management services, developmental day treatment clinic services for children, or any successor program services, the Division of Developmental Disabilities Services of the Department of Human Services shall give approval in the following order of preference:

(1) A certified child health management services, a licensed developmental day treatment clinic services for children, or a successor program with existing operations in the county identified by the division as underserved;

(2) A certified child health management services program, a licensed developmental day treatment clinic services for children, or a successor program from another county in the state;

(3) An accredited entity in the underserved county;

(4) An accredited entity from another county in the state; and

(5) An accredited entity from outside the state.

(b) The Division of Developmental Disabilities shall not require accreditation of the following entities in order to approve the entity's application for expansion of early intervention day treatment services under this subchapter:

(1) A certified child health management services program with existing operations on the effective date of this act;

(2) A licensed nonprofit community program providing developmental day treatment services for children with existing operations on the effective date of this act;

(3) A successor program that was a certified child health management services program with existing operations on the effective date of this act; or

(4) A successor program that was a licensed nonprofit community program providing developmental day treatment services for children with existing operations on the effective date of this act.

20-48-1106. Notice of underserved area.

(a) The Division of Developmental Disabilities Services of the Department of Human Services shall provide written notice by certified mail of its designation under § 20-48-1104 to all child health management services programs, developmental day treatment clinic services programs for children, and successor programs with existing operations in the county designated by the division as underserved.

(b) If all child health management services programs, developmental day treatment clinic services programs for children, and successor programs with existing operations in the county designated by the division as underserved determine not to expand early intervention day treatment services, including child health management services, developmental day treatment clinic services for children, or successor program services in the underserved county, the division shall provide written notice by certified mail of its designation under § 20-48-1104 to all providers of child health management services, developmental day treatment clinic services for children, and any successor program services in the remainder of the state.

(c) If all child health management services programs, developmental day treatment clinic services programs for children, and successor programs in the remainder of the state determine not to expand early intervention day

treatment services, including child health management services, developmental day treatment clinic services for children, or successor program services in the underserved county, the division shall provide notice to the general public in a newspaper of statewide general circulation.

20-48-1107. Rules.

(a) The Division of Developmental Disabilities Services of the Department of Human Services may adopt rules to implement this subchapter.

(b) The division shall work with stakeholders, including without limitation, representatives of the Child Health Management Services Association and the Developmental Disabilities Provider Association in the development of rules under this subchapter.

20-48-1108. Successor program.

(a) On or before the effective date of this act, the Department of Human Services shall convene stakeholders, including without limitation representatives of the Child Health Management Services Association and the Developmental Disabilities Provider Association, to assist in determining the feasibility of combining or merging the child health management services program and the developmental day treatment clinic services program for children into a successor program.

(b)(1) This subchapter does not require a successor program to include child health management services programs operated by an academic medical center.

(2) Child health management services programs operated by an academic medical center shall be subject to all other provisions of this subchapter including without limitation §§ 20-48-1103 and 20-48-1104.

SECTION 2. Arkansas Code § 20-48-101(1)(A), concerning definitions for the treatment of the developmentally disabled, is amended to read as follows:

(1)(A) "Accredited nonprofit entity" means a nonprofit entity that:

(i) Has successfully completed an ongoing accreditation process that is related to the delivery of services to ~~persons~~ adults with developmental disabilities and is offered by a national accrediting organization;

(ii) Satisfies the appropriate licensure criteria established by the Division of Developmental Disabilities Services of the Department of Human Services; and

(iii) Is positioned to provide nonresidential services to ~~persons~~ adults with developmental disabilities upon licensure by the division ~~because~~ when no existing nonprofit community ~~provider~~ program is interested in providing the specific category of nonresidential services to ~~persons~~ adults with developmental disabilities that have been identified by the division as underserved.

SECTION 3. Arkansas Code § 20-48-105 is amended to read as follows:

20-48-105. Nonprofit community programs – ~~Extension or expansion~~ Expansion of services. (a)(1) The intent of this section is to avoid unnecessary duplication of costs and services in the ~~extension or~~ expansion of nonresidential services to ~~persons~~ adults with developmental disabilities.

(2) A designation by the Division of Developmental Disabilities Services of the Department of Human Services that a county is underserved with regard to a specific category of nonresidential services to ~~persons~~ adults with developmental disabilities establishes that an ~~extension or~~ expansion of nonresidential services to ~~persons~~ adults with developmental disabilities in the underserved county is necessary.

(b)(1) The division shall not issue a new license for operation of a nonprofit community program or approve an application from a nonprofit community program to implement additional nonresidential services to ~~persons~~ benefit adults with developmental disabilities that are not currently offered by the nonprofit community program unless the division has determined that:

(A) A ~~The county of the state in which the program seeks to operate~~ The county of the state in which the program seeks to operate is underserved with regard to a specific category of nonresidential services currently offered to ~~persons~~ adults with developmental disabilities and currently funded from available state or federal funds; or

(B)(i) A ~~The county of the state in which the program seeks to operate~~ The county of the state in which the program seeks to operate is underserved with regard to new services not currently available to ~~persons~~ adults with developmental disabilities and the new services should be made available to ~~persons~~ benefit adults with developmental disabilities; and

(ii) State or federal funds are available in amounts necessary to support the delivery of new services not currently available to ~~persons~~ adults with developmental disabilities.

(2)(A) The division shall provide written notice by certified mail of its designation under subdivision (b)(1) of this section to all nonprofit community programs with existing operations in the county designated by the division as underserved.

(B) If nonprofit community programs with existing operations in the county that do not currently offer the specific category of nonresidential services identified by the division as underserved determine not to ~~extend or~~ expand the identified nonresidential service to ~~persons~~ adults with developmental disabilities in the underserved county, the division shall provide written notice by certified mail of its designation under subdivision (b)(1) of this section to all nonprofit community programs in the remainder of the state.

(C) If all nonprofit community programs in the remainder of the state determine not to ~~extend or~~ expand the identified nonresidential service to ~~persons~~ adults with developmental disabilities in the underserved county, the division shall provide notice to the general public in a newspaper of statewide general circulation.

(c) In granting an approval under this section, the division shall give approval in the following order of preference:

(1) A qualified nonprofit community program with existing operations in the county that does not currently offer the specific category of nonresidential services to ~~persons~~ adults with developmental disabilities identified by the division as underserved;

(2) A qualified nonprofit community program from another county in the state;

(3) An accredited nonprofit entity in the underserved county;

(4) An accredited nonprofit entity from another county in the state; and

(5) An accredited nonprofit entity from outside the state.

(d)(1)(A) A license from the division is required for operation of a nonprofit community program.

(B) A qualified nonprofit community program is required to

apply to and obtain the approval of the division to implement additional nonresidential services to ~~persons~~ adults with developmental disabilities that are not currently offered by the qualified nonprofit community program.

(2)(A) If an application is approved, the division shall issue a new license or service expansion approval if it finds that the proposed nonresidential service expansion meets the criteria for approval established by the division.

(B) If the application is denied, the division shall send written notice of the denial to the applicant that sets forth the criteria that the proposed nonresidential service expansion failed to meet.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that managed expansion of the child health management services program and the developmental day treatment clinic services for children program is in the best interest of children served and critical to economic efficiencies necessary to sustain the Medicaid program; that managed expansion is also necessary to ensure adequate geographic coverage in rural areas; and that the managed expansion rules in place for developmental day treatment clinic services have worked well and should serve as the model for child health management services or any successor program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective on July 1, 2013.

/s/H. Wilkins