

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

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 609

By: Senator J. Dismang

For An Act To Be Entitled

AN ACT TO AVOID UNNECESSARY DUPLICATION OF COSTS AND SERVICES IN THE EXPANSION OF MEDICAID DAY HABILITATION SERVICES 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 DUPLICATION OF COSTS AND SERVICES IN THE EXPANSION OF MEDICAID DAY HABILITATION SERVICES 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:

Subchapter 11 – Unnecessary Duplication of Costs and Services

20-48-1101. Legislative intent.

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

20-48-1102. Definitions.

As used in this subchapter:



(1) "Accredited entity" means a corporate entity that:

(A) Has successfully completed an accreditation process that is offered by a national accrediting organization and is:

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

(ii) Related to developmental day treatment clinic services for children; or

(iii) A successor program.

(B) One or more of the following:

(i) Satisfies the appropriate certification criteria established by the Arkansas Foundation for Medical Care for child health management services;

(ii) Satisfies the appropriate 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 the appropriate certification or licensure criteria established by a regulatory entity governing a successor program;

(2) "Child health management services" means Medicaid day habilitation services provided to children by a for-profit or nonprofit corporate entity certified by the Arkansas Foundation for Medical Care;

(3) "Day habilitation" means a pediatric day treatment program and related services for children with developmental disabilities, developmental delays, or a medical condition that puts them at risk for developmental delays;

(4) "Developmental day treatment clinic services for children" means Medicaid day habilitation services provided to children by a nonprofit community program that:

(A) Is licensed to provide center-based community services by the division; 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 who would otherwise require support and services through state-operated programs and facilities;

(5) "Early intervention day treatment program" means child

health management services and developmental day treatment clinic services for children or a successor program providing Medicaid day habilitation services to children;

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

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

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

(B) Another similar national accrediting organization recognized by the division;

(8) "Related services" means services offered in conjunction with day habilitation, including without limitation diagnostic and evaluation services and speech, occupational, and physical therapies; and

(9) "Successor program" means a Medicaid program:

(A) That provides day habilitation and related services to children;

(B) That is a replacement for, a combination of, or derived from the child health management services program or both, the developmental day treatment clinic services program for children, or both; and

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

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

(a)(1)(A)(i) Certification from Arkansas Foundation for Medical Care is required for operation as a child health management services provider.

(ii) The Arkansas Foundation for Medical Care shall grant certification under this section on a county-wide basis.

(B) Before obtaining certification, a child health

management services program shall not apply for certification under subdivision (a)(1)(A)(i) of this section before obtaining 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.

(C) 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 of Developmental Disabilities Services of the Department of Human Services to continue operating.

(2)(A)(i) Licensure from the division is required for operation of a developmental day treatment clinic for children.

(ii) The division shall grant licensure under this section on a county-wide basis.

(B) A nonprofit community program seeking to operate a developmental day treatment clinic for children shall not apply for licensure before obtaining the approval of the division to implement new developmental day treatment clinic services for children based on the criteria established under this subchapter.

(C) A licensed nonprofit community program providing developmental day treatment 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 operating.

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

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

(B) A successor program shall not apply for licensure or certification before obtaining the approval of the division to implement new successor program under the criteria established in this subchapter.

(C) A successor program that is a certified child health management services program with existing operations on the effective date of this act or that is a licensed nonprofit community program providing developmental day treatment 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 as they existed on the effective date

of this act, but shall be subject to certification or licensure surveys and rules applicable to the successor program.

(b) Child health management services and developmental day treatment clinic services or a successor program shall constitute the state's early intervention day treatment program.

(c)(1) Upon a determination by the division regarding the approval or rejection of a program's proposal to implement new services, the division shall notify the appropriate licensing or certification authority and include specific information about the criteria that the applicant met or did not meet.

(2) If the division rejects a program's proposed implementation it shall send written notice of the denial to the applicant and the appropriate licensing or certification authority that sets forth the criteria that the proposed expansion of child health management services, developmental day treatment clinic services for children, or any successor program failed to meet.

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

(a) A determination by the Division of Developmental Disabilities Services of the Department of Human Services that a county is underserved with regard to child health management services, developmental day treatment clinic services for children, or a successor program establishes that an expansion of these programs or services in the underserved county is necessary.

(b) The Arkansas Foundation for Medical Care shall not issue a certification for operation of a child health management services program, the division shall not issue a license for the operation of a developmental day treatment clinic services program for children, and the regulatory authority for a successor program shall not issue a certification or license to operate the successor program, unless the division has determined that a county is underserved in accordance with subsection (a) of this section and additional child health management services, developmental day treatment clinic services for children, or a successor program services should be made available.

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

When considering an application for approval under this subchapter for expansion of child health management services, developmental day treatment clinic services for children, or successor program, 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 program, a licensed developmental day treatment clinic services program 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 program for children, or a successor program from another county;

(3) An accredited entity in the underserved county;

(4) An accredited entity from another county ; and

(5) An corporate entity from outside the state.

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

20-77-1107. Rules.

(a) The Division of Developmental Disabilities Services of the Department of Human Services may promulgate 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.

On or before the effective date of this act, the Division of Developmental Disabilities of 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 the division with determining the feasibility of combining the child health management services program and the developmental day treatment clinic services program for children into a successor program.

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 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~~ 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~~ 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 approve the application and 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 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there is considerable overlap and inconsistencies between the child health management services program and the developmental day treatment clinic services program that create confusion and inefficiencies for children served and for providers; and that the Department of Human Services should develop a plan to combine the programs. It is further found and determined that managed expansion of both programs 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 a successor program. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.