

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1281

By: Representative Ladyman
By: Senator Irvin

For An Act To Be Entitled

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

Subtitle

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

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

SECTION 1. Arkansas Code § 20-48-101(2), concerning the definition of "developmental disability" regarding the treatment of individuals with developmental disabilities, is amended to read as follows:

(2) "Developmental disability" means a disability of a person that:

~~(A)-(i)-(A)~~ Is attributable to:
(i) ~~mental retardation~~ Intellectual disability, cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism spectrum disorder;

(ii) ~~Is attributable to any~~ Any other condition of a



person found to be closely related to ~~mental retardation~~ intellectual disability because the condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of a person with ~~mental retardation~~ intellectual disability or requires treatment and services similar to that required for a person with ~~mental retardation~~ intellectual disability; or

(iii) ~~Is attributable to dyslexia~~ 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;

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

(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 on or before July 1, 1995;

(C) An intermediate care facility ~~for the mentally retarded program with fifteen (15) beds or less~~ for individuals with intellectual disabilities with 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 3. Arkansas Code § 20-48-104 is amended to read as follows:

20-48-104. Intermediate Care Facility for ~~Mentally Retarded~~ Individuals with Intellectual Disabilities program – Administration.

(a) The operation of the community-based Intermediate Care Facility for ~~Mentally Retarded~~ Individuals with Intellectual Disabilities program ~~will~~ shall 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 small intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities 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 and federal rules, regulations, guidelines, standards, and policies.

SECTION 4. Arkansas Code § 20-48-201 is amended to read as follows:

20-48-201. Title.

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

SECTION 5. Arkansas Code § 20-48-202 is amended to read as follows:

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 ~~retarded~~ individuals with developmental disabilities.

(B) "Coordinate" implies a working relationship with, but not administrative authority over, public agencies providing ~~mental retardation~~ services to individuals with developmental disabilities;

(3) "Developmental disability" means the same as defined in § 20-48-603(1)(A);

~~(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)~~(4) "Individual" means a person without regard to chronological age;

~~(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) "Mental retardation services" or "services" means all services pertaining to and incidental to the prevention, detection, diagnosis, evaluation, treatment, care, custody, education, training, rehabilitation, or supervision of retarded individuals;~~

~~(10)~~(6) "Private organizations" means organizations, persons, firms, individuals, corporations, or associations;

~~(11)~~(7) "Public agencies" means all agencies, departments, boards, institutions, commissions, officers, officials, political subdivisions and agencies thereof, and school districts of this state;

~~(12)~~(8) "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 ~~retarded~~ individuals with developmental disabilities when the services cannot be provided feasibly or practically at the local level;

~~(13) "Retarded" or "mentally retarded" or "retarded individual" means;~~

~~(A) 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 the mentally retarded; or~~

~~(B) A functionally retarded person who may not exhibit an intellectual deficit on standard psychological tests but who, because of other handicaps, functions as a retarded person. Not included is a person whose primary problem is mental illness, emotional disturbance, physical handicap, or sensory defect; and~~

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

~~(14)~~(10) "Superintendent" means the chief administrative officer assigned full-time to a human development center.

SECTION 6. 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 ~~retarded~~ individuals with developmental disabilities who are in the human development centers or receiving ~~mental retardation~~ services for individuals with 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~~ the 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 federal government.

SECTION 7. 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 mentally retarded~~ has a developmental disability;

(B) His or her parent or guardian has resided in the state not less than three (3) years prior to 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 mentally retarded~~ has a 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 ~~mental retardation~~ providing services for individuals with developmental disabilities to make a determination as to whether the individual ~~involved is mentally retarded~~ has a developmental disability.

SECTION 8. 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 ~~mental retardation~~ services for individuals with developmental disabilities by private organizations and public agencies; ~~and~~

(2) ~~The board shall promulgate regulations~~ Promulgate 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 ~~developmental disabilities~~ services for individuals with developmental disabilities, 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 ~~mental retardation~~ services for individuals with developmental disabilities unless ~~it~~ the public agency or private organization has a license in effect.

SECTION 9. Arkansas Code § 20-48-209 is 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 ~~mental-retardation~~ services for individuals with developmental disabilities.

(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 ~~mental-retardation~~ services for individuals with developmental disabilities 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, ~~State Board of Career Education~~ 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 ~~mental-retardation~~ programs for individuals with developmental disabilities 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 ~~mental-retardation~~ services for individuals with developmental disabilities 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, ~~State Board of Career Education~~ 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 fixing~~ rules concerning standards for ~~mental-retardation~~ programs and activities for individuals with developmental disabilities and ~~to~~ evaluate ~~mental-retardation~~ programs and activities for individuals with developmental disabilities conducted by ~~of~~ public agencies.

SECTION 10. Arkansas Code § 20-48-210 is amended to read as follows:
 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 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 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 ~~mental-retardation~~ services for individuals with developmental disabilities;

~~(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.

SECTION 11. Arkansas Code § 20-48-211 is amended to read as follows:
 20-48-211. Board of Developmental Disabilities Services – Community centers.

(a)(1) The Board of Developmental Disabilities Services is authorized to 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 ~~mental-retardation~~ services for individuals with developmental disabilities ~~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 ~~mental retardation~~ services for individuals with developmental disabilities 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 ~~mental retardation~~ programs and activities for individuals with developmental disabilities 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 federal government.

SECTION 12. Arkansas Code § 20-48-212 is amended to read as follows:
20-48-212. Amount requested for Arkansas Special Olympics, Inc.

(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 Services' request to the Governor and to the Legislative Council.

SECTION 13. 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 ~~that are mentally retarded or developmentally disabled~~ with developmental disabilities.

SECTION 14. 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 mentally retarded or developmentally disabled~~ with developmental disabilities.

SECTION 15. Arkansas Code § 20-48-402 is amended to read as follows:
20-48-402. Penalties.

Any person who violates the following provisions ~~shall be~~ is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) or by imprisonment for not less than six (6) months, or both:

(1) Under the provisions of this subchapter, knowingly, unlawfully, or improperly causes an individual to be adjudged mentally ~~defective~~ incapacitated;

(2) Procures the escape from a human development center of an individual committed to a human development center or knowingly conceals an escaped individual of a human development center; or

(3) Unlawfully brings any firearm, deadly weapon, or explosive into a human development center or onto its grounds or passes any thereof to an individual committed to a human development center, employee, or officer of a human development center.

SECTION 16. Arkansas Code § 20-48-403 is 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 ~~mentally defective~~ individuals with 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 ~~mentally defective~~ individuals with developmental disabilities.

SECTION 17. 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 ~~a mentally defective individual~~ an individual with a developmental disability may file with the Board of Developmental Disabilities Services a verified petition requesting that the individual be admitted to the human development center.

SECTION 18. Arkansas Code § 20-48-413 is amended to read as follows:

20-48-413. ~~Emotionally disturbed mentally retarded individuals~~
Residents of Arkansas with developmental disabilities.

(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 mentally retarded individuals~~ with developmental disabilities, and persons with disorganized behavior, including hyperkinetic, hyperactive, or aggressive behaviors who, because of their ~~problem~~ behavior, function as ~~retarded individuals~~ an individual with a developmental disability.

(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 mentally retarded individuals~~ residents of this state with developmental disabilities.

SECTION 19. Arkansas Code § 20-48-416 is amended to read as follows:

20-48-416. Designation as state agency for carrying out federal ~~mental retardation acts~~ law.

(a) The Board of Developmental Disabilities Services is designated as the single state agency for carrying out the purposes of any ~~act~~ law of Congress pertaining to ~~mental retardation~~ 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~~ law and accomplishing the purposes thereof, including, without limitation:

(1) The receiving, handling, and disbursing of grants and funds

appropriated by any federal ~~act~~ 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 mental retardation~~ provide services for individuals with developmental disabilities, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs ~~for~~ and institutions for ~~the mentally retarded~~ individuals with 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~~ law as to carrying out the purposes of any federal act;

(4) The preparing and submitting of reports of the activities of ~~the center~~ human development centers in carrying out the purposes of any federal ~~act~~ law in such form and containing such information as may be required by any federal ~~act~~ 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~~ 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~~ 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~~ 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 20. Arkansas Code § 20-48-603(1), concerning the definition of "developmental disability" regarding the Location Act for Community Homes for Developmentally Disabled Persons, is amended to read as follows:

(1)(A) "Developmental disability" means a disability of a person

that:

(i) Is attributable to ~~mental retardation~~ intellectual disability, cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism spectrum disorder;

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

(iii) Is attributable to dyslexia resulting from ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, or autism spectrum disorder; and

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

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

SECTION 21. 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 developmental disabilities under any of the service models included in the state's Medicaid plan with the Centers for Medicare and Medicaid Services ~~of the United States Department of Health and Human 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 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 developmental

disabilities.

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

(c)(1) For individuals with 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 development 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 development 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 ~~disabled~~ child or adult with a disability in the community, thereby bearing a considerable responsibility for the care and expenses related to the treatment and care.

SECTION 22. 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 development 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 development day treatment services model.

SECTION 23. 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 24. 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 ~~developmental~~ intellectual 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 ~~developmental~~ intellectual disabilities" means a residential institution maintained for the care and training of persons with ~~developmental~~ intellectual disabilities, ~~including without limitation mental retardation.~~

~~(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 developmental intellectual 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 federal 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 25. 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 ~~developmental~~ intellectual 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 ~~developmental~~ intellectual 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 ~~developmental~~ intellectual 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 ~~developmental~~ intellectual disabilities as an allowable cost for Medicaid reimbursement purposes.

(c) ~~No~~ An intermediate care facility for individuals with

~~developmental~~ intellectual disabilities ~~shall be~~ is not guaranteed, expressly or otherwise, that any additional moneys paid to the intermediate care facility for individuals with ~~developmental~~ intellectual 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 26. Arkansas Code § 20-48-904(a)(3) and (b), 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 ~~developmental~~ intellectual 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~~ 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.

(b)(1) The designated account moneys in the Arkansas Medicaid Program Trust Fund from the provider fee on intermediate care facilities for individuals with ~~developmental~~ intellectual 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 ~~developmental~~ intellectual disabilities may not be used to supplant other local, state, or federal funds.

SECTION 27. 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~~ 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~~ Community and Employment Supports Services Waiver Program.

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

SECTION 28. 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~~ Community and

Employment Supports Services Waiver Program to be calculated in accordance with this section.

SECTION 29. 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~~ 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~~ Community and Employment Supports Services Waiver Program will equal or exceed the amount of its provider fee.

SECTION 30. 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~~ 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 31. 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 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 (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) “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~~ Early intervention day treatment services 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) For an early intervention day treatment 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 early intervention day treatment services program falls under one (1) administrative structure within the academic medical center;

~~(6)~~(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) “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 who are aged, blind, or disables and whose income and resources are insufficient to meet the cost of necessary medical services; and

~~(8) “National accrediting organization” includes without limitation:~~

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

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

~~(9)~~(6) “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 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~~ an early intervention day treatment services program.

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