

Title 20. Public Health and Welfare

Chapter XI. Division of Aging, Adult, and Behavioral Health Services,

Department of Human Services

Subchapter A. Generally

Part 435. Certification in Deaf Mental Health

Subpart 1. Generally

20 CAR § 435-101. Purpose and scope.

(a) To ensure that mental health services which are allowable and delivered by a Department of Human Services-certified mental health professional comply with applicable laws, which require, among other things, that all deaf and hard of hearing persons have access to appropriate mental health services that are provided:

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

(2) Using appropriate accommodations and access services; and

(3) By the following licensed mental health professionals:

(A) Psychiatrists;

(B) Advance practice registered nurses;

(C) Psychologists;

(D) Therapists;

(E) Counselors; and

(F) Social workers.

(b)(1) Deaf and hard of hearing Arkansans have a right to receive accessible, culturally affirmative, and linguistically appropriate mental health services.

(2)(A) The needs may vary greatly.

(B) For culturally Deaf people, linguistically appropriate may mean that the services are delivered in American Sign Language by a mental health provider who understands Deaf culture.

(C) For someone who is hard of hearing, culturally appropriate and accessible services may mean that the services are delivered through the use of assistive listening technology.

(c)(1) The establishment of a certification will increase the capacity of the mental health professionals in Arkansas to respond more appropriately to the varying needs of deaf and hard of hearing Arkansans.

(2) The purpose of this certification is to increase the capacity of mental health professionals in Arkansas to provide culturally affirmative, accessible, and linguistically appropriate mental health services to Arkansans who are deaf or hard of hearing.

(3) These professionals shall recognize when appropriate referrals need to be made or other professionals need to be consulted.

(d) Professionals certified to provide mental health services to people who are deaf or hard of hearing shall possess the following competencies:

(1) Fluency in the primary language or communication method of the individual who is deaf or hard of hearing;

(2) Understanding of the unique experience of being deaf or hard of hearing in a hearing world;

(3) Knowledge of the barriers deaf and hard of hearing people face and solutions for removing those barriers in the delivery of mental health services;

(4) Knowledge of effective strategies for provision of services; and

(5) Ability to collaborate skillfully with interpreters and other access providers.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-102. Definitions.

Definitions for the purpose of this part are as follows:

(1) "Advanced practice nurse" means a person holding a current Arkansas license from the Arkansas State Board of Nursing with specialty education and experience in at least one (1) of the following:

(A) Adult psychiatric mental health clinical nurse specialist;

- (B) Child psychiatric mental health clinical nurse specialist;
- (C) Adult psychiatric mental health advanced practice nurse; or
- (D) Family psychiatric mental health advanced practice nurse;

(2)(A) "Aural Communication" means the transmission of information through the auditory system which includes the system of speaking and hearing.

(B) It usually encompasses both verbal and paralinguistic communication to convey meaning.

(C) Paralinguistic communication would include things such as volume, speed, and intonation of voice, along with gestures and facial expressions or other nonverbal cues;

(3)(A) "Communication assessment" means an evidenced-based assessment which is approved by the Deaf Mental Health Advisory Committee prior to implementation.

(B) A list of approved communication assessments will be available on the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services webpage;

(4) "Communication method" means any one (1), or combinations, of the following languages or systems of communication used by clients, which may include, but are not limited to:

- (A) American Sign Language;
- (B) An English-based system, such as signed English or cued speech;
- (C) High visual orientation communication;
- (D) Tactile American Sign Language;
- (E) Spoken English, aural communication, and speechreading, also known

as lip-reading; or

(F) Speech-to-text services, to include but not limited to, Communication Access Realtime Translation or TypeWell, for example;

(5)(A) "Culturally affirmative mental health services" means the full continuum of mental health services that are respectful to and informed by the values and norms of the culture of the individual being served, including members of the Deaf community

and culture, that are delivered by licensed mental health professionals who have been certified under the guidelines of this manual.

(B) This may also include services to be provided by ancillary staff who are licensed or unlicensed;

(6) "Deaf" means the condition of having a hearing loss at the level that results in the individual having difficulty processing linguistic information through hearing, regardless of amplification or other assistive technology, and thus relying on visual means of communication;

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

(8) "Fluent" means a score of "advanced" or higher for licensed mental health professionals certified under the guidelines of this part, or a score of "intermediate plus" for other licensed or nonlicensed ancillary staff qualified to work in a mental health setting on a sign language communication skills assessment, including without limitation the Sign Language Proficiency Interview assessment and other communication skills assessments;

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

(10) "Independently licensed clinician" means a person holding a current Arkansas license from the applicable state board as a:

- (A) Licensed clinical social worker;
- (B) Licensed marriage and family therapist;
- (C) Licensed psychologist;
- (D) Licensed psychological examiner — independent; or
- (E) Licensed professional counselor;

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

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

(13) "Non-independently licensed clinician" means a person holding a current Arkansas license from the applicable state board as a:

- (A) Licensed master social worker;
- (B) Licensed associate marital and family therapist;
- (C) Licensed associate counselor;
- (D) Licensed psychological examiner; or
- (E) Provisionally licensed psychologist; and

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

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-103. General Provisions.

(a) A licensed professional certified through this part shall offer culturally affirmative and linguistically appropriate mental health services to a client in the client's primary communication method.

(b)(1) The certified mental health professional shall not deny access to services in the client's primary communication method to a client due to the client's having residual hearing ability, whether supported by amplification or other hearing assistive technology.

(2) The certified mental health professional shall not deny access to services in the client's primary communication method to a client due to the client's previous experience with some other communication method.

(c) Deaf and hard of hearing persons have the right to decline culturally affirmative and linguistically appropriate mental health services.

(d) The requirements and obligations imposed by this rule are substantive, not procedural.

(e) In the event of any change in or loss of full privileges related to their professional license, or actions that would impact the certified mental health professional's ability to appropriately perform his or her duties, the certified mental health professional must notify the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services immediately.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-104. Certified mental health professionals.

(a)(1) A certified mental health professional is approved to provide evidenced-based mental health services which address the unique treatment needs of deaf or hard of hearing individuals and their families or caregivers.

(2) A certified mental health professional shall provide mental health services which:

(A) Contribute to the improvement of the individual's cognitive, behavioral, and social functioning; and

(B) Must be provided by a professional, acting within their scope of practice, who has been determined to meet competencies identified by the Department of Human Services/Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services to provide mental health services which are culturally affirmative and linguistically appropriate.

(b) The minimum education and experience required to become a certified mental health professional is outlined below:

(1) A current Arkansas-licensed doctor of medicine or Arkansas-licensed doctor of osteopathic medicine;

(2) A current Arkansas-licensed advanced practice nurse;

(3) A current Arkansas-licensed independently licensed clinician at the master's or doctoral level; or

(4) A current Arkansas-licensed, nonindependently licensed clinician at the master's/doctoral level who is receiving supervision according to the requirements of their licensing board.

(c) All certified mental health professionals must have completed required training as outlined below:

(1) For initial certification, the mental health professional candidate must:

(A) Possess evidence of an advanced-level certification, or higher level of certification, on a sign language communication skills assessment;

(B) Have attended, participated in, and successfully completed the department/division approved training, which includes twelve (12) weeks of weekly consultation calls, provided by a trainer authorized by the department or designee;

(C) Have demonstrated competencies in the provision of culturally affirmative and linguistically appropriate mental health services introduced during the department/division approved training as evidenced by obtaining a certificate of completion of all requirements related to the department/division approved training, which must be submitted with the application; and

(D) Submit evidence of a current Arkansas license as a:

(i) Mental health professional;

(ii) Advanced practice nurse; or

(iii) Physician.

(2) For recertification every five (5) years:

(A) Evidence of continued advanced-level, or higher, certification on a sign language communication skills assessment as determined by the certifying body;

(B) Evidence of continuing education credit directly related to provision of services to this special population amounting to at least three (3) hours for each twelve-month period of the five-year renewal period, totaling a minimum of fifteen (15) hours per renewal period; and

(C) The certified mental health professional renewal application must include evidence of a current Arkansas license as a mental health professional, advanced practice nurse, or physician at the time of renewal request.

(d)(1) Decisions for approving certified mental health professionals based on completion of similar training as part of a specialized graduate or post-graduate training in evidence-based interventions for individuals who are deaf or hard of hearing will exclusively be made by the department/division.

(2) The department/division reserves the right to consult with the established Deaf Mental Health Advisory Committee for its review of any alternative education course or training to solicit recommendations on acceptable education, course work, or training.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-105. Application process for certified mental health professional.

(a)(1) Applications and renewals will be accepted by electronic mail or postal mail, but preferably by electronic mail to the following email address:

DHS.BehavioralHealth@dhs.arkansas.gov with "Certified Mental Health Professional Application" indicated on the subject line.

(2) Please ensure that all required documentation is included with the initial application or renewal application.

(b)(1) Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services Form 801, Deaf Mental Health Professional Application may be used for the initial application and the renewal application.

(2) Please check the appropriate box on the form to indicate which action you are seeking.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-106. Application review process.

(a) Timeline.

(1)(A) The Department of Human Services will review all application forms and materials within thirty (30) calendar days after the department receives a complete application package.

(B) The department will return incomplete applications to senders without review.

(2) For approved applications, the department will furnish an approval letter via postal or electronic mail within ten (10) calendar days of issuing approval.

(b) Determinations include:

(1) Application approved;

(2) Application returned for additional information; and

(3)(A) Application denied.

(B) The department will state the reasons for denial in a written response to the applicant within ten (10) calendar days of the determination.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-107. Department of Human Services access to applicants/providers.

(a) For the purposes of quality review or investigations, the Department of Human Services may contact applicants or certified mental health professionals at any time.

(b) Contact may take place through announced or unannounced visits.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-108. Additional requirements for providing services.

(a) Care and services must:

(1) Comply with all state and federal laws, rules, and regulations applicable to the furnishing of mental health services funded in whole or in part by federal funds, to all state laws and rules applicable to health coverage;

(2) Conform to professionally recognized behavioral health rehabilitative treatment models; and

(3) Be established by clinically sound documentation that is accurate and demonstrates compliance with applicable payor source for health coverage, as well as licensure/board requirements.

(b) A certified mental health professional may not furnish services to any deaf or hard of hearing client during any time the individual's professional license is not current or valid.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-109. Provider renewal.

(a) The term of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services certification approval is continuous for five (5) years from the date of approval.

(b) An application for renewal must be checked as such on the appropriate form as a renewal application.

(c) The Department of Human Services must receive renewal applications and all required supporting documentation at least fifteen (15) calendar days before the division Deaf Mental Health Professional Certification expiration date.

(d) If the department has not renewed the provider before the certification expiration date, status is void beginning 12:00 a.m. central standard time (CST) the next day.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-110. Noncompliance.

(a) Failure to comply with the requirements outlined in this part may result in one (1) or more of the following:

(1) Submission and implementation of an acceptable corrective action plan as a condition of retaining Deaf Mental Health Professional Certification;

(2) Suspension of Deaf Mental Health Professional Certification for either a fixed period, to be determined by the Department of Human Services, or until the provider meets all conditions specified in the suspension notice; or

(3) Termination of Deaf Mental Health Professional Certification.

(b) Without limitation, the department reserves the right to report egregious professional violations to the appropriate licensing board.

Authority. Arkansas Code § 20-47-1005.

20 CAR § 435-111. Appeal process.

(a) If the Department of Human Services denies, suspends, or revokes deaf mental health professional certification status, i.e., takes adverse action, the affected provider may appeal the department's adverse action.

(b) Appeals must be submitted in writing to the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(c)(1) The provider has thirty (30) calendar days from the date of the notice of adverse action to appeal.

(2) An appeal request received within thirty-five (35) calendar days of the date of the notice will be deemed timely.

(d) The appeal must state with particularity the error or errors asserted to have been made by the department in denying, suspending, or revoking the referenced certification status, and cite the legal authority for each assertion of error.

(e)(1) Within thirty (30) calendar days after receiving an appeal the director shall:

(A) Designate a person who did not participate in reviewing the application or in the appealed-from adverse decision to hear the appeal;

(B) Set a date for the appeal hearing; and

(C) Notify the appellant in writing of the date, time, and place of the hearing.

(2) The hearing shall be set within sixty (60) calendar days of the date the division receives the request for appeal, unless a party to the appeal requests and receives a continuance for good cause.

(f) The department shall record each hearing and maintain the hearing record.

(g)(1) The hearing official shall issue the decision within forty-five (45) calendar days of the date that the hearing record is completed and closed.

(2)(A) The hearing official shall issue the decision in a written document that contains:

- (i) Findings of fact;
- (ii) Conclusions of law; and
- (iii) The decision.

(B) The findings, conclusions, and decision shall be mailed to the appellant except that if the appellant is represented by counsel, a copy of the findings, conclusions, and decision shall also be mailed to the appellant's counsel.

(3) The decision is the final agency determination under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4)(A) Delays caused by the appealing party shall not count against any deadline.

(B) Failure to issue the decision within the time required is not a decision on the merits and shall not alter the rights or status of any party to the appeal, except that any party may pursue legal process to compel the hearing official to render a decision.

Authority. Arkansas Code § 20-47-1005.