

## **Title 20. Public Health and Welfare**

### **Chapter XIV. Division of Developmental Disabilities Services, Department of Human Services**

#### **Subchapter A. Generally**

#### **Part 537. Rules for Early Intervention Day Treatment**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"LAST UPDATED: August 1, 2022"

"101. Authority.

(a) These standards are promulgated under the authority of Ark. Code Ann. § 20-48-201 to - 212, Ark. Code Ann. § 20-48-1101 to -1108, Ark. Code Ann. § 25-10-102, and Ark. Code Ann. § 25-15-217.

(b)(1) The Division of Provider Services and Quality Assurance (DPSQA) shall perform all regulatory functions regarding the licensure and monitoring of Early Intervention Day Treatment programs on behalf of the Division of Developmental Disabilities Services.

(2) The Division of Developmental Disabilities Services (DDS) shall determine whether and to what extent a county is underserved.

(c)(1) The Division of Child Care and Early Childhood Education (DCCECE) shall perform all regulatory functions regarding the licensure and monitoring of childcare centers.

(2) DPSQA may perform regulatory functions regarding the monitoring of childcare centers that are licensed as Early Intervention Day Treatment programs on behalf of DCCECE."

#### **Subpart 1. General Provisions**

##### **20 CAR § 537-101. Purpose.**

The purpose of this part is to:

(1) Serve as the minimum standards for early intervention day treatment programs and facilities; and

(2) Ensure that all clients receive all early intervention day treatment services recommended by a physician for the maximum reduction of physical or mental disability and restoration of the client to the best functional level.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-102. Definitions.**

As used in this part:

(1) "Academic medical center" means a medical center located in Arkansas that consists of a medical school and its primary teaching hospitals and clinical programs;

(2) "Adverse regulatory action" means a denial of an EIDT license and any enforcement action taken by the Division of Provider Services and Quality Assurance pursuant to 20 CAR §§ 537-803 – 537-807;

(3) "Applicant" means an applicant for an EIDT license;

(4)(A) "Change in ownership" means one (1) or more transactions within a twelve-month period that results in a change in greater than fifty percent (50%) of the financial interests, governing body, operational control, or other operational or ownership interests of the EIDT.

(B) "Change in ownership" does not include a change of less than fifty percent (50%) in the membership of the EIDT's:

(i) Board of directors;

(ii) Board of trustees; or

(iii) Other governing body;

(5) "Childcare center" means a childcare center licensed as a childcare center by the Division of Child Care and Early Childhood Education pursuant to the minimum licensing standards for childcare centers;

(6) "Childcare center license" means a license to operate a childcare center

issued by the Division of Child Care and Early Childhood Education pursuant to the minimum licensing standards for childcare centers;

(7) "Directed in-service training plan" means a plan of action that:

(A) Provides training to assist an EIDT in complying with this part and correcting deficiencies;

(B) Includes the topics covered in the training and materials used in the training;

(C) Specifies the length of the training;

(D) Specifies the staff required to attend the training; and

(E) Is approved by the Division of Provider Services and Quality Assurance;

(8) "Early intervention day treatment" means diagnostic, screening, evaluative, preventative, therapeutic, palliative, and rehabilitative and habilitative, including speech, occupational, and physical therapies and any medical or remedial services recommended by a physician for the maximum reduction of physical or mental disabilities and the restoration of the child to the best possible functional level;

(9) "ECDS" means an early childhood developmental specialist, which is an employee:

(A) Responsible for the development of client individual treatment plans, referred to as ITPs, and the supervision of habilitative services delivery to clients; and

(B) Who satisfies at least one (1) of the following criteria:

(i) Is licensed as a:

(a) Speech therapist;

(b) Occupational therapist;

(c) Physical therapist; or

(d) Developmental therapist; or

(ii) Has a bachelor's degree and at least one (1) of the following:

(a) An early childhood or early childhood special education certificate;

(b) Current child development associate's certificate;

(c) Current birth to pre-K credential; or

(d) Documented experience working with children with special needs and twelve (12) hours of completed college courses in early childhood, child development, special education, elementary education, or child and family studies;

(10) "Early intervention day treatment services" means services that are available under the early intervention day treatment program for Medicaid clients as defined in Section II of the Early Intervention Day Treatment Medicaid Manual, 20 CAR pt. 615;

(11) "EIDT" means an early intervention day treatment program, which is a pediatric day treatment program run by one (1) or more ECDS that provides early intervention day treatment service prescribed by a physician to children with:

(A) Intellectual and developmental disabilities;

(B) Developmental delays; or

(C) A medical condition that puts them at risk for developmental delay;

(12) "EIDT license" means a nontransferable license issued by the Division of Provider Services and Quality Assurance to an EIDT for a specific location that meets the standards in this part;

(13)(A) "Employee" means an employee, owner, independent contractor, driver, attendant, or other agent of an EIDT and includes without limitation:

(i) Full-time employees;

(ii) Part-time employees;

(iii) Transportation contractors; and

(iv) Any other person who acts on behalf of an EIDT or has an ownership, financial, or voting interest in the EIDT.

(B) "Employee" does not mean an independent contractor if:

(i) The independent contractor does not assist in the day-to-day operations of the EIDT; or

(ii) The independent contractor has no client contact;

(14) "First Connections" means the Division of Developmental Disabilities Services program that administers, monitors, and carries out all activities and

responsibilities for the State of Arkansas under Part C of the Individuals with Disabilities Education Act to ensure appropriate early intervention services are available to all infants and toddlers from birth to thirty-six (36) months of age who are suspected of having a developmental delay (and their families);

(15) "First Connections Central Intake Unit" means the Division of Developmental Disabilities Services unit in the First Connections program that serves as the program's single referral point of entry to minimize duplication and expedite service delivery;

(16) "Irreconcilable conflict" means a conflict between two (2) standards where an EIDT cannot comply with both standards at the same time;

(17) "ITP" means a client's individual treatment plan, which is a written, individualized service plan for an EIDT client to improve the EIDT client's condition;

(18) "Local education agency" means the school district or education service cooperative that is offering preschool services to the area where the client resides;

(19)(A) "Marketing" means the accurate and honest advertisement of an EIDT that does not also constitute solicitation.

(B) "Marketing" includes without limitation:

(i) Advertising using traditional media;

(ii) Distributing brochures or other informational materials regarding the services offered by the EIDT;

(iii) Conducting tours of the EIDT to interested clients and their families;

(iv) Mentioning services offered by the EIDT in which the client or their family might have an interest; and

(v) Hosting informational gatherings during which the services offered by the EIDT are described;

(20) "Medication error" means the:

(A) Loss of medication;

(B) Unavailability of medication;

(C) Falsification of medication logs;

- (D) Theft of medication;
- (E) Missed doses of medication;
- (F) Incorrect medications administered;
- (G) Incorrect doses of medication;
- (H) Incorrect time of administration;
- (I) Incorrect method of administration; and
- (J) Discovery of an unlocked medication container that is always supposed

to be locked;

(21) "Plan of correction" means a plan of action that:

(A) Provides the steps an EIDT must take to correct noncompliance with this part;

(B) Sets a timeframe for each specific action provided in the plan; and

(C) Is approved by the Division of Provider Services and Quality

Assurance;

(22) "Residence" means the county where a client is listed as residing in the Arkansas Medicaid Management Information System;

(23) "Serious injury" means any injury to a client that:

(A) May cause death;

(B) May result in substantial permanent impairment;

(C) Requires hospitalization; or

(D) Requires the attention of:

(i) An emergency medical technician;

(ii) A paramedic; or

(iii) An emergency room;

(24)(A) "Solicitation" means the initiation of contact with a client or their family by an EIDT when the client is currently receiving services from another provider and the EIDT is attempting to convince the client or their family to switch to or otherwise use the services of the EIDT that initiated the contact.

(B) "Solicitation" includes without limitation the following acts to induce a client or their family by:

(i) Contacting the family of a client that is currently receiving services from another provider;

(ii) Offering cash or gift incentives to a client or their family;

(iii) Offering free goods or services not available to other similarly situated clients or their families;

(iv) Making negative comments to a client or their family regarding the quality of services performed by another service provider;

(v) Promising to provide services in excess of those necessary;

(vi) Giving a client or their family the false impression, directly or indirectly, that the EIDT is the only service provider that can perform the services desired by the client or their family; or

(vii) Engaging in any activity that the Division of Provider Services and Quality Assurance reasonably determines to be "solicitation";

(25) "Student observer" means a student visiting an EIDT on a one-time or periodic basis to observe classroom activities or other similar activities that do not involve direct contact with clients; and

(26) "Underserved county" means a county that is underserved regarding early intervention day treatment services.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**Codification Notes.** Part C of the Individuals with Disabilities Education Act was enacted in Pub. L. No. 94-142 and is codified at 20 U.S.C. §§ 1431 – 1444.

## **Subpart 2. Licensing**

### **20 CAR § 537-201. License required.**

(a)(1) An EIDT must have an EIDT license issued by the Division of Provider Services and Quality Assurance, pursuant to this part, for the address at which the EIDT will provide services.

(2) An EIDT must comply with all requirements of this part.

(b)(1) An EIDT license is specific to a single address.

(2) A separate EIDT license is required for each address, even if the same person or entity has an EIDT at other addresses.

(3) An address may only have one (1) EIDT license attributed to it at any one (1) time.

(c) An EIDT may be operated through an academic medical center program if the program:

(1) Specializes in developmental pediatrics; and

(2) Is staffed and operated by the academic medical center under the direction of a board-certified or board-eligible developmental pediatrician.

(d)(1) An EIDT must have a childcare center license in good standing for the EIDT's location unless the EIDT is operating as an academic medical center.

(2)(A) An EIDT must comply with all requirements of the applicable minimum licensing standards for childcare centers.

(B) A violation of the applicable minimum licensing standards for childcare centers constitutes a violation of this part.

(e)(1) In the event of a conflict between this part and the minimum licensing standards for childcare centers, the stricter requirement shall apply.

(2) In the event of an irreconcilable conflict between this part and the minimum licensing standards for childcare centers, this part shall govern to the extent not governed by federal laws, rules, or state law.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

### **20 CAR § 537-202. Licensure application.**

(a)(1) To apply for an EIDT license, an applicant must submit a complete application to the Division of Provider Services and Quality Assurance.

(2) A complete application includes:

(A) Documentation demonstrating the applicant's entire ownership,

including without limitation all the applicant's financial, governing body, and business interests;

(B) Documentation of the applicant's management, including without limitation the management structure and members of the management team;

(C) Documentation of the applicant's current contractors and the contractors that the applicant intends to use as part of operating the EIDT;

(D) Documentation of all required state and national criminal background checks for employees and operators;

(E) Documentation of all required Child Maltreatment Central Registry checks and Adult and Long-term Care Facility Resident Maltreatment Registry checks for employees and operators;

(F) Documentation demonstrating compliance with this part; and

(G) All other documentation or other information requested by the division.

(b) To apply to change the ownership of an existing EIDT, the EIDT must submit a complete application described in subsection (a) of this section.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-203. Licensure process.**

(a) The Division of Provider Services and Quality Assurance may approve an application for an EIDT license and issue an EIDT license if:

(1) Applicant submits a complete application under 20 CAR § 537-202(a);

(2) The Division of Provider Services and Quality Assurance determines that the applicant has successfully passed all required criminal background and maltreatment checks;

(3) The Division of Provider Services and Quality Assurance determines that the applicant satisfies this part; and

(4) The Division of Provider Services and Quality Assurance determines that one (1) of the following conditions are met:

(A) The Division of Developmental Disabilities Services has determined that the county in which the new EIDT would be located is an underserved county;

(B) The applicant has one (1) or more EIDT licensed locations in the same county in which the new EIDT would be located; or

(C) The applicant has one (1) or more EIDT licensed locations in a county contiguous to the county in which the new EIDT would be located, and the existing location serves at least thirty (30) children who are eligible, enrolled, and participating in the existing location, but reside in the county in which the EIDT would be located.

(b) The Division of Provider Services and Quality Assurance may approve an application to change the ownership of an existing EIDT and change the ownership of an existing EIDT license if:

(1) The applicant submits a complete application under 20 CAR § 537-202;

(2) The Division of Provider Services and Quality Assurance determines that all employees and operators have successfully passed all required criminal background and maltreatment checks; and

(3) The Division of Provider Services and Quality Assurance determines that the applicant satisfies the standards in this part.

(c) The Division of Provider Services and Quality Assurance shall issue new EIDT licenses in accordance with the order of priority required by Arkansas Code § 20-48-1105.

(d) EIDT licenses do not expire until terminated under this part.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-204. Notice of underserved status.**

The Division of Developmental Disabilities Services shall provide written notice of any underserved determination made under 20 CAR § 537-203(a), as required in Arkansas Code § 20-48-1106.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

### **Subpart 3. Administration**

#### **20 CAR § 537-301. Organization and ownership.**

(a) The EIDT must be authorized and in good standing to do business under the laws of the State of Arkansas.

(b)(1) An EIDT must:

(A) Appoint a single manager as the point of contact for all Division of Developmental Disabilities Services and Division of Provider Services and Quality Assurance matters; and

(B) Provide the Division of Developmental Disabilities Services and Division of Provider Services and Quality Assurance with updated contact information for that manager.

(2) This manager must have authority over the EIDT and all EIDT employees and must ensure that the Division of Developmental Disabilities Services and Division of Provider Services and Quality Assurance requests, concerns, inquiries, and enforcement actions are addressed and resolved to the satisfaction of the Division of Developmental Disabilities Services and Division of Provider Services and Quality Assurance.

(c)(1) An EIDT cannot transfer its EIDT license to any person or entity.

(2) An EIDT cannot change its ownership unless the Division of Provider Services and Quality Assurance approves the application of the new ownership pursuant to 20 CAR §§ 537-202 and 537-203.

(3) An EIDT cannot change its name or otherwise operate under a different name than the name listed on the EIDT license without prior written approval from the Division of Provider Services and Quality Assurance.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

#### **20 CAR § 537-302. Employees and staffing requirements.**

(a)(1) An EIDT must appropriately supervise all clients based on each client's

needs.

(2) An EIDT must have enough employees onsite to supervise clients at the EIDT location.

(b)(1) An EIDT must comply with all requirements applicable to employees under this part and all requirements applicable to employees of childcare centers, including without limitation:

- (A) Drug screens;
- (B) Criminal background checks; and
- (C) Adult and child maltreatment checks.

(2) An EIDT must verify an employee still meets all requirements under this part:

(A) Upon the request of the Division of Provider Services and Quality Assurance; or

(B) Whenever the EIDT receives information after hiring that would create a reasonable belief that the employee no longer meets all requirements under this part.

(c) An EIDT must conduct criminal background checks for all employees as required by law and applicable minimum licensing standards for childcare centers.

(d) An EIDT must conduct a Child Maltreatment Central Registry check on each employee prior to hiring and at least every two (2) years thereafter.

(e) An EIDT must conduct an Adult and Long-term Care Facility Resident Maltreatment Central Registry check on each employee prior to hiring and at least every two (2) years thereafter.

(f) An EIDT must conduct a drug screen that tests for the use of illegal drugs on each employee prior to hiring.

(g) An EIDT must conduct an Arkansas Sex Offender Registry search on each employee prior to hiring and at least every two (2) years thereafter.

(h)(1) Employees must be sixteen (16) years of age or older.

(2) Employees under eighteen (18) years of age must be:

(A) Directly and visually supervised by an adult employee when in direct contact with clients; and

(B) Enrolled in high school or GED curriculum.

(3) Student observers:

(A) Cannot be counted toward staff-to-client ratios;

(B) Cannot have disciplinary control over an EIDT client;

(C) Cannot be left alone with a client; and

(D) Are not required to have criminal background, child maltreatment, or adult maltreatment checks.

(i)(1) Except as provided in subdivision (i)(2) of this section, the EIDT must provide at least the following minimum staff-to-client ratio for all clients:

Age Group	Ratio
0 to 18 months	1:4
18 to 36 months	1:6
3 to 4 years	1:8
4 years and above	1:9

(2) The EIDT may reduce the staff-to-client ratio by up to fifty percent (50%) during naptime for clients who are two and one-half (2 1/2) years of age and older, if at least seventy-five percent (75%) of the staff-to-client ratio is maintained throughout the EIDT facility.

(j)(1) An EIDT must document all scheduled and actual employee staffing.

(2) The documentation required for employee staffing includes without limitation employee:

(A) Names;

(B) Job title or credential;

(C) Job duties; and

(D) Typical working days and hours.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**Codification Notes.** "GED" means General Educational Development.

**20 CAR § 537-303. Employee training.**

(a) All employees involved in any way with services provided to clients, or who have routine contact with clients, must receive the following training before having contact with clients and no later than thirty (30) days after beginning employment:

- (1) Basic health and safety practices;
- (2) Infection control and infection control procedures;
- (3) Identification and mitigation of unsafe environmental factors;
- (4) Emergency and evacuation procedures;
- (5) Identification and prevention of adult and child maltreatment;
- (6) Mandated reporter requirements; and
- (7) Reporting incidents and accidents as required in this part.

(b) Employees required to receive training prescribed in subsection (a) of this section must receive annual retraining on those topics at least once every twelve (12) months.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-304. Employee records.**

(a) An EIDT must maintain a personnel file for each employee that includes:

- (1) A detailed job description;
- (2) All required criminal background checks;
- (3) All required Child Maltreatment Central Registry checks;
- (4) All required Adult and Long-term Care Facility Resident Maltreatment Central Registry checks;
- (5) All conducted drug screen results;
- (6) A signed statement that employee will comply with the EIDT's drug screen and drug use policies;
- (7) A copy of current state or federal identification;

(8) A copy of valid state-issued driver's license if driving is required in the job description;

(9) Documentation demonstrating that the employee received all training required in 20 CAR § 537-303;

(10) Documentation demonstrating that the employee obtained and maintained in good standing all professional licensures, certifications, or credentials required for the employee or the service the employee is performing; and

(11) Documentation demonstrating that the employee meets all continuing education, in-service, or other training requirements applicable under this part and any professional licensures, certifications, or credentials held by that employee.

(b) An EIDT must ensure that each personnel record is kept confidential and available only to:

(1) Employees who need to know the information contained in the personnel record;

(2) Persons or entities who need to know the information contained in the personnel record;

(3) The Division of Provider Services and Quality Assurance and any governmental entity with jurisdiction or other authority to access the personnel record;

(4) The employee; and

(5) Any other individual authorized in writing by the employee.

(c) An EIDT must keep personnel records in a file cabinet or room that is always locked.

(d)(1) An EIDT may use electronic records in addition to or in place of physical records to comply with this part.

(2) An EIDT provider that uses electronic records must take reasonable steps to backup all electronic records and reconstruct a personnel record in the event of a breakdown in the EIDT's electronic records system.

(e) An EIDT must retain all employee records for five (5) years from the date an employee is no longer an employee of the EIDT or, if longer, the final conclusion of all reviews, appeals, investigations, administrative actions, or judicial actions related to

that employee that are pending at the end of the five-year period.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-305. Client service records.**

(a)(1) An EIDT must maintain a separate, updated, and complete service record for each client documenting the services provided to the client and all other documentation required under this part.

(2) Each client service record must be uniformly organized and readily available for review by the Division of Provider Services and Quality Assurance at the EIDT's location.

(3) A client's service record must include a summary document at the front that includes:

(A) The client's:

(i) Full name;

(ii) Address and county of residence;

(iii) Telephone number and, if available, email address;

(iv) Date of birth;

(v) Primary language;

(vi) Diagnoses;

(vii) Medications, dosage, and frequency, if applicable;

(viii) Known allergies;

(ix) Entry date into the EIDT;

(x) Exit date from the EIDT;

(xi) Medicaid number; and

(xii) Commercial or private health insurance information or managed care organization information, if applicable;

(B) Name, address, phone number, email address, and relationship of the client's custodian or legal guardian; and

(C) Name, address, and phone number of the client's primary care

physician.

(b) A client's service record must include at least the following information and documentation:

(1) The client's:

(A) ITP;

(B) Behavioral management plan;

(C) Daily activity logs; and

(D) Medication management plan and medication logs;

(2) Copies of any assessments or evaluations completed on the client; and

(3) Copies of any orders that place the client in the custody of another person or entity.

(c) An EIDT must ensure that each client service record is kept confidential and available only to:

(1) Employees who need to know the information contained in the client's service record;

(2) Persons or entities who need to know the information contained in the client service record in order to provide services to the client;

(3) The division and any governmental entity with jurisdiction or other authority to access the client's service record;

(4) The client's legal guardian or custodian; and

(5) Any other individual authorized in writing by the legal guardian or custodian.

(d) An EIDT must keep client service records in a file cabinet or room that is always locked.

(e)(1) An EIDT may use electronic records in addition to or in place of physical records to comply with this part.

(2) An EIDT provider that uses electronic records must take reasonable steps to backup all electronic records and reconstruct a client's service record in the event of a breakdown in the EIDT's electronic records system.

(f) An EIDT must retain all client service records for five (5) years from the date

the client last exits from the EIDT or, if longer, the final conclusion of all reviews, appeals, investigations, administrative actions, or judicial actions related to the client that are pending at the end of the five-year period.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-306. Marketing and solicitation.**

- (a) An EIDT can market its services.
- (b) An EIDT cannot solicit a client or their family.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-307. Third-party service agreements.**

(a) An EIDT may contract in writing with third-party vendors to provide services or otherwise satisfy requirements under this part.

(b) An EIDT must ensure that all third-party vendors comply with this part and all other applicable:

- (1) Laws;
- (2) Rules; and
- (3) Regulations.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**Subpart 4. Facility Requirements**

**20 CAR § 537-401. General requirements.**

(a) An EIDT facility must:

(1) Be heated, air-conditioned, well-lit, well-ventilated, and well-maintained at a comfortable temperature;

(2) Be safe, clean, maintained, in good repair, and sanitary, including without

limitation as to the facility's:

- (A) Exterior;
- (B) Surrounding property; and
- (C) Interior floors and ceilings;

(3) Be free of offensive odors and potentially hazardous objects including without limitation explosives and broken equipment;

(4) Have drinking water available to clients and employees;

(5) Have an emergency alarm system throughout the facility to alert employees and clients when there is an emergency;

(6) Have at least one (1) toilet and one (1) sink for every fifteen (15) clients, with:

- (A) Running hot and cold water;
- (B) Toilet tissue;
- (C) Liquid soap; and
- (D) Paper towels or air dryers;

(7) Have bathrooms that provide for individual privacy and are appropriate for all clients with regard to size and accessibility;

(8) Have at least one (1) operable telephone on site that is available at all hours and reachable with a phone number for outside callers;

(9) Have working smoke and carbon monoxide detectors in all areas used by clients or employees;

(10) Have a first-aid kit that includes at least the following:

- (A) Adhesive band-aids of various sizes;
- (B) Sterile gauze squares;
- (C) Adhesive tape;
- (D) Roll of gauze bandages;
- (E) Antiseptic;
- (F) Thermometer;
- (G) Scissors;
- (H) Disposable gloves; and

(I) Tweezers;

(11) Have enough fire extinguishers in number and location to satisfy all applicable laws and rules, but no fewer than two (2) fire extinguishers;

(12) Have hallways and corridors at least six feet (6') in width;

(13) Have screens for all windows and doors used for ventilation;

(14) Have screens or guards attached to the floor or wall to protect:

(A) Floor furnaces;

(B) Heaters;

(C) Hot radiators;

(D) Exposed water heaters;

(E) Air conditioners; and

(F) Electric fans;

(15) Have no lead-based paint;

(16) Have lighted "exit" signs at all exit locations;

(17) Have written instructions and diagrams noting emergency evacuation routes and shelters to be used in case of fire, severe weather, or other emergency, posted at least every twenty-five feet (25'):

(A) In all stairwells;

(B) In and by all elevators; and

(C) In each room used by clients;

(18) Have a copy of Title VI and VII of the Civil Rights Act of 1964, and all required legal notices, prominently posted as required;

(19) Have an emergency power system to provide lighting and power to essential electrical devices throughout the EIDT, including without limitation power to:

(A) Exit lighting and fire detection;

(B) Fire alarm; and

(C) Fire extinguishing systems;

(20) Have chemicals, toxic substances, and flammable substances stored in locked storage cabinets or closets;

(21) Have the EIDT's telephone, hours of operation, and hours of access, if

applicable, posted at all public entrances;

(22) Prohibit the possession of firearms or other weapons except by authorized law enforcement personnel; and

(23) Prohibit:

(A) Smoking;

(B) Use of tobacco products; and

(C) The consumption of:

(i) Prescription medication without a prescription;

(ii) Alcohol; and

(iii) Illegal drugs.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**Codification Notes.** The Civil Rights Act of 1964 was enacted as Pub. L. No. 88-352.

## **Subpart 5. Enrollments, Exits, and Referrals**

### **20 CAR § 537-501. Enrollments.**

(a) An EIDT may enroll and provide services to a client who is eligible to receive EIDT services.

(b) An EIDT must document the enrollment of all clients to the EIDT.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

### **20 CAR § 537-502. Exits.**

(a) An EIDT may exit a client from its program if the person becomes ineligible for EIDT services, chooses to enroll with another EIDT, or for any other lawful reason.

(b) An EIDT must document the exit of all clients from its program.

(c) An EIDT must provide reasonable assistance to all clients exiting its program, including without limitation to:

- (1) Assisting the client in transferring to another EIDT or other service provider; and
- (2) Providing copies of such a client's records to the:
  - (A) Client;
  - (B) Client's legal custodian or guardian; and
  - (C) EIDT or other service provider to which the client transfers after exiting the program.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-503. Referrals to the First Connections program.**

- (a) An EIDT must, within two (2) working days of first contact, refer to the First Connections program all infants and toddlers from birth to thirty-six (36) months of age for whom there is a diagnosis or suspicion of a developmental delay or disability.
- (b) The referral must be made to the First Connections Central Intake Unit.
- (c) Each EIDT is responsible for documenting that a proper and timely referral to First Connections has been made, pursuant to this part.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-504. Referrals to local education agencies.**

- (a) Each EIDT must, within two (2) working days of first contact, refer to the appropriate local education agency each client:
  - (1) Who is at least three (3) years of age;
  - (2) Who has not entered Kindergarten; and
  - (3) For whom there is a diagnosis or suspicion of a developmental delay or disability.
- (b) For clients who turn three (3) years of age while receiving services at the EIDT, the referral must be made at least ninety (90) days prior to the client's third birthday.
- (c) If the client begins services less than ninety (90) days prior to their third

birthday, the referral should be made within two (2) working days of first contact.

(d) The referral must be made to the local education agency where that client resides.

(e) Each EIDT is responsible for documenting that a proper and timely referral to the appropriate local education agency has been made, pursuant to this part.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-505. Appropriate referrals for clients failing to qualify.**

(a) An EIDT must provide the custodian or legal guardian of a client with appropriate information and referrals to other available services if:

(1) The EIDT assists the client with obtaining a developmental screen or performs a comprehensive developmental evaluation as part of the process of determining the client's eligibility for EIDT services; and

(2) The developmental screen or comprehensive developmental evaluation indicates the client is not eligible to receive EIDT services.

(b) Other available services include without limitation any Early Head Start, Head Start, and home-visiting programs.

(c) Each EIDT is responsible for maintaining documentation evidencing that a reasonable attempt was made to provide the referrals, materials, and information described in subsection (a) of this section to the client's custodian or legal guardian.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**Subpart 6. Program and Services**

**20 CAR § 537-601. Arrivals and departures.**

(a) An EIDT must ensure that clients safely arrive to and depart from an EIDT facility.

(b)(1) An EIDT must document the arrival and departure of each client to and from

an EIDT facility.

(2) Documentation of arrivals to and departures from an EIDT must include without limitation the:

(A) Client's:

(i) Name;

(ii) Date of birth; and

(iii) Date and time of arrival and departure;

(B) Name of the person or entity that provided transportation; and

(C) Method of transportation.

(c) A manager or designee of an EIDT must:

(1) Review the client's arrival and departure documentation each day and compare it with the EIDT's attendance record; and

(2) Sign and date the client arrival and departure documentation verifying that all clients for the day safely arrived to and departed from the EIDT facility.

(d) An EIDT must maintain client arrival and departure documentation for one (1) year from the date of transportation.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

### **20 CAR § 537-602. Medications.**

(a)(1) An EIDT must develop a medication management plan for all clients with prescribed medication that may be administered at the EIDT.

(2) A medication management plan must include without limitation:

(A) The name of each medication;

(B) The name of the prescribing physician or other healthcare professional if the medication is by prescription;

(C) A description of each medication prescribed and any symptom or symptoms to be addressed by each medication;

(D) How each medication will be administered, including without limitation:

- (i) Times of administration;
- (ii) Doses;
- (iii) Delivery; and
- (iv) Persons that may lawfully administer each medication;

(E) How each medication will be charted;

(F) A list of the potential side effects caused by each medication; and

(G) The consent to the administration of each medication by the client or, if the client lacks capacity to consent, by the client's legal guardian or custodian.

(b)(1) An EIDT must maintain a medication log detailing the administration of all medication to a client, including without limitation prescribed medication and over-the-counter medications.

(2) Each medication log must be uniformly organized and document the following for each administration of a medication:

(A) The name and dosage of medication administered;

(B) The symptom for which the medication was used to address;

(C) The method the medication was administered;

(D) The date and time the medication was administered;

(E) The name of the employee who administered the medication or assisted in the administration of the medication;

(F) Any adverse reaction or other side effect from the medication;

(G) Any transfer of medication from its original container into individual dosage containers by the client's custodian or legal guardian;

(H) Any error in administering the medication and the name of the supervisor to which the error was reported; and

(I) The prescription and the name of the prescribing physician or other healthcare professional if the medication was not previously listed in the medication management plan.

(3) Medication errors must be:

(A) Immediately reported to a supervisor;

(B) Documented in the medication log; and

(C) Reported as required under all applicable laws and rules including without limitation the laws and rules governing controlled substances.

(c) All medications stored for a client by an EIDT must be:

(1) Kept in the original medication container unless the client's custodian or legal guardian transfers the medication into individual dosage containers;

(2) Labeled with the client's name;

(3) Stored in an area, medication cart, or container that is always locked; and

(4) Returned to a client's custodian or legal guardian, destroyed, or otherwise disposed of in accordance with applicable laws and rules if the medication is no longer to be administered to a client.

(d) An EIDT must store all medications requiring cold storage in a separate refrigerator that is used only for the purpose of storing medications.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

### **20 CAR § 537-603. Behavior management plans.**

(a)(1) An EIDT may implement a written behavior management plan for a client if a client exhibits challenging behaviors on a chronic basis.

(2) A behavior management plan:

(A) Must be approved by an ECDS;

(B) Must involve the fewest and shortest interventions possible; and

(C) Cannot punish or use interventions that are physically or emotionally painful or frightening nor put the client at medical risk.

(b)(1) An EIDT must reevaluate behavior management plans at least quarterly.

(2) An EIDT must refer the client to an appropriately licensed professional for reevaluation if the behavior management plan is not achieving the desired results.

(3)(A) An EIDT must regularly collect and review data regarding the use and effectiveness of all behavior management plans.

(B) The collection and review of data regarding the use and effectiveness of behavior management plans must include at least the:

- (i) Date and time any intervention is used;
- (ii) Duration of each intervention;
- (iii) Employee or employees involved in each intervention; and
- (iv) Event or circumstances that triggered the need for the intervention.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-604. Transportation.**

(a) An EIDT may elect to provide transportation services to its clients.

(b)(1) The requirements of this part apply to all transportation provided to a client for any reason by any person or entity on behalf of the EIDT regardless of whether the transportation is a billed service.

(2) Notwithstanding the foregoing, if the transportation provided to a client is covered by another Medicaid program, then the transportation requirements applicable to the funding Medicaid program, and not this part, shall apply.

(c) An EIDT electing to provide transportation services to clients must maintain an updated list of all vehicles used to transport clients that includes the following information for each vehicle:

(1) Manufacturer:

(A) Name;

(B) Make;

(C) Model; and

(D) Model year;

(2) Vehicle identification number; and

(3) Type of vehicle, for example, a sedan, eight-passenger van, fifteen-passenger van, or wheelchair van.

(d) Any vehicle used by an EIDT to transport clients must be available for inspection upon request.

(e) Reports or other documentation required to be maintained under this section

must be made available for inspection upon request.

(f)(1) An EIDT may use electronic records in addition to or in place of physical records to comply with this section.

(2) An EIDT provider that uses electronic records must take reasonable steps to backup all electronic records and reconstruct its transportation records in the event of a breakdown in the EIDT's electronic records system.

(g)(1) An EIDT electing to provide transportation services must provide the level of attendant care on each vehicle that is necessary to ensure client safety.

(2)(A) Notwithstanding the foregoing, a three to one (3:1) minimum client to attendant ratio is required for clients under three (3) years of age on any vehicle used by an EIDT for transportation.

(B) The driver may be counted towards the minimum client to attendant ratio for these purposes, but under no circumstances can the driver be the only adult on a vehicle transporting one (1) or more clients under three (3) years of age.

(3)(A) An inspection report must be completed for each trip in which a vehicle is used by an EIDT to transport clients.

(B)(i) Each inspection report must include a pre-trip and post-trip inspection that includes at a minimum the:

(a) Vehicle used to transport;

(b) Date of the trip;

(c) A pre-trip check box that is marked to demonstrate that a visual inspection of the exterior of the vehicle was completed prior to the start of the trip;

(d) A pre-trip check box that is marked to demonstrate a visual inspection of the interior of the vehicle was completed prior to the start of the trip;

(e) A pre-trip check box that is marked to demonstrate that a visual inspection of the tires was completed prior to the start of the trip;

(f) A pre-trip check box that is marked to demonstrate that a visual inspection of the windshield was completed prior to the start of the trip;

(g) A post-trip check box that is marked to demonstrate that a

visual inspection of the exterior of the vehicle was completed after final unloading;

(h) A post-trip check box that is marked to demonstrate that a visual inspection of the interior of the vehicle was completed after final unloading;

(i) A post-trip check box that is marked to demonstrate that a visual inspection of the tires was completed after final unloading;

(j) A post-trip check box that is marked to demonstrate that a visual inspection of the windshield was completed after final unloading; and

(k) A section for listing and describing any defect or deficiency discovered or reported during the:

(1) Trip;

(2) Pre-trip inspection; or

(3) Post-trip inspection.

(ii) Each inspection report must include the:

(a) Signature of the employee that performed the pre-trip inspection;

(b) Signature of the employee that performed the post-trip inspection;

(c) Time the pre-trip inspection was completed; and

(d) Time the post-trip inspection was completed.

(C) An EIDT must maintain all inspection reports for five (5) years from the date of transportation.

(h)(1) A separate transportation log must be maintained for each trip in which a vehicle is used by an EIDT to transport a client, and that log must include:

(A) Each transported client's:

(i) Name;

(ii) Age;

(iii) Date of birth;

(iv) Medicaid ID number;

(v) Exact address of pickup and drop-off; and

(vi) Exact time of pickup and drop-off;

- (B) The driver of the vehicle;
- (C) Each attendant or any other persons transported; and
- (D) The odometer reading on the vehicle at the:
  - (i) Pickup of the first client on the trip; and
  - (ii) Drop-off of last client on the trip.

(2) The transportation log shall be used to check clients on and off the vehicle at pickup and drop-off.

(3) The driver or attendant who conducts the walk-through required by subsections (i) and (j) of this section must sign the transportation log once it is confirmed that all clients exited the vehicle.

(4) An EIDT must maintain all transportation logs for five (5) years from the date of transportation.

(i)(1) Any vehicle with a maximum capacity of seven (7) or fewer passengers and one (1) driver that is used by an EIDT to transport clients must have the driver or an attendant walk through the vehicle and conduct a visual inspection of each seat on the vehicle upon arrival at the final unloading destination.

(2) The driver or attendant who conducts the walk-through inspection upon arrival must sign the transportation log required to be maintained under subsection (h) of this section.

(j) Any vehicle with a maximum capacity of more than seven (7) passengers and one (1) driver that is used by an EIDT to transport clients must have the driver or an attendant complete a walk-through inspection of each seat on the vehicle in one (1) of the following ways upon arrival at the final unloading destination:

- (1)(A) The driver or an attendant must:
  - (i) Unload all clients from the vehicle;
  - (ii) Walk or otherwise move through the interior of the vehicle to ensure that no client remains on board; and
  - (iii) Deactivate the vehicle's safety alarm device.

(B) This option can only be used if all clients are able to unload from the vehicle in less than one (1) minute;

(2)(A)(i) An attendant supervises the clients while unloading.

(ii) The driver remains on the vehicle during unloading to walk through the interior of the vehicle to ensure that no clients remain on board.

(iii)(a) The driver deactivates the safety alarm device upon reaching the back of the vehicle.

(b) The individual who deactivates the safety alarm device must remain near the safety alarm device deactivation switch until all clients have unloaded to ensure that no client is left on board.

(B) This option will require at least two (2) individuals, one (1) to supervise the clients exiting the vehicle and one (1) to remain near the safety alarm device deactivation switch; or

(3)(A) The driver or an attendant deactivates the safety alarm device and unloads all clients immediately upon arrival.

(B)(i) Immediately after unloading, the driver will start the vehicle and move it to a different location for final parking, which must reactivate the safety alarm device.

(ii) Once parked the driver:

(a) Walks or otherwise moves through the interior of the vehicle to ensure that no clients remain on board; and

(b) Deactivates the safety alarm device.

(k) An EIDT providing transportation services to a client must maintain the client's emergency contact information within the vehicle during transport.

(l) Each driver of a vehicle that is transporting clients on behalf of an EIDT must meet each of the following requirements:

(1) Meet the higher of the following age requirements:

(A) Twenty-one (21) years of age; or

(B) The minimum age required by the applicable vehicle insurance;

(2) Hold a current valid driver's license;

(3) If required by state law for the transporting vehicle, hold a commercial driver's license;

(4) Obtain and maintain in good standing the following credentials:

(A) Cardiopulmonary resuscitation (CPR) certification from the:

(i) American Heart Association;

(ii) Medic First Aid; or

(iii) American Red Cross; and

(B) First-aid certification from the:

(i) American Heart Association;

(ii) Medic First Aid; or

(iii) American Red Cross; and

(5) Have successfully completed training courses on the following:

(A) Defensive driving;

(B) Child passenger safety; and

(C) If applicable:

(i) Lift operation; and

(ii) Wheelchair securement.

(m) The following individuals are prohibited from driving a vehicle transporting EIDT clients:

(1) Any individual who has had a suspended or revoked driver's license for a moving violation within the last five (5) years;

(2) Any individual who has been convicted of an alcohol, drug, or substance abuse offense within the last five (5) years; and

(3) Any individual who has received at least two (2) of any combination of the following citations within the prior twelve (12) months:

(A) Citations for moving vehicle violations; and

(B) Citations for accidents where the individual was found to be at fault.

(n) In addition to those requirements in 20 CAR § 537-304, an EIDT must maintain the following documentation for each employee who drives a vehicle transporting clients:

(1) A copy of an employee's driving record for the previous three (3) years from the Division of Arkansas State Police or Arkansas Wireless Information Network

that is updated annually;

- (2) Documentation of all reported complaints involving the employee;
- (3) Documentation of all accidents or moving violations involving the employee, for example, copies of tickets, police reports, etc.; and
- (4) Documentation evidencing the completion of all required training and credentials.

(o) Each attendant to a vehicle transporting clients on behalf of an EIDT must meet each of the following requirements:

- (1) Be at least eighteen (18) years of age;
- (2) Have successfully completed training courses on the following:
  - (A) Defensive driving;
  - (B) Child passenger safety; and
  - (C) If applicable:
    - (i) Lift operation; and
    - (ii) Wheelchair securement; and
- (3) Obtain and maintain in good standing the following credentials:
  - (A) CPR certification from the:
    - (i) American Heart Association;
    - (ii) Medic First Aid; or
    - (iii) American Red Cross; and
  - (B) First-aid certification from the:
    - (i) American Heart Association;
    - (ii) Medic First Aid; or
    - (iii) American Red Cross.

(p) Each driver and attendant in a vehicle that is used by an EIDT to provide transportation services to a client must:

- (1) Wear or have visible an easily readable identification demonstrating they are employees of the EIDT;
- (2) Carry a valid driver's license or, if a nondriving attendant, other government-issued identification;

(3) Abide by all infection control directives or guidance issued by the Department of Health;

(4) When picking up a client:

(A) Identify and announce their presence at the entrance of the pickup location if the client is not waiting curbside upon arrival;

(B) Provide assistance to a client, as necessary, from the pickup location to the vehicle;

(C) If necessary, assist a client in the process of:

(i) Seating;

(ii) Fastening their seatbelt; and

(iii) Otherwise safely securing the client prior to departure;

(D) Assist any client in a wheelchair, or who is mobility-limited, with entering and exiting a vehicle;

(E) Ensure that clients in wheelchairs are properly secured in their wheelchair;

(F) Ensure all wheelchairs are properly secured in the vehicle prior to departure; and

(G) Ensure all folding wheelchairs and other mobility aides being transported are safely and securely stowed away on the vehicle prior to departure; and

(5) When arriving at the client's drop-off location:

(A) Provide a client with assistance, as necessary, in:

(i) Exiting the vehicle; and

(ii) Traveling from the vehicle to the entry of the client's drop-off location; and

(B) Ensure the client is safely transitioned at the drop-off location in accordance with the client's needs.

(q)(1) Any vehicle used to transport a client must meet the safety and mechanical operating and maintenance standards for the make and model of vehicle.

(2) Each vehicle used to transport a client must have:

(A) Up-to-date registration with the Office of Motor Vehicle; and

(B) All other licenses, permits, and certificates required by state and federal law.

(r)(1) Commercial insurance coverage must be maintained on any vehicle that is used to transport a client.

(2) Commercial insurance must have the following minimum coverage amounts:

(A) One million dollars (\$1,000,000) combined single-limit liability coverage;

(B) One hundred thousand dollars (\$100,000) for uninsured motorist;

(C) One hundred thousand dollars (\$100,000) for underinsured motorist;

and

(D) Five thousand dollars (\$5,000) personal injury protection for each passenger based on the number of passengers the vehicle is manufactured to transport.

(3) Each commercial insurance policy must name the Department of Human Services as an additional insured and loss payee under the policy.

(4) All commercial insurance coverage must be with companies licensed and approved to do business with the State of Arkansas.

(5) An EIDT must maintain documentation evidencing that the required commercial insurance is in place for each vehicle that is used to transport a client.

(s) Each vehicle used to transport a client must have the following safety equipment on board:

(1) Fire extinguisher;

(2) First-aid kit;

(3) Reflective triangles;

(4) Flashlight; and

(5) Reflective safety vest.

(t) Each vehicle used to transport a client must be maintained in a sanitary and safe condition, which includes without limitation:

(1) A heating and air conditioning system that is in good working condition;

(2)(A) Each client must have their own seating space with a functioning seat belt or other appropriate safety restraint in accordance with federal and state law and manufacturer's guidelines.

(B) Each client under six (6) years of age or weighing less than sixty (60) pounds must be restrained in a child passenger seat secured in accordance with the manufacturer's guidelines;

(3) Vehicle interiors must be free of:

- (A) Dirt;
- (B) Oil;
- (C) Grease;
- (D) Litter;
- (E) Torn upholstery;
- (F) Torn ceiling coverings;
- (G) Damaged seats;
- (H) Protruding sharp edges;
- (I) Hazardous debris; and
- (J) Unsecured items;

(4)(A) Vehicles with an entry step-up of greater than twelve inches (12") must include a retractable step or step stool to aid in client boarding.

(B) A step stool must have four (4) legs with anti-skid tips on each leg;

(5) Vehicle exteriors must be clean and free of:

- (A) Broken:
  - (i) Windshields;
  - (ii) Mirrors; and
  - (iii) Windows; and
- (B) Excessive:
  - (i) Grime;
  - (ii) Dirt;
  - (iii) Dents; and
  - (iv) Damage;

(6)(A) The floor of each vehicle must be covered with commercial anti-skid ribbed flooring or carpeting.

(B) Any ribbed flooring must not interfere with wheelchair movement;

(7)(A) Any vehicle with a maximum capacity of seven (7) or more passengers and one (1) driver that is used by an EIDT to transport clients must have a safety alarm device.

(B) The safety alarm device must:

(i) Always be in working order and properly maintained;

(ii) Be installed so that the driver is required to walk to the very back of the vehicle to reach the switch that deactivates the alarm;

(iii) Be installed in accordance with the device manufacturer's recommendations; and

(iv) Sound the alarm for at least one (1) minute after the activation of the safety alarm device;

(8)(A) Any vehicle used by an EIDT to transport clients must have a camera system installed.

(B) The camera system must:

(i) Be in working order at all times that a vehicle is used to transport clients;

(ii) Be properly maintained;

(iii) Have at least seven hundred twenty pixels (720p) resolution camera or cameras;

(iv) Maintain daily footage for a minimum of forty-five (45) days;

(v) Include GPS tracking; and

(vi) Have camera or cameras positioned so that all passenger activity on each vehicle is recorded; and

(9) Each vehicle used to transport a client must prominently display:

(A) Provider name; and

(B) Provider contact information.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**Codification Notes.** "GPS" means Global Positioning System.

## **Subpart 7. Incident and Accident Reporting**

### **20 CAR § 537-701. Incidents to be reported.**

(a) An EIDT must report all alleged, suspected, observed, or reported occurrences of any of the following events while a client is in the care or under the supervision of an EIDT:

- (1) Death of a client;
- (2) Serious injury to a client;
- (3) Adult or child maltreatment of a client;
- (4) Any event where an employee threatens or strikes a client;
- (5) Unauthorized use on a client of restrictive intervention, including seclusion or physical, chemical, or mechanical restraint;
- (6) Any situation when the whereabouts of a client are unknown for more than two (2) hours;
- (7) Any unanticipated situation when services to the client are interrupted for more than two (2) hours;
- (8) Events involving a risk of death, serious physical or psychological injury, or serious illness to a client;
- (9) Medication errors made by an employee that cause or have the potential to cause death, serious injury, or serious illness to a client;
- (10) Any act or omission that jeopardizes the health, safety, or quality of life of a client;
- (11) Motor vehicle accidents involving a client;
- (12) A positive case of a client or a staff member for any infectious disease that is the subject of a public health emergency declared by the:
  - (A) Governor;

- (B) Department of Health;
  - (C) President of the United States; or
  - (D) United States Department of Health and Human Services; and
- (13) Any event that requires notification of the:
- (A) Police;
  - (B) Fire department; or
  - (C) Coroner.

(b) Any EIDT may report any other occurrences impacting the health, safety, or quality of life of a client.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-702. Reporting requirements.**

(a) An EIDT must:

(1) Submit all reports of the following events within one (1) hour of the event:

- (A) Death of a client;
- (B) Serious injury to a client; or
- (C) Any incident that an EIDT should reasonably know might be of

interest to the public or the media.

(2) Submit reports of all other incidents within forty-eight (48) hours of the event.

(b) An EIDT must submit reports of all incidents to the Division of Provider Services and Quality Assurance as provided through the division's website:

<https://humanservices.arkansas.gov/about-dhs/dpsqa/>.

(c) Reporting under this part does not relieve an EIDT of complying with any other applicable reporting or disclosure requirements under state or federal laws, rules, or regulations.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-703. Notification to guardians and legal custodians.**

(a) An EIDT must notify the guardian or legal custodian of a client of any reportable incident involving a client as well as any injury or accident involving a client, even if the injury or accident is not otherwise required to be reported in this section.

(b) An EIDT should maintain documentation evidencing notification required in subsection (a) of this section.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**Subpart 8. Enforcement**

**20 CAR § 537-801. Monitoring.**

(a)(1) The Division of Provider Services and Quality Assurance shall monitor an EIDT to ensure compliance with this part.

(2)(A) An EIDT must cooperate and comply with all monitoring, enforcement, and any other regulatory or law enforcement activities performed or requested by the Division of Provider Services and Quality Assurance or law enforcement.

(B) Cooperation required under this part includes without limitation cooperation and compliance with respect to investigations, surveys, site visits, reviews, and other regulatory actions taken by the Division of Provider Services and Quality Assurance or any third party contracted by the Department of Human Services to monitor, enforce, or take other regulatory action on behalf of the:

- (i) Department;
- (ii) Division of Provider Services and Quality Assurance; or
- (iii) Division of Developmental Disabilities Services.

(b) Monitoring includes without limitation:

(1) Onsite surveys and other visits including without limitation complaint surveys and initial site visits;

(2) Onsite or remote file reviews;

(3) Written requests for documentation and records required under this part;

- (4) Written requests for information; and
- (5) Investigations related to complaints received.

(c) The department may contract with a third party to monitor, enforce, or take other regulatory action on behalf of the:

- (1) Department;
- (2) Division of Provider Services and Quality Assurance; or
- (3) Division of Developmental Disabilities Services.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-802. Written notice of enforcement action.**

(a) The Division of Provider Services and Quality Assurance shall provide written notice to the EIDT of all enforcement actions taken against the EIDT.

(b) The division shall provide written notice to the EIDT by mailing the imposition of the enforcement action to the manager that is appointed by the EIDT pursuant to 20 CAR § 537-301.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-803. Remedies.**

(a)(1) The Division of Provider Services and Quality Assurance shall not impose any remedies imposed by an enforcement action unless:

(A) The EIDT is given notice and an opportunity to be heard pursuant to this section and 20 CAR § 537-1001 et seq.; or

(B) The Division of Provider Services and Quality Assurance determines that public health, safety, or welfare imperatively requires emergency action.

(2) If the Division of Provider Services and Quality Assurance imposes a remedy as an emergency action before the EIDT has notice and an opportunity to be heard pursuant to subdivision (a)(1) of this section, the Division of Provider Services and Quality Assurance shall:

- (A) Provide immediate notice to the EIDT of the enforcement action; and
- (B) Provide the EIDT with an opportunity to be heard pursuant to 20 CAR

§ 537-1001 et seq.

(b) The Division of Provider Services and Quality Assurance may impose on an EIDT any of the following enforcement actions for the EIDT's failure to comply with this part:

- (1) Plan of correction;
- (2) Directed in-service training plan;
- (3) Moratorium on new admissions;
- (4) Transfer of clients;
- (5) Monetary penalties;
- (6) Suspension of EIDT license;
- (7) Revocation of EIDT license; or
- (8) Any remedy authorized by law or rule including without limitation Arkansas

Code § 25-15-217.

(c) The Division of Provider Services and Quality Assurance shall determine the imposition and severity of these enforcement remedies on a case-by-case basis using the following factors:

- (1) Frequency of noncompliance;
- (2) Number of noncompliance issues;
- (3) Impact of noncompliance on a client's:
  - (A) Health;
  - (B) Safety; or
  - (C) Well-being;
- (4) Responsiveness in correcting noncompliance;
- (5) Repeated noncompliance in the same or similar areas;
- (6) Noncompliance with previously or currently imposed enforcement

remedies;

- (7) Noncompliance involving intentional fraud or dishonesty; and
- (8) Noncompliance involving a violation of any law, rule, or other legal

requirement.

(d)(1) The Division of Provider Services and Quality Assurance shall report any noncompliance, action, or inaction by the EIDT to appropriate agencies for investigation and further action.

(2) The Division of Provider Services and Quality Assurance shall refer noncompliance involving Medicaid billing requirements to the Division of Medical Services and the Medicaid Fraud Control Unit.

(e) These enforcement remedies are not mutually exclusive and the Division of Provider Services and Quality Assurance may apply multiple remedies simultaneously to a failure to comply with this part.

(f) The failure to comply with an enforcement remedy imposed by the Division of Provider Services and Quality Assurance constitutes a separate violation of this part.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-804. Moratorium.**

(a) The Division of Provider Services and Quality Assurance may prohibit an EIDT from accepting new clients.

(b) An EIDT prohibited from accepting new admissions may continue to provide services to existing clients.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-805. Transfer of clients.**

(a) The Division of Provider Services and Quality Assurance may require that an EIDT transfer a client to another EIDT if the division finds that the EIDT cannot adequately provide services to the client.

(b) If directed by the division, an EIDT must continue providing services until the client is transferred to their new service provider of choice.

(c) A transfer of a client may be permanent or for a specific term depending on the

circumstances.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-806. Monetary penalties.**

(a) The Division of Provider Services and Quality Assurance may impose on an EIDT a civil monetary penalty not to exceed five hundred dollars (\$500) for each violation of this part.

(b)(1) The division may file suit to collect a civil monetary penalty assessed pursuant to this part if the EIDT does not pay the civil monetary penalty within sixty (60) days from the date the division provides written notice to the EIDT of the imposition of the civil monetary penalty.

(2) The division may file suit in Pulaski County Circuit Court or the circuit court of any county in which the EIDT is located.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-807. Suspension and revocation of EIDT license.**

(a)(1) The Division of Provider Services and Quality Assurance may temporarily suspend an EIDT license if the EIDT fails to comply with this part.

(2) If an EIDT's license is suspended, the EIDT must immediately stop providing EIDT services until the division reinstates its license.

(b)(1) The division may permanently revoke an EIDT license if the EIDT fails to comply with this part.

(2) If an EIDT's license is revoked, the EIDT must immediately stop providing EIDT services and comply with the permanent closure requirements in 20 CAR § 537-901(a).

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

## **Subpart 9. Closure**

### **20 CAR § 537-901. Closure.**

(a)(1) An EIDT license ends if an EIDT permanently closes, whether voluntarily or involuntarily, and the license is effective on the date of the permanent closure as determined by the Division of Provider Services and Quality Assurance.

(2) An EIDT that intends to permanently close or does permanently close without warning, whether voluntarily or involuntarily, must immediately:

(A) Provide the custodian or legal guardian of each client with written notice of the closure;

(B) Provide the custodian or legal guardian of each client with written referrals to at least three (3) other appropriate service providers;

(C) Assist each client and their custodian or legal guardian in transferring services and copies of client records to any new service providers;

(D) Assist each client and their custodian or legal guardian in transitioning to new service providers; and

(E) Arrange for the storage of client service records to satisfy the requirements of 20 CAR § 537-305.

(b)(1) An EIDT that intends to voluntarily close temporarily due to natural disaster, pandemic, completion of needed repairs or renovations, or for similar circumstances, may request to temporarily close its facility while maintaining its EIDT license for up to one (1) year from the date of the request.

(2) An EIDT must comply with requirements in subdivision (a)(2) of this section for notice, referrals, assistance, and storage of client records if the division grants an EIDT's request for a temporary closure.

(3)(A) The division may grant a temporary closure if the EIDT demonstrates that it is reasonably likely to reopen after the temporary closure.

(B) The division shall end an EIDT's temporary closure and direct that the EIDT permanently close if the EIDT fails to demonstrate that it is reasonably likely that it will be able to reopen after the temporary closure.

(4)(A) The division may end an EIDT's temporary closure if the EIDT demonstrates that it is in full compliance with this part.

(B) The division shall end an EIDT's temporary closure and direct that the EIDT permanently close if the EIDT fails to become fully compliant with this part within one (1) year from the date of the request.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

### **Subpart 10. Appeals**

#### **20 CAR § 537-1001. Reconsideration of adverse regulatory actions.**

(a)(1) An EIDT may ask for reconsideration of any adverse regulatory action taken by the Division of Provider Services and Quality Assurance by submitting a written request for reconsideration to:

Division of Provider Services and Quality Assurance  
Office of the Director  
Requests for Reconsideration of Adverse Regulatory Actions  
P.O. Box 1437, Slot 427  
Little Rock, Arkansas 72203

(2) The written request for reconsideration of an adverse regulatory action taken by the Division of Provider Services and Quality Assurance must be submitted by the EIDT and received by the Division of Provider Services and Quality Assurance within thirty (30) calendar days of the date that the EIDT received written notice of the adverse regulatory action.

(3) The written request for reconsideration of an adverse regulatory action taken by the Division of Provider Services and Quality Assurance must include without limitation the:

(A) Specific adverse regulatory action taken;

(B) Date of the adverse regulatory action;

(C) Name of the EIDT against whom the adverse regulatory action was taken;

(D) Address and contact information for the EIDT against whom the adverse regulatory action was taken; and

(E) A legal and factual basis for the reconsideration of the adverse regulatory action.

(b)(1) The Division of Provider Services and Quality Assurance shall review each timely received written request for reconsideration and determine whether to affirm or reverse the adverse regulatory action taken based on this part.

(2) The Division of Provider Services and Quality Assurance may request, at its discretion, additional information as needed to review the adverse regulatory action and determine whether the adverse regulatory action taken should be affirmed or reversed based on this part.

(c)(1) The Division of Provider Services and Quality Assurance shall issue in writing its determination on reconsideration within thirty (30) days of receiving the written request for reconsideration or within thirty (30) days of receiving all information requested by the Division of Provider Services and Quality Assurance under subdivision (b)(2) of this section, whichever is later.

(2) The Division of Provider Services and Quality Assurance shall issue its determination to the EIDT using the address and contact information provided in the request for reconsideration.

(d)(1) An applicant may ask for reconsideration of a determination by the Division of Developmental Disabilities Services to ensure that a county is not underserved by submitting a written request for reconsideration pursuant to Appeals, 20 CAR pt. 544.

(2) If a determination that a county is not underserved is reversed on reconsideration by the Division of Developmental Disabilities Services or on appeal by an agency or court with jurisdiction:

(A) The applicant shall notify the Division of Provider Services and Quality Assurance of the reversal and submit a written request for reconsideration to the

Division of Provider Services and Quality Assurance as provided in this section for any adverse regulatory action taken by the Division of Provider Services and Quality Assurance based on the initial determination; and

(B) The Division of Provider Services and Quality Assurance shall review the written request for reconsideration as provided in this section.

(e) The Division of Provider Services and Quality Assurance may also decide to reconsider any adverse regulatory action on its own accord any time it determines in its discretion that an adverse regulatory action is not consistent with this part.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.

**20 CAR § 537-1002. Appeal of regulatory actions.**

(a)(1) An EIDT may administratively appeal any adverse regulatory action to the Office of Appeals and Hearings except for provider appeals related to the payment for Medicaid claims and services governed by the Medicaid Fairness Act, Arkansas Code §§ 20-77-1701 – 1718, which shall be governed by the Medicaid Fairness Act.

(2) The office shall conduct administrative appeals of adverse regulatory actions pursuant to Appeals and Hearings Procedures, 25 CAR pt. 34, and other applicable laws and rules.

(b) An EIDT may appeal any adverse regulatory action or other adverse agency action to circuit court as allowed by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

**Authority.** Arkansas Code §§ 20-48-1107, 20-48-208.