

## DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

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**SUBJECT:** EIDT-1-20 and Rules for DDS EIDT

**DESCRIPTION:**

Statement of Necessity

The Early Intervention Day Treatment (EIDT) Medicaid Provider Manual is being updated and the Rules for the Division of Developmental Disabilities Early Intervention Day Treatment are being created to facilitate billing for EIDT services, bring language used up to date with current industry language, clarify available EIDT services, and establish the new rules relating to EIDT licensure and monitoring.

Rule Summary

Effective January 1, 2021, the Early Intervention Day Treatment (EIDT) Medicaid Provider Manual is being revised as follows:

- Remove duplicative and unnecessary information, revise section arrangement for clarity, and clarify available services.
- Address the evaluations used to establish eligibility and align those evaluations with the standards of practice in the field.
- Remove the opt-in and opt-out requirements for the Part B program under the Individuals with Disabilities Education Act (IDEA) because the program transferred back to the Arkansas Department of Education (ADE) on July 1, 2019. The new language sets out referral requirements for all children ages 3-5 in compliance with the IDEA. This referral process mirrors the one in place for children ages 0-3 under Part C of the IDEA.
- Remove the codes from the manual based on Act 605 of 2017 to allow for faster updates when national code changes occur.
- Combine the treatment planning and evaluation service to align with how these services are paid nationally.
- Change “Speech Therapy” to “Speech-Language Therapy” to mirror current language in the field.

Effective January 1, 2021, the Rules for the Division of Developmental Disabilities Early Intervention Day Treatment will serve as the new set of minimum standards for EIDT programs covering all topics related to EIDT licensure and monitoring.

**PUBLIC COMMENT:** A remote access public hearing was held on this rule on October 16, 2020. The public comment period expired October 29, 2020. The agency provided a summary of the public comments received and its responses thereto, which due to its length is attached separately.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. Is CMS approval required for this proposed rule change? If so, what is the status on that approval? **RESPONSE:** No CMS approval required.
2. Have PAs always been required for reimbursement for (a) more than five hours of EIDT day habilitative services in a single day and (b) over eight hours of covered EIDT services in a single day, or are these new requirements (PM Section 220.000)? **RESPONSE:** This is not a new requirement.
3. Where do the qualifications for an early child development specialist come from (Rule 103(i))? **RESPONSE:** Brought over from Section 214.200 of the EIDT Medicaid Manual.
4. Where does the definition of “serious injury” in Rule 103(w) come from? **RESPONSE:** This is a new definition.
5. Where does the definition of “solicitation” in Rule 103(x)(2) come from? **RESPONSE:** Was in DDS Policy #1091 with some tweaks based on provider feedback.
6. Where do the licensure conditions in Rule 203(a)(4)(B) and (C) come from? **RESPONSE:** DDS Policy #1089-B
7. Where do the requirements for employees under age 18 come from (Rule 302(d)(2))? **RESPONSE:** Based on feedback from stakeholders and program experience.
8. Are student observers statutorily excluded from needing background checks or is there another reason they are not required to have background checks? **RESPONSE:** They would not have direct contact with beneficiaries.
9. Are the staff-to-beneficiary ratios statutory, required by other regulation, or sourced from somewhere else? **RESPONSE:** Based on feedback from stakeholders and program experience.
10. Are the training topics listed in Rule 303(a) topics in which training is required by statute or federal regulation, or does this list come from somewhere else? **RESPONSE:** Primarily compiled for these rules based upon feedback from stakeholders.
11. What is the source for the five-year timeframe on employee record and beneficiary service record storage? **RESPONSE:** Nothing statutory, common timeframe used for DHS policy purposes.
12. The proposed rules require beneficiary service records to be kept in a file cabinet or room that is always locked. Are there any comparable security requirements for

electronic records? **RESPONSE:** As written, the locked room requirement would apply to where any computer is used for accessing/storing electronic records.

**13.** The proposed rules require an EIDT facility to have at least one toilet and one sink for every ten beneficiaries. Where does this ratio come from? **RESPONSE:** Based upon feedback from stakeholders.

**14.** The proposed rules add a new section regarding referrals to local education agencies. Is this section required by statute? **RESPONSE:** It was brought over from the EIDT Medicaid Manual and are [sic] required by Part B and Part C of the Individuals with Disabilities Education Act.

**15.** Where does the one-year timeframe for storing beneficiary arrival and departure documentation come from? **RESPONSE:** Regulatory experience based on typical investigatory timeframe for transportation incidents.

**16.** Rules 701(a) and 702(a) list events/incidents that an EIDT must report. Were these lists compiled for these rules or do they come from somewhere else? **RESPONSE:** The list is primarily a carryover from prior standards with some minor additions based upon program experience.

**17.** Rule 803(b)(5) and Rule 806 both state that DPSQA may impose monetary penalties on a noncompliant EIDT. What is the specific statutory authority for these penalties? **RESPONSE:** Ark. Code Ann. §25-15-217

The proposed effective date is January 1, 2021.

**FINANCIAL IMPACT:** The agency indicated that this rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b). As an agency with the authority to suspend, revoke, or deny licenses, the Department may, as an alternative sanction, impose a monetary penalty up to \$500 on persons or entities under its jurisdiction. Ark. Code Ann. § 25-15-217(a)-(b).

“The [B]oard [of Developmental Disabilities Services] may make rules regarding the care, custody, training, and discipline of individuals with intellectual and developmental disabilities in the human development centers or receiving services for individuals with intellectual and developmental disabilities[.]” Ark. Code Ann. § 20-48-205(b). The

Division of Developmental Disabilities Services has the authority to promulgate rules implementing Arkansas law regarding the managed expansion for child health management services. Ark. Code Ann. § 20-48-1107(a).

This rule implements Act 605 of 2017, sponsored by Representative Justin Boyd, which codified the process for the review of rules impacting state Medicaid costs and exempted medical codes from the rulemaking process and legislative review and approval.