Developmental Disabilities Statutory Synopsis

people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the state of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1999, No. 1537, § 140: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

20-48-501. Liberal construction — Act supplemental.

(a) This subchapter shall be liberally construed.

(b) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

(c) Furthermore, this subchapter shall be construed as being supplementary to any existing purposes and powers authorized to be accomplished and performed by the Board of Developmental Disabilities Services and by the human development centers.

History. Acts 1963, No. 186, § 11; A.S.A. 1947, § 59-1126.

20-48-502. Authority to acquire properties.

(a) The Board of Developmental Disabilities Services, established and existing pursuant to the provisions of § 70-48-401 et seq,, is authorized to own, acquire, construct, reconstruct, extend, equip, improve, maintain, operate, lease, contract concerning, or otherwise deal in and

with any lands, improvements, buildings, furniture, furnishings, machinery, and personal property of any and every nature whatever, sometimes called "properties", that can be used by the board for the accomplishment of, or in connection with the accomplishment of, any of the purposes and powers of the board and of the human development centers as specified by and set forth in § 70-48-401 et seq. or as specified by this subchapter or by any constitutional provision or act.

(b) The properties may be located on or near the present operation of the Human Development Center at Conway, Arkansas, or at any other location in the State of Arkansas where the board shall undertake operations to discharge its purposes and powers.

History. Acts 1963, No. 186, § 1; A.S.A. 1947, § 59-1117.

20-48-503. Authority to issue revenue bonds and use available funds and revenues.

(a) The Board of Developmental Disabilities Services is authorized to use any available revenues for the accomplishment of the purposes specified and referred to in § 20-48-502 and is authorized to issue revenue bonds and to use the proceeds thereof for the accomplishment of the purposes, either alone or together with other available funds and revenues.

(b) The amount of bonds issued shall be sufficient to pay all costs and sums required and necessarily incidental to the accomplishment of the specified purposes, all costs incurred in connection with the issuance of the bonds, the amount necessary to cover debt service on the bonds until revenues are available in a sufficient amount therefor, and the amount necessary for a debt service reserve, if deemed desirable.

History. Acts 1963, No. 186, § 2; A.S.A. 1947, § 59-1118.

Publisher's Notes. Acts 1985, No. 1062, § 24.00, provided in part that the authority of the Board of Developmental Disabilities Services to issue revenue bonds pursuant to Acts 1963, No. 186, § 2, was transferred to the Arkansas Development Finance Authority and that from May 1, 1985, the issuer of revenue bonds pursuant to Acts 1963, No. 186, § 2, means the authority.

20-48-504. Procedure for issuing revenue bonds.

(a) Revenue bonds may be issued from time to time for any of the purposes set forth in § 20-48-502.

(1) Each issue shall be authorized by resolution of the Board of Developmental Disabilities Services.

(2) (A) The bonds of each issue shall be coupon bonds payable to bearer but may be made subject to registration as to principal only, except as otherwise provided in subsection (e) of this section, may be issued in one (1) or more series, may bear such date or dates, may mature

at such time or times, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, and may contain such terms, covenants, and conditions as the resolution may provide.

(B) The resolution may contain terms, covenants, and conditions, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance and investment of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the board and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(3) Priority as to lien on revenues between and among successive issues may be controlled by the resolution authorizing the issuance of each issue of bonds.

(4) The bonds shall have all the qualities of negotiable instruments under the negotiable instrument laws of this state.

(b) Each resolution authorizing the issuance of any issue of bonds may provide for the execution by the board of an indenture which defines the rights of the bondholders and provides for the appointment of a trustee for the bondholders. The indenture may control priority as to lien on revenues between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the board and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(c) The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the board may determine by resolution.

(d) The bonds shall be executed by the chairman and the executive secretary of the board and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds of any issue, the signature shall nevertheless be valid and sufficient for all purposes. The coupons attached to the bonds shall be executed by the facsimile signature of the chairman of the board.

(e) (1) In the resolution authorizing the issuance of any issue of bonds, the board may provide for the initial issuance of one (1) or more bonds aggregating the principal amount of the entire issue and may, in the resolution, make such provisions for installment payments of the principal amount of the bonds as it may consider desirable and may provide for the making of the bonds payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsement of payment of interest on such bonds.

(2) The board may make provision in the resolution for the manner and circumstances in which and under which the bonds may in the future at the request of the holders thereof be

converted into bonds of smaller denomination, which bonds of smaller denomination may in turn be either coupon bonds or bonds registrable as to principal or registrable as to principal and interest.

History. Acts 1963, No. 186, § 3; 1970 (Ex. Sess.), No. 56, §§ 1, 2; 1975, No. 225, § 16; 1981, No. 425, § 16; A.S.A. 1947, § 59-1119.

20-48-505. Liability of Board of Developmental Disabilities Services for bonds.

(a) It shall be plainly stated on the face of each bond issued that the bond has been issued under the provisions of this subchapter. Bonds issued under the provisions of this subchapter shall be general obligations only of the Board of Developmental Disabilities Services, and in no event shall they constitute an indebtedness for which the faith and credit of the State of Arkansas or any of its revenues are pledged. There shall be no mortgage or other lien executed on any lands or buildings belonging to the State of Arkansas.

(b) All agreements and contracts entered into by the board in connection with the issuance of any bonds hereunder shall be binding in all respects upon the board and its successors from time to time in accordance with the terms and provisions of the agreements or contracts. The terms and provisions of the agreements or contracts shall be enforceable by appropriate proceedings at law or in equity, or otherwise, including, without limitation, mandamus.

History. Acts 1963, No. 186, § 4; A.S.A. 1947, § 59-1120.

20-48-506. Nonliability of board members for bonds — Exception.

No member of the Board of Developmental Disabilities Services shall be personally liable on any bonds issued pursuant to this subchapter, or for any damages sustained by anyone in connection with agreements and contracts authorizing or pertaining to the bonds of any issue pursuant to this subchapter or the carrying out of any other authority conferred by this subchapter, unless the member involved has acted with a corrupt intent.

History. Acts 1963, No. 186, § 5; A.S.A. 1947, § 59-1121.

20-48-507. Revenue bonds secured by pledge of gross charges and surplus charges.

(a) The principal of, interest on, and paying agent's fees in connection with the revenue bonds of each issue shall be secured by a pledge of and payable in the first instance from the gross charges imposed by the Board of Developmental Disabilities Services pursuant to the provisions of § 20-48-411 applicable to the particular properties financed in whole or in part by the proceeds of the bonds of the particular issue involved.

(b) (1) In addition, the board is authorized to pledge and to use for the payment of the principal of and interest on the bonds of any issue, and paying agent's fees, surplus charges

applicable to existing properties and any other properties operated by the board, whether or not the other properties were financed in whole or in part by bonds issued under this subchapter.

(2) "Surplus charges", as that term is used in this section, means gross charges which are not pledged to any bond issue and also that amount of any charges that are pledged which is in excess of the amount necessary to meet all requirements of resolutions securing bonds to finance the particular properties to the payment of which the charges are specifically pledged.

(c) As specified in this subchapter, the resolution of the board pledging specific charges can control priorities as to the lien on the charges between successive issues.

(d) In addition, the board is authorized to use, as distinguished from pledge, any available revenues and funds of the board, including, without limitation, appropriated and cash funds, if available.

(e) All charges assessed and collected by the board pursuant to the authority conferred by § 20-48-411 are specifically declared to be cash funds and may be collected and deposited in such banks and depositories as shall be determined from time to time by the board.

(f) Furthermore, in connection with any charges which are pledged to the payment of any issue of bonds pursuant to this subchapter, the board is expressly authorized to make such agreements and contracts with the bondholders, or the trustee for the bondholders, embodied in a resolution or trust indenture, referred to above, authorizing and securing the particular issue of bonds, with reference to the maintenance of the maximum possible occupancy and the maintenance of charges at a specified level, as the board may determine to be necessary or desirable in connection with the issuance of bonds on the most favorable terms possible.

History. Acts 1963, No. 186, § 7; A.S.A. 1947, § 59-1122.

20-48-508. Issuance of refunding bonds.

(a) Bonds may be issued pursuant to this subchapter for the purpose of refunding any issue of bonds theretofore issued under the provisions of this subchapter.

(b) When refunding bonds are issued, the refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in escrow for the retirement thereof.

(c) All refunding bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of such bonds.

(d) The resolution under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the charges pledged for their payment as was enjoyed by the bonds refunded thereby.

History. Acts 1963, No. 186, § 8; A.S.A. 1947, § 59-1123.

20-48-509. Taxation of bonds.

Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes. This exemption includes income and estate taxes.

History. Acts 1963, No. 186, § 9; A.S.A. 1947, § 59-1124.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Arkansas Constitution, Amendment 57, § 1 and § 26-3-302. The Arkansas Constitution, Amendment 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempt all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

20-48-510. Municipalities, boards, commissions, etc. authorized to invest in bonds.

(a) Any municipality or any board, commission, or other authority established by ordinance of any municipality, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality, or any county, or the board of trustees of any retirement system created by the General Assembly, may, in its discretion, invest any of its funds in the bonds of the Board of Developmental Disabilities Services issued under the provisions of this subchapter.

(b) The bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1963, No. 186, § 10; A.S.A. 1947, § 59-1125.

20-48-511. Developmental disabilities — Timber sales proceeds — Capital improvements and equipment.

(a) (1) The Division of Developmental Disabilities Services is authorized to have cash fund accounts for capital improvements to physical plants and for the purchase of capital equipment for the six (6) human development centers operated by the division.

(2) The cash funds shall be held by the division from the proceeds of the sale of timber that may be harvested from land owned by the division.

(3) The harvesting of timber is specifically authorized to provide funds to finance capital improvements to the physical plants and for major capital equipment purchases at any of the six (6) human development centers.

(b) All expenditures of funds derived from the sale of timber will be expended in accordance with relevant state procurement laws.

(c) (1) The division shall report all income derived from timber management to the Chief Fiscal Officer of the State and to the Legislative Council.

(2) Any contracts initiated for the harvesting of timber shall be submitted to the Subcommittee on Review for review.

History. Acts 1999, No. 1537, § 97.

A.C.R.C. Notes. Acts 2001, No. 1639, § 14, provided:

"DEVELOPMENTAL DISABILITIES — TIMBER SALES PROCEEDS — CAPITAL IMPROVEMENTS AND EQUIPMENT. The Division of Developmental Disabilities Services is authorized to have cash fund accounts for capital improvements to physical plants and for the purchase of capital equipment for the six human development centers operated by the Department of Human Services, Division of Developmental Services. The cash funds shall be held by the Department of Human Services, Division of Developmental Disabilities Services from the proceeds of the sale of timber that may be harvested from land owned by the Division of Developmental Disabilities Services. The harvesting of timber is specifically authorized to provide funds to finance capital improvements to the physical plants and for major capital equipment purchases at any of the six human development centers.

"The Division of Developmental Disabilities Services shall report all income derived from timber management to the Chief Fiscal Officer of the State and the Arkansas Legislative Council. Any contracts initiated for the harvesting of timber shall be submitted to the Review Subcommittee of the Arkansas Legislative Council for review. All expenditures of funds derived from the sale of timber will be expended in accordance with relevant state purchasing laws.

"The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

Acts 2005, No. 2102, § 16, provided:

"DEVELOPMENTAL DISABILITIES — TIMBER AND LAND SALES PROCEEDS — CAPITAL IMPROVEMENTS AND EQUIPMENT. The Division of Developmental Disabilities Services is authorized to have cash fund accounts for capital improvements to physical plants and for the purchase of capital equipment, and for the operation of the six human development centers operated by the Department of Human Services, Division of Developmental Disabilities Services. The cash funds shall be held by the Department of Human Services, Division of Developmental Disabilities Services from the proceeds of the sale of land and the sale of timber that may be harvested from land owned by the Division of Developmental Disabilities Services. The sale of land and the harvesting of timber is specifically authorized to provide funds to finance capital improvements to the physical plants, for the purchase of major capital equipment, and for the operation of any of the six human development centers from which the land or timber is sold. The Division of Developmental Disabilities Services shall report all income derived from the sale of land and timber management to the Chief Fiscal Officer of the State and the Arkansas Legislative Council. Any contracts initiated for the sale of land or the harvesting of timber shall be submitted to the Review Subcommittee of the Arkansas Legislative Council for prior review. All expenditures of funds derived from the sale of land and the sale of timber will be expended in accordance with relevant state purchasing laws.

"The provisions of this section shall be in effect only from July 1, 2005 through June 30, 2007."

Acts 2009, No. 1418, § 12 provided:

"YOUTH SERVICES — TIMBER SALES PROCEEDS — CAPITAL IMPROVEMENTS AND EQUIPMENT. The Division of Youth Services is authorized to use the administrative operating account for capital improvements to the physical plant and for the purchase of capital equipment by the Mansfield Youth Services Facility operated by the Department of Human Services, Division of Youth Services. The funds shall be held by the Department of Human Services, Division of Youth Services from the proceeds of the sale of timber that may be harvested from land owned by the Division of Youth Services. All funds deposited and all expenses shall be tracked separately. The harvesting of timber is specifically authorized to provide funds to finance capital improvements to the physical plant and for the purchase of major capital equipment by the Mansfield Facility from which the timber is sold. The Division of Youth Services shall report all income derived from the sale of timber to the Chief Fiscal Officer of the State and the Arkansas Legislative Council. Any contracts initiated for the harvesting and sale of timber shall be submitted to the Review Subcommittee of the Arkansas Legislative Council for prior review. All expenditures of funds derived from the sale of timber will be expended in accordance with relevant state purchasing laws.

"The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

Acts 2009, No. 1419, § 14 provided:

"DEVELOPMENTAL DISABILITIES — TIMBER SALES PROCEEDS — CAPITAL IMPROVEMENTS AND EQUIPMENT. The Division of Developmental Disabilities Services is authorized to use the administrative operating accounts for capital improvements to physical plants and for the purchase of capital equipment. The funds shall be held by the Department of Human Services, Division of Developmental Disabilities Services from the proceeds of the sale of timber that may be harvested from land owned by the Division of Developmental Disabilities Services. All funds deposited and all expenses shall be tracked separately. The harvesting of timber is specifically authorized to provide funds to finance capital improvements to the physical plants and for the purchase of major capital equipment.

"The Division of Developmental Disabilities Services shall report all income derived from timber management to the Chief Fiscal Officer of the State and the Arkansas Legislative Council. Any contracts initiated for the harvesting of timber shall be submitted to the Review Subcommittee of the Arkansas Legislative Council for prior review. All expenditures of funds derived from the sale of timber will be expended in accordance with relevant state purchasing laws.

"The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

Subchapter 6 — Location Act For Community Homes for Developmentally Disabled Persons

20-48-611. Restriction by private property agreement void.

A.C.R.C. Notes. References to "this chapter" in the text of chapter 48, subchapters 1-5, may not apply to this subchapter, which was enacted subsequently.

20-48-601. Title.

This subchapter shall be known as the "Location Act for Community Homes for Developmentally Disabled Persons".

History. Acts 1987, No. 611, § 1.

20-48-602. Purpose.

The General Assembly declares that it is the goal of this subchapter to improve the quality of life of all developmentally disabled persons and to integrate developmentally disabled persons into the mainstream of society by ensuring them the availability of community residential opportunities in the residential areas of this state. In order to implement this goal, this subchapter should be liberally construed toward that end.

History. Acts 1987, No. 611, § 2.

20-48-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

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

(i) Is attributable to mental retardation, cerebral palsy, epilepsy, or autism;

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

(iii) Is attributable to dyslexia resulting from mental retardation, cerebral palsy, epilepsy, or autism; and

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

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

(2) "Developmentally disabled person" means a person with a developmental disability as defined in this section;

(3) "Division" means the Division of Developmental Disabilities Services of the Department of Human Services or the staff of the division where the context so indicates;

(4) (A) "Family Home I" means a community-based residential home licensed by the division that provides room and board, personal care, habilitation services, and supervision in a single-family environment for not more than eight (8) developmentally disabled persons; and

(B) "Family Home II" means a community-based residential home licensed by the division that provides room and board, personal care, habilitation services, and supervision in a multi-family environment for more than eight (8), but fewer than sixteen (16), developmentally disabled persons;

(5) "Permitted use" means a use by right which is authorized in residential zoning districts; and

(6) "Political subdivision" means a county or municipal corporation and includes any boards, commissions, or councils governing land use on behalf of the political subdivision.

History. Acts 1987, No. 611, § 3.

20-48-604. Zoning — Permitted use.

(a) A Family Home I is a residential use of property for the purposes of zoning and shall be treated as a permitted use in all residential zones or districts, including all single-family residential zones or districts of all political subdivisions. No political subdivision may require that a Family Home I or its owner or operator obtain a conditional use permit, special use permit, special exception, or variance.

(b) A Family Home II is a multi-family residential use of a property for the purpose of zoning and shall be treated as a permitted use in all zoning districts of all political subdivisions allowing multi-family uses. No political subdivision may require that a Family Home II or its owner or operator obtain a conditional use permit, special use permit, special exception, or variance.

History. Acts 1987, No. 611, § 4.

20-48-605. Issuance and renewal of licenses.

(a) For the purposes of safeguarding the health and safety of developmentally disabled persons and avoiding over-concentration of Family Homes I and II, either alone or in conjunction with similar community-based residences, the Division of Developmental Disabilities Services shall inspect and license the operation of family homes and may renew and revoke their licenses.

(b) A license is valid for one (1) year from the date it is issued or renewed although the division may inspect the homes more frequently, if needed.

(c) The division shall not issue or renew and may revoke the license of a family home not operating in compliance with this section and regulations adopted hereunder.

History. Acts 1987, No. 611, § 5.

20-48-606. Regulations — Density control.

(a) The Division of Developmental Disabilities Services shall promulgate regulations pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which shall encompass the following matters:

(1) (A) Limits on the number of new Family Homes I and II to be permitted on blocks, block faces, and other appropriate geographic areas taking into account the existing residential population density and the number, occupancy, and location of similar community residential facilities serving persons in drug, alcohol, juvenile, child, parole, and other treatment programs as well as any other dissimilar facilities such as public housing, soup kitchens at churches, and boarding homes.

(B) Density limits as follows:

City Population	Total Numb
1,000 or fewer	1
1,001 — 9,999	1 for every
10,000 — 49,000	1 for every
50,000 — 249,000	1 for every
250,000 —	1 for every

(C) There shall be three hundred feet (300′) between family homes unless otherwise permitted by local ordinance. There shall be three thousand feet (3,000′) between family homes in cities over thirty thousand (30,000) population unless otherwise permitted by local ordinance.

(2) Assurance that adequate arrangements are made for the residents of family homes to receive such care and habilitation as are necessary and appropriate to their needs and to further their progress towards independent living and that they have access to appropriate services such

as public transportation, health care, recreation facilities, and shopping centers;

(3) Protection of the health and safety of the residents of Family Homes I and II, however, compliance with these regulations shall not relieve the owner or operator of any Family Home I or II of the obligation to comply with the requirements or standards of a political subdivision pertaining to setback, lot size, flood zones, outside appearance, building, housing, health, fire, safety, and motor vehicle parking space that generally apply to single family residences in the zoning district for Family Home I or multi-family use districts for Family Home II. No requirements for business licenses, gross receipt taxes, environmental impact studies or clearances may be imposed on the homes if those fees, taxes, or clearances are not imposed on all structures in the zoning district housing a like number of persons;

(4) (A) Procedures by which any resident of a residential zoning district or the governing body of a political subdivision in which a Family Home I or II is or is to be located may petition the division to deny an application for a license to operate a Family Home I or II on the grounds that the operation of the home would be in violation of the limits established pursuant to subdivisions (1)(A) or (B) of this section or that the proposed location is an area of high risk to the health and safety of the residents of the family home.

(B) Petitions claiming the high risk area basis for denial must set forth and document one (1) or more of the following high risk rationales:

(i) High crime area;

(ii) Close proximity to stored hazardous materials;

(iii) Dangerous traffic pattern;

(iv) Frequent flooding; or

(v) Insufficient fire protection.

(b) The division shall furnish a copy of proposed regulations promulgated hereunder to the Arkansas Municipal League, the Arkansas Association of County Governments, and the Capitol Zoning Commission at least thirty (30) days prior to the public hearing to be held thereon.

History. Acts 1987, No. 611, § 5.

A.C.R.C. Notes. Acts 1987, No. 611, § 5, provided, in part, that, within 180 days of the enactment of this chapter, the division shall promulgate regulations pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

20-48-607. Application for license.

(a) All applicants for a license to operate a Family Home I or II shall apply to the Division of Developmental Disabilities Services for the license and shall file a copy of the application with

the governing body of the political subdivision having jurisdiction over the zoning of the land on which the Family Home I or II is to be located.

(b) Notice of the application shall be sent by mail addressed to the resident as listed in the city directory or occupant of all buildings located within two hundred feet (200′) of the proposed site.

(c) (1) All applicants shall post a sign not less than twelve inches by eighteen inches (12″ x 18″) at the site.

(2) The sign shall contain such statements as required by regulations promulgated pursuant to this subchapter.

(d) All applications must include population and occupancy statistics reflecting compliance with the limits established pursuant to § 20-48-606(a)(1)(A) and (B).

(e) The division may not issue a license for a family home until the applicant has submitted proof of filing with the governing body of the political subdivision having jurisdiction over the zoning of the land on which the home is to be located a copy of the application at least thirty (30) days prior to the granting of the license and any amendment of the application increasing the number of residents to be served at least fifteen (15) days prior to the granting of a license.

History. Acts 1987, No. 611, § 6.

20-48-608. List of family homes.

In order to facilitate the implementation of § 20-48-606(1)(A) and (B), the Division of Developmental Disabilities Services shall maintain a list of the location, capacity, and current occupancy of all Family Homes I and II. The division shall ensure that this list shall not contain the names or other identifiable information about any residents of the homes and that copies of this list shall be available to any resident of this state and any state agency or political subdivision upon request.

History. Acts 1987, No. 611, § 7.

20-48-609. Comprehensive plans.

(a) Any political subdivision which currently has zoning restrictions or hereafter adopts zoning restrictions may develop a comprehensive plan for providing adequate sites for Family Homes I and II and submit the plan to the division along with population and occupancy statistics reflecting compliance with the limits established pursuant to § 20-48-606(a)(1)(A) and (B).

(b) The plan may also delineate unsuitable sites due to high risks set forth in § 20-48-606(4).

(c) The division shall thereafter consult the comprehensive plan filed by the political subdivision in considering licensure of Family Homes I and II for that political subdivision.

History. Acts 1987, No. 611, § 9.

20-48-610. Compliance with appearance or structural requirements in certain districts.

Nothing in this subchapter shall be construed as relieving the owner or operator of any Family Home I or II of the obligation to comply with outside appearance requirements or structural requirements for location of a Family Home I or II within a local historic district or within the Capitol Zoning District.

History. Acts 1987, No. 611, § 8.

20-48-611. Restriction by private property agreement void.

(a) Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property which would permit residential use of property but prohibit the use of the property as a Family Home I or II for developmentally disabled persons, to the extent of the prohibition, shall be void as against the public policy of this state and shall be given no legal or equitable force or effect.

(b) Nothing in this subchapter shall be construed directly or analogously to affect the rights of property owners to exclude by express or judicially implied agreements other property uses which are not the subject of this subchapter.

History. Acts 1987, No. 611, § 10.

Subchapter 7 — Relationship Between State and Communities to Provide for Community-Based Services

A.C.R.C. Notes. References to "this chapter" in subchapters 1 through 5 may not apply to this subchapter, which was enacted subsequently.

Effective Dates. Acts 2001, No. 1792, § 5: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the General Assembly that community programs are struggling to attain the resources necessary to provide individuals with developmental disabilities with the community-based services to which they are entitled by federal and state mandates which they rightfully deserve; that the costs to the community program which have accumulated over a twenty-five (25) year period of unfunded mandates is shifting the service dollar to compliance processes rather than to treatment of individuals; that the

imposition of a rate structure which will cover the costs of treatment services as well as processes and procedures required by federal and state mandates will allow community-based programs to provide quality treatment services and therefore, enhance the level of safety and security for individuals choosing community-based services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-48-701. Finding.

The General Assembly finds that the State of Arkansas contracts with nonprofit community programs serving individuals with developmental disabilities as quasi-governmental instrumentalities of the state in order to provide a service that the state would otherwise provide for this population through state-operated programs and facilities.

History. Acts 2001, No. 1792, § 1; 2007, No. 645, § 2 [4].

Amendments. The 2007 amendment substituted "nonprofit community programs" for "community-based programs."

20-48-702. Reimbursement rate structure.

(a) (1) To provide viable options for an array of community-based services for individuals with developmental disabilities, the Department of Human Services, subject to state and federal funding restrictions, shall establish a reimbursement rate structure for contracting with community programs licensed by the Board of Developmental Disabilities Services that will cover costs of all federal and state mandates for which they are held responsible by the department and for any additionally required processes the department may elect to implement for cost containment and management purposes over and above the established reimbursement rates for costs of treatment services.

(2) By January 1, 2002, the department will design and conduct a rate and cost-of-service review of the reasonable and efficient prospective costs necessarily incurred to provide Medicaid-covered and state-covered services within the community to individuals with developmental disabilities. Subject to federal and state funding restrictions, the department will fund Medicaid services for persons with developmental disabilities in accordance with findings contained in the review and provide state funds for those services to which the individuals are entitled under federal and state laws that are not covered by the Medicaid program. By June 30, 2002, the department will adopt regulations and standards, approved pursuant to this subchapter, which clearly define the state's responsibility to individuals eligible for services under federal laws, including, but not limited to, the Americans With Disabilities Act, Pub. L. 99-457, Pub L. 94-142, the Rehabilitation Act of 1973, Section 504, and state laws, including §§ 20-48-101, 20-48-603, and 20-14-502, and more specifically:

(A) The categories of services and service limits on each category which will be provided through the Medicaid state plan; and

(B) The categories of services and service limits which will be provided with state general revenue funds or funds that are applicable for provider client services, or both.

(3) There shall be a quarterly progress report to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor by the department on the categories of services and respective service limits, service eligibility guidelines for each service component, and the rate structure based on prospective costs.

(4) Nothing in this subchapter shall be construed to imply the adoption of cost-reimbursement methodology as opposed to a reasonable and necessary rate structure based on prospective costs. However, in the event that the Division of Medical Services of the Department of Human Services develops a new funding mechanism for community-based services provided through the University of Arkansas for Medical Sciences which is a full-cost reimbursement methodology with additional state matching funds provided by existing revenues within that system:

(A) The new service model shall be developed to interface with the existing community-based programs through interagency agreements that enhance and broaden the level of care without duplicating services in communities which already have an array of services for children from birth to twenty-one (21); and

(B) The university will staff twelve (12) regional clinics, provided the pediatric specialists are available at the university. These will be conducted on a quarterly basis in coordination with local providers to provide diagnosis, evaluation, and consultation by the pediatric specialists employed by the university to the local professional staffs of community programs. The reimbursement for the costs of conducting these outreach clinics must be fully funded by the cost-reimbursement methodology under any new funding model developed for the university by the department.

(b) Subject to state and federal funding restrictions, the reimbursement rates shall be revised annually with market-basket rate adjustments to provide resources to the community-based programs necessary to provide persons choosing community-based services quality care assurance in a safe, healthy environment.

History. Acts 2001, No. 1792, § 2.

U.S. Code. The Americans With Disabilities Act, referred to in this section, is codified primarily as 42 U.S.C. § 12101 et seq.

The Rehabilitation Act of 1973, referred to in this section, is codified as 29 U.S.C. § 701 et seq.

20-48-703. Eligibility.

(a) Eligibility for services and appropriate placement in the least restrictive environment for individuals with developmental disabilities under any of the service models included in the state's Medicaid plan with the Health Care Financing Administration of the United States Department of Health and Human Services or for services covered from state general revenue dollars shall be made by the interdisciplinary team composed in keeping with federal and state laws pertaining to individuals with special needs. This section does not negate nor preclude the rights of individuals with developmental disabilities under existing federal and state laws.

(b) Subject to approval by the administration, the Department of Human Services will accept an individualized family service plan or an individualized program plan developed in conformity with all applicable state and federal laws as prior authorization for Medicaid-covered therapies provided to persons with developmental disabilities. Prior authorization does not preclude postpayment reviews or other utilization control measures.

(c) For individuals with developmental disabilities who, pursuant to the diagnosis, evaluation, and assessments conducted by the interdisciplinary team, in conformity with all applicable federal and state laws, are found to fall within the eligibility guidelines adopted pursuant to this subchapter, and where the individual's primary care physician, independent of the service provider, serves as the gatekeeper and prescribes day treatment services, referred to as developmental day treatment services under the present developmental day treatment clinic services model, prior approval is not required for up to five (5) hours of daily services. Should the funding model for the day treatment services be changed in the state's Medicaid plan with the administration, the five (5) hours per day shall remain the floor to afford those families who choose to keep their disabled child or adult in the community, thereby bearing a considerable responsibility for the care and expenses related to the treatment and care.

History. Acts 2001, No. 1792, § 3.

20-48-704. Code system of reimbursement.

(a) The conversion to the federally mandated current procedural terminology code system of reimbursement shall take into account the intent of this law to provide sources of funding that cover the costs of services to individuals who choose community-based options, within the adopted and approved eligibility standard, including the prescribed treatment services and all required compliance mandates from the federal and state governments.

(b) In the event that it is evident that the developmental day treatment clinic services codes will be excluded by the Health Care Financing Administration, the Division of Medical Services of the Department of Human Services shall take all necessary steps to apply to the administration for approval of a service model that will continue to provide an array of community-based service options for children and adults comparable to or greater than those under the present developmental day treatment clinic services model.

History. Acts 2001, No. 1792, § 4.

20-48-705. Membership of nonprofit organizations.

A nonprofit organization licensed or certified by the Division of Developmental Disabilities Services of the Department of Human Services to serve adults shall include an individual with developmental disabilities as an ex officio member of the nonprofit organization's board of directors or other governing body.

History. Acts 2009, No. 1488, § 1.

Subchapter 8 — Criminal Records Checks for Employees of Providers of Care to Disabled Adults

Effective Dates. Acts 2009, No. 762, § 12, provided: "This act shall be effective September 1, 2009."

20-48-801 — 20-48-811. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 762, § 7. The subchapter was derived from the following sources:

20-48-801 Acts 2001, No. 1548, § 1.

20-48-802 Acts 2001, No. 1548, § 1.

20-48-803 Acts 2001, No. 1548, § 1.

20-48-804 Acts 2001, No. 1548, § 1; 2003, No. 1087, § 20; 2003, No. 1381, § 1; 2005, No. 968, § 1; 2005, No. 1923, § 7; 2007, No. 827, § 169.

20-48-805 Acts 2001, No. 1548, § 1.

20-48-806 Acts 2001, No. 1548, § 1.

20-48-807 Acts 2001, No. 1548, § 1.

20-48-808 Acts 2001, No. 1548, § 1.

20-48-809 Acts 2001, No. 1548, § 1.

20-48-810 Acts 2001, No. 1548, § 1.

20-48-811 Acts 2001, No. 1548, § 1.

Effective Dates. Acts 2009, No. 762, § 12, provided: "This act shall be effective September 1, 2009."

20-48-812. Criminal history records checks required.

(a) As used in this section:

(1) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure or certification as a service provider or employment with a service provider to provide care as defined in § 20-38-101; and

(2) "Service provider" means any of the following:

(A) An Alternative Community Services Waiver Program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;

(B) An early intervention program provider certified by the division; or

(C) A nonprofit community program as defined by § 20-48-101.

(b) Beginning September 1, 2009, a service provider is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(c) (1) A person offered employment with a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2) (A) A person who was offered employment by a service provider prior to September 1, 2009, was subject to a criminal history records check under §§ 20-48-801 — 20-48-811 [repealed] and has continued to be employed by the service provider who initiated the criminal history records check may continue employment with the service provider based on the results of the criminal history records check process conducted under §§ 20-48-801 — 20-48-811 [repealed].

(B) When the person next undergoes a periodic criminal history records check, the person's continued employment with the service provider is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(d) (1) The person who signs an application for licensure or certification as a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal records checks.

(2) (A) The person who signed an application for licensure or certification of a service provider prior to September 1, 2009, was subject to a criminal history records check under §§ 20-48-801 — 20-48-811 [repealed], and has continued to maintain the licensure or certification of the service provider may continue to maintain the licensure or certification of the service provider based on the results of the criminal history records check process conducted under §§

20-48-801 — 20-48-811 [repealed].

(B) When the service provider next undergoes a periodic criminal history records check, the service provider's continued licensure or certification is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(e) The division shall establish by rule requirements for registry records checks for:

(1) An applicant for licensure or certification of a service provider;

(2) An applicant for employment with a service provider; and

(3) An employee of a service provider.

(f) The division shall establish by rule:

(1) Requirements for criminal history and registry records checks of persons who volunteer for a service provider; and

(2) The consequences of a determination that a person who proposes to reside in an alternative living home in which services are provided to an individual with developmental disabilities is disqualified from the residency based on the criminal history of the person.

History. Acts 2009, No. 762, § 8.

Effective Dates. Acts 2009, No. 762, § 12, provided: "This act shall be effective September 1, 2009."

Subchapter 9 — Intermediate care facilities

20-48-901. Definitions.

As used in this subchapter:

(1) (A) "Gross receipts" means all compensation paid to intermediate care facilities for individuals with developmental disabilities for services provided to residents, including without limitation client participation.

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

(2) (A) "Intermediate care facility for individuals with developmental disabilities" means a residential institution maintained for the care and training of persons with

developmental disabilities, including without limitation mental retardation.

(B) "Intermediate care facility for individuals with developmental disabilities" has the same meaning as "intermediate care facility for the mentally retarded" or "ICF/MR" under federal law.

(C) "Intermediate care facility for individuals with developmental disabilities" does not include:

(i) Offices of private physicians and surgeons;

(ii) Residential care facilities;

(iii) Assisted living facilities;

(iv) Hospitals;

(v) Institutions operated by the federal government;

(vi) Life care facilities;

(vii) Nursing facilities; or

(viii) A facility which is conducted by and for those who rely exclusively upon treatment by prayer for healing in accordance with tenets or practices of a recognized religious denomination; and

(3) "Medicaid" means the medical assistance program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2009, and administered by the Division of Medical Services of the Department of Human Services.

History. Acts 2009, No. 433, § 1.

20-48-902. Calculation of provider fee.

(a) (1) There is levied a provider fee on intermediate care facilities for individuals with developmental disabilities to be calculated in accordance with this section.

(2) (A) The provider fee shall be an amount calculated by the Division of Medical Services of the Department of Human Services to produce an aggregate provider fee payment equal to six percent (6%) of the aggregate gross receipts of all intermediate care facilities for individuals with developmental disabilities.

(B) Aggregate provider fees shall not equal or exceed an amount measured on a state fiscal year basis that may cause a reduction in federal financial participation in Medicaid.

(b) (1) (A) The provider fee of an intermediate facility for individuals with developmental disabilities shall be payable in monthly payments.

(B) Each monthly payment shall be due and payable for the previous month by the thirtieth day of each month.

(2) The division shall seek approval from the Centers for Medicare & Medicaid Services to treat the provider fee of an intermediate care facility for individuals with developmental disabilities as an allowable cost for Medicaid reimbursement purposes.

(c) No intermediate care facility for individuals with developmental disabilities shall be guaranteed, expressly or otherwise, that any additional moneys paid to the intermediate care facility for individuals with developmental disabilities will equal or exceed the amount of its provider fee.

(d) (1) The division shall ensure that the rate of assessment of the provider fee established in this section maximizes federal funding to the fullest extent possible.

(2) If the division determines that the rate of assessment of the provider fee established in this section equals or exceeds the maximum rate of assessment that federal law allows without reduction in federal financial participation in Medicaid, the division shall lower the rate of assessment of the provider fee to a rate that maximizes federal funding to the fullest extent possible.

History. Acts 2009, No. 433, § 1.

20-48-903. Administration.

(a) The Director of the Division of Medical Services of the Department of Human Services shall administer this subchapter and shall be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) (1) In accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Division of Medical Services of the Department of Human Services shall promulgate rules and prescribe forms for:

(A) The proper imposition and collection of the provider fee;

(B) (i) The enforcement of this subchapter, including without limitation license or certification nonrenewal, letters of caution, sanctions, or fines.

(ii) (a) The fine for failure to comply with payment and reporting requirements shall be at least one thousand dollars ($1,000) but no more than one thousand five hundred dollars ($1,500).

(b) The fine and, if applicable, the outstanding balance of the provider fee shall accrue interest at the maximum rate permitted by law from the date the fine and, if applicable, the provider fee is due until payment of the outstanding balance of the fine and, if applicable, the provider fee;

(C) The format for reporting gross receipts; and

(D) The administration of this subchapter.

(2) The rules shall not grant any exceptions to or exceptions from the provider fee.

History. Acts 2009, No. 433, § 1.

20-48-904. Use of funds.

(a) (1) The provider fee assessed and collected under this subchapter shall be deposited into a designated account within the Arkansas Medicaid Program Trust Fund.

(2) The designated account shall be separate and distinct from the general fund and shall be supplementary to the trust fund.

(3) The designated account moneys in the trust fund and the matching federal financial participation under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2009, shall be used only for:

(A) Continued operation of and rate increases for:

(i) Intermediate care facilities for individuals with developmental disabilities;

(ii) Developmental Day Treatment Clinic Services provided to persons with developmental disabilities by providers licensed by the Division of Developmental Disabilities of the Department of Human Services under § 20-48-101 et seq.; and

(iii) Services provided to persons with developmental disabilities under the Alternative Community Services Waiver Program by providers certified to provide waiver services by the Division of Developmental Disabilities of the Department of Human Services;

(B) Expansion of the Alternative Community Services Waiver Program to serve more persons with developmental disabilities than is approved under the waiver program as of March 1, 2009;

(C) The Division of Medical Services of the Department of Human Services; and

(D) Public guardianship of adults.

(b) (1) The designated account moneys in the trust fund from the provider fee on intermediate care facilities for individuals with developmental disabilities that are unused at the end of a fiscal year shall be carried forward.

(2) The designated account moneys in the trust fund from the provider fee on intermediate care facilities for individuals with developmental disabilities may not be used to supplant other local, state, or federal funds.