

Developmental Disabilities Statutory Synopsis

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25-10-104. Developmental disabilities services — Board of Developmental Disabilities Services.

Statute text

(a) The Board of Developmental Disabilities Services and the institutional and supportive facilities of the human development centers located at Alexander, Conway, Arkadelphia, Jonesboro, Booneville, and the Southeast Human Development Center at Warren, and all improvements and additions to those institutional units made subsequent to February 4, 1971, shall be operated under the control of the Board of Developmental Disabilities Services within the Department of Human Services.

(b) The Board of Developmental Disabilities Services shall name the administrative head or director of each of the respective institutions under the board's jurisdiction with the concurrence of the Director of the Department of Human Services.

(c) Under a type 1 transfer of the Board of Developmental Disabilities Services, and the institutions under its management and control, to the Department of Human Services, the board shall have control of all budgeting, purchasing, and related management functions in accordance with the limitations and restrictions thereon provided in this act and by other laws applicable thereto.

(d) (1) It is the intent of this section that the administration of the human development centers located at Alexander, Arkadelphia, Booneville, Conway, Jonesboro, and the Southeast Human Development Center at Warren, and the various facilities and services thereof, shall be under the control of the Board of Developmental Disabilities Services, as provided and intended by the Arkansas Constitution, Amendment 33, but the board shall exercise its control in accordance with the general guidelines, policies, and regulations of the Department of Human Services governing divisions, offices, sections, or units within the department with respect to budgets, personnel and personnel policies, records, purchasing, bookkeeping, and other administrative procedures prescribed by the director.

(2) It is the intent of this act that the Board of Developmental Disabilities Services shall devote its time and resources to the operation and management of the state-owned and controlled institutional programs of the various state human development centers and that the establishment and operation of community programs, workshops, and other services for the mentally retarded or developmentally disabled in this state and other regional and community services benefiting the mentally retarded or developmentally disabled shall be administered by the Department of Human Services through the divisions, offices, sections, or units of the department as determined by the director of the department.

(e) (1) Nothing in this act shall be construed to prevent community providers from making determinations consistent with guidelines and criteria established by the state with respect to the appropriate placement of eligible developmentally disabled persons in the least restrictive setting and the development of individual program plans for instructional and case management functions for developmentally disabled persons, in keeping with the requirements of regulations promulgated pursuant to Pub. L. No. 94-142 of 1975 and § 504 of the Rehabilitation Act of 1973.

(2) The state reserves the authority to make final determination of eligibility for services funded, in whole or in part, by state and federal funds.

History. Acts 1985, No. 348, §§ 3, 8; A.S.A. 1947, §§ 5-902, 5-912d.

25-10-108. Coordination of programs, procedures, etc., of department and institutional boards.

Statute text

In addition to the functions and duties provided by law to be performed by the Director of the Department of Human Services, the director shall direct those divisions, offices, sections, or units of the department which he or she may designate to:

(1) Serve in a liaison capacity for the Department of Human Services and the director thereof with the boards and the directors of the various institutional facilities of the Department of Human Services State Institutional System Board and the Board of Developmental Disabilities Services within the Department of Human Services in efforts to coordinate services provided citizens of this state through those institutions with programs of the department for the benefit of neglected, dependent, and delinquent juveniles, the mentally ill, and the mentally retarded or developmentally disabled of this state;

(2) Cooperate with the administrators of the various institutions under the direction and control of the Department of Human Services State Institutional System Board and the Board of Developmental Disabilities Services within the Department of Human Services in the administration of fiscal and budgetary policies applicable to all divisions and programs of the department as promulgated by the director thereof and as directed by the Chief Fiscal Officer of the State;

(3) Offer assistance to the Department of Human Services State Institutional System Board and the Board of Developmental Disabilities Services within the Department of Human Services in developing biennial budgets and annual, quarterly, and monthly fiscal plans for the operation of those institutions and assist those boards in complying with the budget and fiscal policies promulgated by the Director of the Department of Human Services for the control and management of the funds made available to the department and its various offices, divisions, programs, and institutions. In connection therewith, the boards shall be furnished records of all accounts, expenditures, funds, and fund balances available to each institution for its operation and support;

(4) (A) Coordinate, with each institution and its administrator under the control and direction of the Department of Human Services State Institutional System Board and the Board of Developmental Disabilities Services within the Department of Human Services, the purchasing policies and procedures of the department as promulgated by the director thereof to assure that all those institutions comply with the uniform purchasing practices and policies of the department and with the Arkansas Procurement Law, § 19-11-201 et seq., and the rules and regulations promulgated thereunder by the State Purchasing Director.

(B) However, each of the various institutions under the control of the Department of Human Services State Institutional System Board and the Board of Developmental Disabilities Services within the Department of Human Services is authorized to have institutional purchasing officials who shall be authorized to make purchases in behalf of those institutions which are not within the exclusive jurisdiction of the State Purchasing Director, but all such purchases shall be made in compliance with the uniform purchasing practices and policies promulgated by the Director of the Department of Human Services to be applicable to all divisions, offices, sections, or units of the department and shall be in conformance with the Arkansas Procurement Law, § 19-11-201 et seq., and regulations promulgated by the State Purchasing Director.

(5) (A) Coordinate the policies promulgated by the Director of the Department of Human Services for the administration of personnel and personnel records within the various

divisions, offices, sections, or units of the department with the Department of Human Services State Institutional System Board, the Board of Developmental Disabilities Services within the Department of Human Services, and the administrators of each of those institutions to assure that all employee records and personnel records conform to the personnel policies and records promulgated by the Director of the Department of Human Services and to the personnel policies and practices laws of the State of Arkansas.

(B) Nothing in this act shall prohibit or restrict the right of each of the institutional boards to employ, promote, discipline, or discharge any employee of any of those institutions so long as those actions are within the overall policies and procedures promulgated by the Director of the Department of Human Services governing employee practices or actions. History. Acts 1985, No. 348, § 9; A.S.A. 1947, § 5-912f.

25-10-109. Institutional services generally — Development of admission policies, etc.

Statute text

In addition to the functions and duties provided by law and this act to be performed by the Board of Developmental Disabilities Services within the Department of Human Services and the Department of Human Services State Institutional System Board, it is the intent of this act that those boards shall cooperate with the Director of the Department of Human Services, the divisions, offices, sections, or units of the Department of Human Services created by this act, and the programs funded by and operated by the department by developing admission policies, criteria, and services which will assure appropriate access to institutional services to meet the residential service needs of the citizens of this state.

History. Acts 1985, No. 348, § 10; A.S.A. 1947, § 5-912g.

25-10-110. Institutional services generally — Charges.

Statute text

(a) It is found and determined by the General Assembly that under existing law most institutions in the Department of Human Services engaged in providing services to members of the general public seek recovery of the costs of providing those services on the basis of the average per capita cost. It is further found and determined that these methods of charging costs result in significant revenue losses to the state and do not allow the recovery of the actual costs of providing the services.

(b) The Divisions of Mental Health Services, Rehabilitation Services, Youth Services, and Developmental Disabilities Services of the Department of Human Services are permitted to charge for institutional services provided to members of the public on an actual cost basis rather than on a per capita or other basis.

History. Acts 1975, No. 340, §§ 1, 2; A.S.A. 1947, §§ 5-912.2, 5-912.2n.

Subchapter 2 — Governor's Commission on People with Disabilities

- 20-14-201. Legislative policy.
- 20-14-202. Creation — Members.
- 20-14-203. Ex officio members.
- 20-14-204. Officers.
- 20-14-205. Meetings.
- 20-14-206. Powers and duties.
- 20-14-207. Executive board.
- 20-14-208. Subcommittees.
- 20-14-209. Administrative support.
- 20-14-210. Gifts, grants, and donations.

Effective Dates. Acts 1985, No. 911, § 13: Apr. 15, 1985. Emergency clause provided: "In recognition of the pressing problems of people with disabilities, it is hereby found and determined by the General Assembly that a special Commission is needed to address these problems and it is imperative that this Commission commence operation immediately and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-14-201. Legislative policy.

This law is enacted to provide for a Governor's commission to carry on a continuing program to promote the interests of persons with disabilities in this state, in recognition that:

- (1) Arkansas has a public awareness of, and community interest in, the problems of persons with disabilities and that the awareness and interest must be heightened in order to enhance understanding of their problems;
- (2) There exists a need to assure that the special requirements of persons with disabilities are appropriately considered in state programs;
- (3) Existing programs for persons with disabilities require coordination to eliminate fragmentation of responsibility; and
- (4) There exists a critical need to provide individuals seeking information or assistance regarding services and programs for persons with disabilities with a simple means of obtaining appropriate information and referrals.

History. Acts 1985, No. 911, § 1; A.S.A. 1947, § 82-2908.

20-14-202. Creation — Members.

(a) There is created a commission to be known as the "Governor's Commission on People with Disabilities" composed of a maximum of twenty-five (25) members appointed by the Governor, subject to confirmation by the Senate.

(b) (1) Thirteen (13) of the members shall be disabled persons.

(2) Membership terms shall be three (3) years. Each member shall be eligible for reappointment by the Governor for one (1) three-year term.

(3) Vacancies shall be filled for the remainder of the term of the original appointment by the Governor.

(4) Members shall receive no compensation for serving on the commission.

(5) (A) Any member who shall be absent from two (2) successive regular meetings shall be subject to removal from the commission in the event he or she shall fail to present to the Governor a satisfactory excuse for the absence. In that event, the unexcused absence shall constitute sufficient cause for removal.

(B) Any member who shall be absent from three (3) successive regular meetings for any reason other than illness of the member, verified by a written sworn statement by his or her attending physician and entered in the minutes of the commission, shall thereby forfeit and vacate his or her membership on the commission and the forfeiture and vacancy shall be forthwith certified to the Governor by the executive director of the commission.

(6) The vacancies shall be filled in the manner prescribed by law.

(c) The commission shall be nonpartisan, nonprofit, and shall not engage in the dissemination of partisan principles.

History. Acts 1985, No. 911, §§ 2, 6, 8, 11; A.S.A. 1947, §§ 82-2909, 82-2913, 82-2915, 82-2917.

Publisher's Notes. Acts 1985, No. 911, § 2 provided, in part, that terms of office would be staggered so that not more than one-third of the membership would be appointed each year.

20-14-203. Ex officio members.

(a) The Director of the Department of Human Services, the deputy director of the appropriate division as determined by the Director of the Department of Human Services, and the Director of the Department of Workforce Services or any director, commissioner, or administrator of successors' agencies shall serve as ex officio members of the Governor's Commission on People with Disabilities.

(b) The Governor shall also appoint two (2) members of the General Assembly to serve as ex

officio members of the commission.

History. Acts 1985, No. 911, § 3; A.S.A. 1947, § 82-2910.

20-14-204. Officers.

(a) The Chair of the Governor's Commission on People with Disabilities shall be appointed biennially by the Governor and serve at the pleasure of the Governor.

(b) The chair shall select an executive board.

(c) The executive board is empowered to select from the commission membership a vice chair should such a position be desirable.

(d) The chair, or in his or her absence the vice chair, shall exercise general supervision of all commission affairs.

(e) The chair shall preside over all meetings of the commission and executive board, appoint subcommittees and chairs, and serve as an ex officio member of all subcommittees.

History. Acts 1985, No. 911, § 7; A.S.A. 1947, § 82-2914.

20-14-205. Meetings.

(a) A notice of regular and special meetings shall be mailed to members of the Governor's Commission on People with Disabilities not less than ten (10) days in advance. An agenda for the meeting shall accompany the notice of meeting.

(b) A quorum shall consist of not less than one-third (1/3) of the membership plus one (1) additional member.

(c) The conduct of all meetings shall be governed by Robert's Rules of Order, Revised, unless a majority of those attending vote to lay rules aside for a particular meeting.

History. Acts 1985, No. 911, § 8; A.S.A. 1947, § 82-2915.

20-14-206. Powers and duties.

The Governor's Commission on People with Disabilities shall:

(1) Advise and assist the Governor in developing policies designed to meet the needs of citizens with disabilities;

(2) Help coordinate state and private provider programs and activities relating to persons with disabilities;

(3) Cooperate with state agencies and private providers to assure that the services which

the Governor and the General Assembly have authorized for persons with disabilities are, in fact, provided;

(4) Cooperate with and assist political subdivisions of the state and private providers in the development of local programs for persons with disabilities, including, but not limited to, coordination and community planning, information services, counseling services, dissemination of information, and volunteer activities;

(5) Stimulate community interest in the problems of persons with disabilities and promote public awareness of resources available for such persons;

(6) Refer persons seeking advice, assistance, and available services in connection with particular problems of persons with disabilities to the appropriate departments and agencies of the state and federal governments or to agencies providing services by contract with the governmental entities as well as other private providers;

(7) Consult and cooperate with universities, colleges, and educational institutions in the state for the development of courses of study for persons engaged in public and private programs for persons with disabilities;

(8) Make or cause to be made such studies of needs of persons with disabilities as may be appropriate;

(9) Serve as a clearinghouse for information relating to the needs of persons with disabilities;

(10) Sponsor conferences relating to problems of and services for persons with disabilities;

(11) Assist state and local governments in eliminating obstacles to dignity and achievement which persons with disabilities may face as a result of a government and society unaware of or insensitive to their needs;

(12) Examine federal, state, and local programs for persons with disabilities and provide assistance when greater coordination between federal, state, and local programs is needed; and

(13) Cooperate with the General Assembly and the President's Committee on Employment of People with Disabilities.

History. Acts 1985, No. 911, § 5; A.S.A. 1947, § 82-2912; Acts 1997, No. 208, § 15.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided:

"LEGISLATIVE INTENT AND PURPOSE. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

20-14-207. Executive board.

(a) The chair of the Governor's Commission on People with Disabilities shall name an executive board from the membership consisting of no more than five (5) members, taking into consideration that consumer representation must be assured.

(b) The executive board shall be responsible for the following activities:

(1) Appointing, subject to the personnel law, such staff as is necessary to carry out the commission's objectives;

(2) Acting on behalf of the commission between regular meetings of the full commission;

(3) Establishing a schedule for regular commission meetings and holding such other meetings of the executive board as may be necessary;

(4) Preparing an annual plan of work for the commission, subject to the approval of the commission;

(5) Assuring that commission activities coordinate with those of other public and private agencies responsible for providing services to disabled citizens;

(6) Scheduling a public hearing on any commission-related matter if a hearing is required by state law or deemed necessary by the commission; and

(7) Establishing such subcommittees as may be necessary to carry out the powers and duties of the commission.

History. Acts 1985, No. 911, § 8; A.S.A. 1947, § 82-2915.

20-14-208. Subcommittees.

(a) The Executive Board of the Governor's Commission on People with Disabilities shall establish such subcommittees as it determines necessary.

(b) Membership of subcommittees shall not be limited to members of the Governor's Commission on People with Disabilities.

(c) Subcommittees shall maintain written records of their activities and submit them to the commission chair.

History. Acts 1985, No. 911, § 10; A.S.A. 1947, § 82-2916.

20-14-209. Administrative support.

(a) The appropriate division as determined by the Director of the Department of Health and Human Services or any other agency or division as the Governor shall designate shall provide administrative support to the Governor's Commission on People with Disabilities.

(b) A representative of the appropriate division as determined by the director or any other agency or division as the Governor shall designate shall be appointed as executive director to effect the coordination between the division and the Chair of the Governor's Commission on People with Disabilities in the arrangement of the support.

History. Acts 1985, No. 911, § 4; A.S.A. 1947, § 82-2911.

20-14-210. Gifts, grants, and donations.

(a) The Governor's Commission on People with Disabilities may receive any gifts, grants, or donations made for any of the purposes of its program.

(b) The commission may disburse and administer the gifts, grants, and donations in accordance with the conditions established by the Executive Board of the Governor's Commission on People with Disabilities.

History. Acts 1985, No. 911, § 12; A.S.A. 1947, § 82-2918.

Chapter 48

Treatment of the Developmentally Disabled

- Subchapter 1 — General Provisions
- Subchapter 2 — Arkansas Mental Retardation Act
- Subchapter 3 — Cooperative Agreements
- Subchapter 4 — Human Development Centers Generally
- Subchapter 5 — Human Development Centers — Property and Finances
- Subchapter 6 — Location Act For Community Homes for Developmentally Disabled Persons
- Subchapter 7 — Relationship Between State and Communities to Provide for
Community-Based Services
- Subchapter 8 — Criminal Records Checks for Employees of Providers of Care to Disabled
Adults
- Subchapter 9 — Intermediate care facilities

A.C.R.C. Notes. References to “this chapter” in the text of chapter 48, subchapters 1-5, may not apply to §§ 20-48-104 and 20-48-105 and subchapters 6 and 7, which were enacted subsequently.

Acts 2001, No. 1292, § 1, provided:

“The House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor shall study the feasibility of including private intermediate care facilities for the mentally retarded and all residential programs licensed by the Division of Developmental Disabilities of The Department of Human Services among facilities affected by the quality assurance fee.

“The House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor shall study the feasibility of including private intermediate care facilities for the mentally retarded and all residential programs licensed by the Division of Developmental Disabilities of The Department of Human Services among facilities affected by the quality assurance fee.”

Research References

ALR.

Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons. 32 A.L.R.4th 1018.

Restrictive covenants: community residence for mentally disabled persons as violation of. 41 A.L.R.4th 1216.

Validity, construction, and effect of statute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill, 51 A.L.R.4th 1096.

Am. Jur. 53 Am. Jur. 2d, Mentally Impaired Persons, § 3 et seq.

Subchapter 1

— General Provisions

20-48-101. Definitions.

20-48-102. [Repealed.]

20-48-103. Purpose — Use of certain funds.

20-48-104. Intermediate Care Facility for Mentally Retarded program — Administration.

20-48-105. Nonprofit community programs — Extension or expansion of services.

Preambles. Acts 1981, No. 513 contained a preamble which read:

"Whereas, the existing name and official title of Mental Retardation-Developmental Disabilities Services (MR-DDS) and the existing name and official title of five of the six institutions it operates, the Arkansas Children's Colony system, have proven to be confusing and detrimental to the proper commission and effectiveness of the said Division's official business and that of the policy-making board under which it functions. The name of the Division is redundant by definition, and the name of the institutional system is inaccurate with respect to clients served and programs provided.

Now therefore...."

Effective Dates. Acts 1971, No. 433, ch. 10, § 4: Mar. 29, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various mental health laws have been enacted over a period of one hundred years and are not properly organized so that they can be easily found; that many of these laws are antiquated and archaic and are in great need of updating in order to be useful; that the mental health laws need to be placed in a comprehensive code for easy reference by those persons interested in and who use these laws; and that only by the immediate passage of this Act can this be achieved. 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 become effective from and after its passage and approval."

Acts 1985, No. 777, § 23: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth 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, 1985 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, 1985 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, 1985."

Acts 1989 (1st Ex. Sess.), No. 246, § 26: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh 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, 1989 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, 1989 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, 1989."

Acts 1991, No. 922, § 28: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth 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, 1991 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, 1991 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, 1991.”

Acts 1991, No. 1129, § 33: July 1, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth 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, 1991 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, 1991 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, 1991.”

Acts 1997, No. 1360, § 132: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-First 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, 1997 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, 1997 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, Section 115 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1997.”

20-48-101. Definitions.

As used in this chapter:

(1) (A) “Accredited nonprofit entity” means a nonprofit entity that:

(i) Has successfully completed an ongoing accreditation process that is related to the delivery of services to persons with developmental disabilities and is offered by a national accrediting organization;

(ii) Satisfies the appropriate licensure criteria established by the Division of Developmental Disabilities Services of the Department of Human Services; and

(iii) Is positioned to provide nonresidential services to persons with developmental disabilities upon licensure by the division because no existing nonprofit community provider is interested in providing the specific category of nonresidential services to persons with developmental disabilities that has been identified by the division as underserved.

(B) As used in subdivision (1)(A)(i) of this section, “national accrediting organization” includes without limitation:

(i) The Commission on Accreditation of Rehabilitation Facilities; or

(ii) Any other similar national accrediting organization recognized by the division;

(2) “Developmental disability” means a disability of a person that:

(A) (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 the condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation or requires treatment and services similar to that required for a person with mental retardation; or

(iii) Is attributable to dyslexia resulting from a disability described in subdivision (2)(A)(i) of this section or subdivision (2)(A)(ii) of this section;

(B) Originates before the person attains the age of twenty-two (22) years;

(C) Has continued or can be expected to continue indefinitely; and

(D) Constitutes a substantial handicap to the person's ability to function without appropriate support services, including, but not limited to, planned recreational activities, medical services such as physical therapy and speech therapy, and possibilities for sheltered employment or job training;

(3) "Existing operations" means the provision by a qualified nonprofit community provider of one (1) or more of the following services without regard to order:

(A) A developmental day treatment clinic services preschool program or adult development program;

(B) A licensed developmental disability services group home in operation and recognized by the division on or before July 1, 1995;

(C) An intermediate care facility for the mentally retarded program with fifteen (15) beds or less; or

(D) An apartment complex in operation and serving individuals with developmental disabilities on or before January 1, 2008;

(4) "Human development center" means an institution maintained for the care and training of persons with developmental disabilities;

(5) (A) "Nonprofit community program" means a program that provides nonresidential services to persons with developmental disabilities or nonresidential and residential services to persons with developmental disabilities and is licensed by the division.

(B) A nonprofit community program serves as a quasi-governmental instrumentality of the state by providing support and services to persons who have a developmental disability or delay and would otherwise require support and services through state-operated programs and facilities; and

(6) (A) "Qualified nonprofit community program" means a nonprofit community program that holds a valid nonprofit community program license issued by the division.

(B) "Qualified nonprofit community program" includes:

(i) A nonprofit community program that holds a license that was issued by the division on or before February 1, 2007; and

(ii) An accredited nonprofit entity that is awarded a license as a nonprofit community program by the division after February 1, 2007.

History. Acts 1981, No. 513, § 1; A.S.A. 1947, § 59-1018; Acts 1993, No. 729, § 1; 2007, No. 645, § 1.

Amendments. The 2007 amendment deleted "unless the context otherwise requires" in the introductory paragraph; added present (1), deleted former (2), added present (3), (5), and (6), and redesignated subdivisions accordingly; in present (2)(A)(ii), substituted "because the condition" for "because it," "that of a person with mental retardation" for "those of mentally retarded persons" and "that required for a person with mental retardation" for "those required for such persons"; substituted "subdivision (2)(A)(i) of this section or subdivision (2)(A)(ii)" for "subdivision (1)(A) of this section" in present (2)(A)(iii); and made related and stylistic changes.

20-48-102. [Repealed.]

Publisher's Notes. This section, concerning the prohibition of abuse, ridicule, and teasing, was repealed by Acts 2005, No. 1994, § 528. The section was derived from Acts 1971, No. 433, ch. 7, § 2; A.S.A. 1947, § 59-602.

20-48-103. Purpose — Use of certain funds.

It is the specific recommendation of the General Assembly that the Division of Developmental Disabilities Services of the Department of Human Services utilize Title XIX, social services block grant, and state grants-in-aid funds available to nonprofit community programs to seek to achieve the following goals:

(1) Providing for operation of nonprofit community programs that the state agency encouraged the nonprofit community programs to build with nonstate funds;

(2) Determination by the division of reasonable costs for the services provided by nonprofit community programs; and

(3) That the state not reduce reasonable cost funding of nonprofit community programs.

History. Acts 1985, No. 777, § 18; 1989 (1st Ex. Sess.), No. 246, § 16; 2007, No. 645, § 2.

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

"community-based residential programs" or similar language throughout the section; and rewrote (2) and (3).

U.S. Code. Title XIX, referred to in this section, is Title XIX of the federal Social Security Act, codified as 42 U.S.C. § 1396 et seq.

20-48-104. Intermediate Care Facility for Mentally Retarded program — Administration.

(a) The operation of the community-based Intermediate Care Facility for Mentally Retarded program will be subject to the oversight of a five-member committee comprised of three (3) members of the House of Representatives to be appointed by the Speaker of the House of Representatives and two (2) members of the Senate to be appointed by the President Pro Tempore of the Senate.

(b) The committee shall provide oversight for the operation of the small intermediate care facility for the mentally retarded program and make recommendations, within the appropriate federal regulations and guidelines, to the Division of Developmental Disabilities Services and the Office of Long-Term Care to establish and clarify the mission, goals, levels of services, and scope of the program and to provide consistency in state regulations, guidelines, standards, and policies.

(c) The committee shall also make recommendations for adequate funding to ensure the fiscal integrity of the program to allow it to be operated pursuant to the state and federal regulations, guidelines, standards, and policies.

History. Acts 1991, No. 922, § 20; 1991, No. 1129, § 26.

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

Publisher's Notes. Acts 1991, No. 922, § 20 and No. 1129, § 26 are also codified as § 20-10-233.

20-48-105. Nonprofit community programs — Extension or expansion of services.

(a) (1) The intent of this section is to avoid unnecessary duplication of costs and services in the extension or expansion of nonresidential services to persons with developmental disabilities.

(2) A designation by the Division of Developmental Disabilities Services of the Department of Human Services that a county is underserved with regard to a specific category of nonresidential services to persons with developmental disabilities establishes that an extension or expansion of nonresidential services to persons with developmental disabilities in the underserved county is necessary.

(b) (1) The division shall not issue a new license for operation of a nonprofit community program or approve an application from a nonprofit community program to implement additional

nonresidential services to persons with developmental disabilities that are not currently offered by the nonprofit community program unless the division has determined that:

(A) A county of the state is underserved with regard to a specific category of nonresidential services currently offered to persons with developmental disabilities and currently funded from available state or federal funds; or

(B) (i) A county of the state is underserved with regard to new services not currently available to persons with developmental disabilities and new services should be made available to persons with developmental disabilities; and

(ii) State or federal funds are available in amounts necessary to support the delivery of new services not currently available to persons with developmental disabilities.

(2) (A) The division shall provide written notice by certified mail of its designation under subdivision (b)(1) of this section to all nonprofit community programs with existing operations in the county designated by the division as underserved.

(B) If nonprofit community programs with existing operations in the county that do not currently offer the specific category of nonresidential services identified by the division as underserved determine not to extend or expand the identified nonresidential service to persons with developmental disabilities in the underserved county, the division shall provide written notice by certified mail of its designation under subdivision (b)(1) of this section to all nonprofit community programs in the remainder of the state.

(C) If all nonprofit community programs in the remainder of the state determine not to extend or expand the identified nonresidential service to persons with developmental disabilities in the underserved county, the division shall provide notice to the general public in a newspaper of statewide general circulation.

(c) In granting an approval under this section, the division shall give approval in the following order of preference:

(1) A qualified nonprofit community program with existing operations in the county that does not currently offer the specific category of nonresidential services to persons with developmental disabilities identified by the division as underserved;

(2) A qualified nonprofit community program from another county in the state;

(3) An accredited nonprofit entity in the underserved county;

(4) An accredited nonprofit entity from another county in the state; and

(5) An accredited nonprofit entity from outside the state.

(d) (1) (A) A license from the division is required for operation of a nonprofit community program.

(B) A qualified nonprofit community program is required to apply to and obtain

the approval of the division to implement additional nonresidential services to persons with developmental disabilities that are not currently offered by the qualified nonprofit community program.

(2) (A) If an application is approved, the division shall issue a new license or service expansion approval if it finds that the proposed nonresidential service expansion meets the criteria for approval established by the division.

(B) If the application is denied, the division shall send written notice of the denial to the applicant that sets forth the criteria that the proposed nonresidential service expansion failed to meet.

History. Acts 1997, No. 1360, § 123; 2007, No. 645, § 3.

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

Acts 2001, No. 1639, §§ 10 and 13, provided:

"Section 10. DEVELOPMENTAL DISABILITIES — GRANTS TO COMMUNITY BASED PROVIDERS. Funds allocated under the appropriation for community-based services, for Grants to Community Providers, in the Developmental Disabilities Services — Grants-in-Aid appropriation in this act shall be used only to provide services through private community based services licensed or certified by the Arkansas Division of Developmental Disabilities Services (DDS). Non-profit community-based programs licensed by the Division of Developmental Disabilities Services are quasi-governmental instrumentalities of the state which provide supports and services to individuals who have a developmental disability or delay, who would otherwise require supports and services through state-operated programs and facilities owned by the State of Arkansas. When DDS licensed providers are involved in delivering services which are Medicaid reimbursable, they must enroll as a provider with the Arkansas Medicaid Program and must bill the Arkansas Medicaid Program for all covered services for eligible individuals.

"Services which are covered by the Arkansas State Medicaid Program or under the Alternative Community Services Waiver Program (ACS) will be utilized to the maximum extent possible for any individual who is eligible for Medicaid coverage. It is the intent of this section that DDS, as a general policy, maximize the use of Medicaid funding available for appropriate services.

"The State shall require each provider funded from this Appropriation for community based services, including funding from the Grants/Patient Services Line, in the Developmental Disabilities Services—Operations appropriation, the Early Intervention Line, in the Developmental Disabilities Services—Operations appropriation, or from the Grants to Community Providers Line, in the Developmental Disabilities Services—Grants-in-Aid appropriation, to screen each individual to whom services are provided for a determination of eligibility or ineligibility for Medicaid coverage within thirty days of the first date that services are provided. It is the intent of this section to insure that wherever possible and appropriate, Medicaid funds are utilized for covered or waived services to individuals who are eligible for coverage under the Arkansas Medicaid Program or the ACS Waiver.

"Nothing in this Act shall prevent the Division or any provider from extending emergency services when appropriate measures have been taken in a timely manner to secure Medicaid eligibility.

"In the event that components of community-based services now funded from state and/or federal funds are extended to unserved or underserved areas of the state, or in the event that new services categories/codes are made available, to be funded from state and/or federal funds the existing non-profit

community programs licensed by the Division of Developmental Disabilities Services shall be granted an opportunity to make application to expand their service base to unserved or underserved areas or shall be granted an opportunity to make application to offer new services that the State intends to offer. When the Division of Developmental Disabilities Services determines that state and/or federal funding for new or expanded services are to be available, it shall develop a Request for Proposal (RFP) process which includes a provision to provide notice of its intent to existing providers and to the general public. Nothing in this Act shall restrict the Division's discretion to award new or expanded services to the existing community based service providers making application for the same pursuant to this section. The intent of this section is to avoid unnecessary duplication of administrative costs and services in the extension or expansion of services.

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

"Section 13. GRANTS IN AID-CONDITIONS FOR RECEIVING FUNDS. Private nonprofit community based programs licensed by the Department of Human Services, Developmental Disabilities Services, are eligible to receive funds appropriated for Grants to Community Providers in the Developmental Disabilities Services—Grants-in-Aid appropriation of this Act, and as a condition of receiving such funds they shall:

"1. Meet minimum standards of performance in the delivery of services to people with disabilities as defined by the Department of Human Services, Developmental Disabilities Services.

"2. Supply statistical and financial data to the Department of Human Services, Developmental Disabilities Services.

"3. Establish and maintain a sound financial management system in accordance with guidelines as set forth by the Department of Human Services.

"4. Establish and maintain community support programs designed to provide coordinated care and treatment to ensure ongoing involvement and individualized services for persons with disabilities. Every community support program shall provide services for persons with disabilities who reside within the respective area of the program.

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

Acts 2005, No. 2102, § 12, provided:

"DEVELOPMENTAL DISABILITIES — GRANTS TO COMMUNITY BASED PROVIDERS. Funds allocated under the appropriation for community-based services, for Grants to Community Providers, in the Developmental Disabilities Services — Grants-in-Aid appropriation in this act shall be used only to provide services through private community based services licensed or certified by the Arkansas Division of Developmental Disabilities Services (DDS). Non-profit community-based programs licensed by the Division of Developmental Disabilities Services are quasi-governmental instrumentalities of the state which provide supports and services to individuals who have a developmental disability or delay, who would otherwise require supports and services through state-operated programs and facilities owned by the State of Arkansas. When DDS licensed providers are involved in delivering services which are Medicaid reimbursable, they must enroll as a provider with the Arkansas Medicaid Program and must bill the Arkansas Medicaid Program for all covered services for eligible individuals.

"Services which are covered by the Arkansas State Medicaid Program or under the Alternative Community Services Waiver Program (ACS) will be utilized to the maximum extent possible for any individual who is eligible for Medicaid coverage. It is the intent of this section that DDS, as a general policy, maximize the use of Medicaid funding available for appropriate services.

"The State shall require each provider funded from this Appropriation for community based services, including funding from the Grants/Patient Services Line, in the Developmental Disabilities Services — Operations appropriation, or from the Grants to Community Providers Line, in the Developmental

Disabilities Services — Grants-in-Aid appropriation, to screen each individual to whom services are provided for a determination of eligibility or ineligibility for Medicaid coverage within thirty days of the first date that services are provided. It is the intent of this section to insure that wherever possible and appropriate, Medicaid funds are utilized for covered or waived services to individuals who are eligible for coverage under the Arkansas Medicaid Program or the ACS Waiver.

“Nothing in this Act shall prevent the Division or any provider from extending emergency services when appropriate measures have been taken in a timely manner to secure Medicaid eligibility.

“In the event that components of community-based services now funded from state and/or federal funds are extended to unserved or underserved areas of the state, or in the event that new services categories/codes are made available, to be funded from state and/or federal funds all non-profit community programs licensed by the Division of Developmental Disabilities Services shall be granted an opportunity to make application to expand their service base to unserved or underserved areas or shall be granted an opportunity to make application to offer new services that the State intends to offer. When the Division of Developmental Disabilities Services determines that state and/or federal funding for new or expanded services are to be available, it shall provide written notice by certified mail of its intent to existing licensed providers who are already providing services. If no existing licensed providers respond in writing to Division of Developmental Disabilities Services within thirty days that they will provide the new or expanded services, Division of Developmental Disabilities Services shall provide notice to the general public that a new entity will be allowed to develop services and obtain licensure to provide the new or expanded services. Nothing in this Act shall restrict the Division's discretion to award new or expanded services to the existing community based service licensed providers making application for the same pursuant to this section. The intent of this section is to avoid unnecessary duplication of administrative costs and services in the extension or expansion of services.

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

Acts 2005, No. 2102, § 15, provided:

“GRANTS IN AID-CONDITIONS FOR RECEIVING FUNDS. Private nonprofit community based programs licensed by the Department of Human Services, Developmental Disabilities Services, are eligible to receive funds appropriated for Grants to Community Providers in the Developmental Disabilities Services — Grants-in-Aid appropriation of this Act, and as a condition of receiving such funds they shall:

“1. Meet minimum standards of performance in the delivery of services to people with disabilities as defined by the Department of Human Services, Developmental Disabilities Services.

“2. Supply statistical and financial data to the Department of Human Services, Developmental Disabilities Services.

“3. Establish and maintain a sound financial management system in accordance with guidelines as set forth by the Department of Human Services.

“4. Establish and maintain community support programs designed to provide coordinated care and treatment to ensure ongoing involvement and individualized services for persons with disabilities. Every community support program shall provide services for persons with disabilities who reside within the respective area of the program.

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

Acts 2009, No. 1419, § 11, provided:

“DEVELOPMENTAL DISABILITIES — GRANTS TO COMMUNITY BASED PROVIDERS. Funds allocated under the appropriation for community-based services, for Grants to Community Providers, in the Developmental Disabilities Services — Grants-in-Aid appropriation in this act shall be used only to provide services through private community based services licensed or certified by the Arkansas Division

of Developmental Disabilities Services (DDS). Non-profit community-based programs licensed by the Division of Developmental Disabilities Services are quasi-governmental instrumentalities of the state which provide supports and services to individuals who have a developmental disability or delay, who would otherwise require supports and services through state-operated programs and facilities owned by the State of Arkansas. When DDS licensed providers are involved in delivering services which are Medicaid reimbursable, they must enroll as a provider with the Arkansas Medicaid Program and must bill the Arkansas Medicaid Program for all covered services for eligible individuals.

"Services which are covered by the Arkansas State Medicaid Program or under the Alternative Community Services Waiver Program (ACS) will be utilized to the maximum extent possible for any individual who is eligible for Medicaid coverage. It is the intent of this section that DDS, as a general policy, maximize the use of Medicaid funding available for appropriate services.

"The State shall require each provider funded from this Appropriation for community based services, including funding from the Grants/Patient Services Line, in the Developmental Disabilities Services — Operations appropriation, or from the Grants to Community Providers Line, in the Developmental Disabilities Services — Grants-in-Aid appropriation, to screen each individual to whom services are provided for a determination of eligibility or ineligibility for Medicaid coverage within thirty days of the first date that services are provided. It is the intent of this section to insure that wherever possible and appropriate, Medicaid funds are utilized for covered or waived services to individuals who are eligible for coverage under the Arkansas Medicaid Program or the ACS Waiver.

"Nothing in this Act shall prevent the Division or any provider from extending emergency services when appropriate measures have been taken in a timely manner to secure Medicaid eligibility.

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

Acts 2009, No. 1419, § 13, provided:

"GRANTS IN AID — CONDITIONS FOR RECEIVING FUNDS. Private non-profit community-based programs licensed by the Department of Human Services, Developmental Disabilities Services, are eligible to receive funds appropriated for Grants to Community Providers in the Developmental Disabilities Services — Grants-in-Aid appropriation of this Act, and as a condition of receiving such funds they shall:

"1. Meet minimum standards of performance in the delivery of services to people with disabilities as defined by the Department of Human Services, Developmental Disabilities Services.

"2. Supply statistical and financial data to the Department of Human Services, Developmental Disabilities Services.

"3. Establish and maintain a sound financial management system in accordance with guidelines as set forth by the Department of Human Services.

"4. Establish and maintain community support programs designed to provide coordinated care and treatment to ensure ongoing involvement and individualized services for persons with disabilities. Every community support program shall provide services for persons with disabilities who reside within the respective area of the program.

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

Amendments. The 2007 amendment substituted "Nonprofit community programs" for "Community-based service providers" in the section heading; and rewrote the section.

Subchapter 2 **— Arkansas Mental Retardation Act**

20-48-201. Title.

- 20-48-202. Definitions.
- 20-48-203. Board of Developmental Disabilities Services — Creation — Members.
- 20-48-204. Board of Developmental Disabilities Services — Officers — Proceedings.
- 20-48-205. Board of Developmental Disabilities Services — Powers and duties.
- 20-48-206. Board of Developmental Disabilities Services — Human development centers — Powers and duties — Admission.
- 20-48-207. Board of Developmental Disabilities Services — Contracts for provision of services.
- 20-48-208. Board of Developmental Disabilities Services — License for facilities and institutions required.
- 20-48-209. Board of Developmental Disabilities Services — Planning and implementation.
- 20-48-210. Deputy Director of the Division of Developmental Disabilities Services.
- 20-48-211. Board of Developmental Disabilities Services — Community centers.
- 20-48-212. Amount requested for Arkansas Special Olympics, Inc.

Cross References. Department of Human Services, operation and control of mental retardation facilities, § 25-10-104.

Psychiatric residential treatment facilities, licensing, standards, § 20-46-401 et seq.

Effective Dates. Acts 1969, No. 265, § 14: July 1, 1969 with implementation dependent on availability of funds.

Acts 1981, No. 106, § 3: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are a large number of mentally retarded persons in this State; that the present laws pertaining to licensing of facilities for these persons are deficient and that there is an immediate need that this deficiency be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be enforced from and after July 1, 1981."

Acts 1981, No. 774, § 26: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third 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, 1981 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, 1981 could work irreparable harm upon the proper administration and providing 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, 1981."

Acts 1983, No. 779, § 23: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth 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, 1983 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, 1983 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, 1983."

Acts 1989 (1st Ex. Sess.), No. 246, § 26: July 1, 1989. Emergency clause provided: "It is hereby found

and determined by the Seventy-Seventh 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, 1989 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, 1989 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, 1989."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. 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 [sic], 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."

Research References

U. Ark. Little Rock L.J.

Boyd, Symposium on Development Disabilities and the Law — The Aftermath of the DD Act: Is There Life After Pennhurst? 4 U. Ark. Little Rock L.J. 448.

20-48-201. Title.

This subchapter shall be known and may be cited as the "Arkansas Mental Retardation Act".

History. Acts 1969, No. 265, § 1; A.S.A. 1947, § 59-1001.

20-48-202. Definitions.

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

- (1) "Board" means the Board of Developmental Disabilities Services;
- (2) "Center" means a human development center;
- (3) "Division" means the Division of Developmental Disabilities Services in the Department of Human Services or the appropriate division as determined by the Director of the Department of Human Services;
- (4) "Director" means the Director of the Department of Human Services;
- (5) "Superintendent" means the chief administrative officer assigned full time to a center;
- (6) "Retarded" or "mentally retarded" or "retarded individual" means:
 - (A) A person with a mental deficit requiring him or her to have special