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4

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A Bill

HOUSE BILL 1651

5 By: Representatives Ladyman, C. Cooper
6 By: Senators Irvin, K. Hammer
7

For An Act To Be Entitled

9 AN ACT TO AMEND AND UPDATE THE LAWS REGARDING
10 TREATMENT FOR INDIVIDUALS WITH INTELLECTUAL AND
11 DEVELOPMENTAL DISABILITIES; TO ENSURE RESPECTFUL
12 LANGUAGE IS USED WITHIN THE ARKANSAS CODE REGARDING
13 INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL
14 DISABILITIES; AND FOR OTHER PURPOSES.
15

Subtitle

16
17
18 TO AMEND AND UPDATE THE LAWS REGARDING
19 TREATMENT FOR INDIVIDUALS WITH
20 INTELLECTUAL AND DEVELOPMENTAL
21 DISABILITIES; AND TO ENSURE RESPECTFUL
22 LANGUAGE IS USED WITHIN THE ARKANSAS
23 CODE.
24

25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 4-88-201(b), concerning the definition of
29 "disabled person" under deceptive trade practices, is amended to read as
30 follows:

31 (b) ~~"Disabled person~~ Person with a disability" means a person who has a
32 physical or mental impairment which substantially limits one (1) or more of
33 such person's major life activities.

34 (1) As used in this subsection, "physical or mental impairment"
35 means any of the following:

36 (A) Any physiological disorder or condition, cosmetic



1 disfigurement, or anatomical loss substantially affecting one (1) or more of
 2 the following body systems: neurological; musculoskeletal; special sense
 3 organs; respiratory, including speech organs; cardiovascular; reproductive;
 4 digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

5 (B) Any mental or psychological disorder, ~~such as mental~~
 6 ~~retardation~~ including intellectual and developmental disabilities, organic
 7 brain syndrome, emotional or mental illness, and specific learning
 8 disabilities.

9 (2) The term "physical or mental impairment" includes, but is
 10 not limited to, such diseases and conditions as orthopedic, visual, speech
 11 and hearing impairment, cerebral palsy, spina bifida, Down syndrome,
 12 epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease,
 13 diabetes, ~~mental retardation~~ intellectual and developmental disabilities, and
 14 emotional illness.

15
 16 SECTION 2. Arkansas Code §§ 4-88-202 through 4-88-207 are amended to
 17 read as follows:

18 4-88-202. Civil penalty – Disposition of funds.

19 (a) If any person is found to have violated any provision of this
 20 chapter, including unlawful practices related to charitable solicitations,
 21 and the violation is committed against ~~elder or disabled persons~~ an elder
 22 person or a person with a disability, in addition to any civil penalty
 23 otherwise set forth or imposed, the court may impose an additional civil
 24 penalty not to exceed ten thousand dollars (\$10,000) for each violation.

25 (b) The civil penalties imposed pursuant to subsection (a) of this
 26 section shall be deposited with the Treasurer of State and placed into the
 27 Elder Person and ~~Disabled~~ Person with a Disability Victims Fund, a special
 28 fund created in the State Treasury and administered by the Attorney General
 29 for the investigation and prosecution of deceptive acts against ~~elder and~~
 30 ~~disabled persons~~ an elder person or a person with a disability and for
 31 consumer education initiatives.

32
 33 4-88-203. Determination of civil penalty.

34 In determining whether to impose an enhanced civil penalty under this
 35 subchapter and the amount thereof, the court shall consider the extent to
 36 which one (1) or more of the following factors are present:

1 (1) Whether the defendant's conduct was in disregard of the
2 rights of the ~~elder or disabled person~~ elder person or person with a
3 disability;

4 (2) Whether the defendant knew or should have known that the
5 defendant's conduct was directed to an ~~elder person or disabled person~~ elder
6 person or person with a disability;

7 (3) Whether the ~~elder or disabled person~~ elder person or person
8 with a disability was more vulnerable to the defendant's conduct because of
9 age, poor health, infirmity, impaired understanding, restricted mobility, or
10 disability than other persons and whether the ~~elder or disabled person~~ elder
11 person or person with a disability actually suffered substantial physical,
12 emotional, or economic damage resulting from the defendant's conduct;

13 (4) Whether the defendant's conduct caused an ~~elder or disabled~~
14 ~~person~~ elder person or person with a disability to suffer any of the
15 following:

16 (A) Mental or emotional anguish;

17 (B) Loss of or encumbrance upon a primary residence of the
18 ~~elder or disabled person~~ elder person or person with a disability;

19 (C) Loss of or encumbrance upon the elder or disabled
20 person's principal employment or principal source of income;

21 (D) Loss of funds received under a pension or retirement
22 plan or a government benefits program;

23 (E) Loss of property set aside for retirement or for
24 personal or family care and maintenance; or

25 (F) Loss of assets essential to the health and welfare of
26 the ~~elder or disabled person~~ elder person or person with a disability; or

27 (5) Any other factors the court deems appropriate.

28
29 4-88-204. Cause of action.

30 An ~~elder or disabled person~~ elder person or person with a disability
31 who suffers damage or injury as a result of an offense or violation described
32 in this chapter has a cause of action to recover actual damages, punitive
33 damages, if appropriate, and reasonable attorney's fees. Restitution ordered
34 pursuant to this section has priority over a civil penalty imposed pursuant
35 to this subchapter.

36

1 4-88-205. Education initiatives.

2 The Attorney General shall, pursuant to the funds allocated in this
 3 subchapter, develop and implement statewide educational initiatives to inform
 4 ~~elder persons and disabled persons~~ an elder person and a person with a
 5 disability, law enforcement agencies, the judicial system, social services
 6 professionals, and the general public as to the prevalence and prevention of
 7 consumer crimes against ~~elder and disabled persons~~ an elder person or person
 8 with a disability, the provisions of this chapter, the penalties for
 9 violations of this chapter, and the remedies available for victims of
 10 violations.

11
 12 4-88-206. Referrals for abuse, neglect, and exploitation.

13 The Attorney General shall establish and maintain referral procedures
 14 with the Division of Aging, Adult, and Behavioral Health Services of the
 15 Department of Human Services in order to provide any necessary intervention
 16 and assistance to ~~elder or disabled persons~~ an elder person or person with a
 17 disability who may have been victimized by violations of this chapter.

18
 19 4-88-207. Elder Person and ~~Disabled~~ Person with a Disability Victims
 20 Fund created.

21 The "Elder Person and ~~Disabled~~ Person with a Disability Victims Fund"
 22 is hereby created and established on the books of the Treasurer of State,
 23 Auditor of State, and Chief Fiscal Officer of the State and shall consist of
 24 those special funds as may be provided by law. This fund shall be used for
 25 the investigation and prosecution of deceptive acts against ~~elder and~~
 26 ~~disabled persons~~ an elder person or person with a disability and for consumer
 27 education initiatives directed toward ~~elder and disabled persons~~ an elder
 28 person or person with a disability, law enforcement officers, the judicial
 29 system, social services professionals, and the general public on the
 30 provisions of this chapter and related statutes.

31
 32 SECTION 3. Arkansas Code § 5-4-618 is amended to read as follows:

33 5-4-618. ~~Mental retardation~~ Defendants with intellectual disabilities.

34 (a)(1) As used in this section, "~~mental retardation~~" "intellectual
 35 disabilities" means:

36 (A) Significantly ~~subaverage~~ below average general

1 intellectual functioning accompanied by a significant deficit or impairment
2 in adaptive functioning manifest in the developmental period, but no later
3 than age eighteen (18) years of age; and

4 (B) A deficit in adaptive behavior.

5 (2) There is a rebuttable presumption of ~~mental retardation~~
6 intellectual disabilities when a defendant has an intelligence quotient of
7 sixty-five (65) or below.

8 (b) No defendant with ~~mental retardation~~ intellectual disabilities at
9 the time of committing capital murder shall be sentenced to death.

10 (c) The defendant has the burden of proving ~~mental retardation~~
11 intellectual disabilities at the time of committing the offense by a
12 preponderance of the evidence.

13 (d)(1) A defendant on trial for capital murder shall raise the special
14 sentencing provision of ~~mental retardation~~ intellectual disabilities by
15 motion prior to trial.

16 (2)(A) Prior to trial, the court shall determine if the
17 defendant has ~~mental retardation~~ an intellectual disability.

18 (B)(i) If the court determines that the defendant does not
19 have ~~mental retardation~~ an intellectual disability, the defendant may raise
20 the question of ~~mental retardation~~ an intellectual disability to the jury for
21 determination de novo during the sentencing phase of the trial.

22 (ii) At the time the jury retires to decide
23 mitigating and aggravating circumstances, the jury shall be given a special
24 verdict form on ~~mental retardation~~ an intellectual disability.

25 (iii) If the jury unanimously determines that the
26 defendant had ~~mental retardation~~ an intellectual disability at the time of
27 the commission of capital murder, then the defendant will automatically be
28 sentenced to life imprisonment without possibility of parole.

29 (C) If the court determines that the defendant has ~~mental~~
30 ~~retardation~~ an intellectual disability, then:

31 (i) The jury is not "death qualified"; and

32 (ii) The jury shall sentence the defendant to life
33 imprisonment without possibility of parole upon conviction.

34 (e) However, this section is not deemed to:

35 (1) Require unanimity for consideration of any mitigating
36 circumstance; or

1 (2) Supersede any suggested mitigating circumstance regarding
2 mental defect or disease currently found in § 5-4-605.

3
4 SECTION 4. Arkansas Code § 9-28-402(12)(F) and (G), concerning the
5 definition of "exempt child welfare agency" under the Child Welfare Agency
6 Licensing Act, are amended to read as follows:

7 (F) Human development centers regulated by the Board of
8 Developmental Disabilities Services pursuant to the Location Act for
9 Community Homes for ~~Developmentally Disabled Persons~~ Individuals with
10 Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

11 (G) Any facility licensed as a family home pursuant to the
12 Location Act for Community Homes for ~~Developmentally Disabled Persons~~
13 Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et
14 seq.;

15
16 SECTION 5. Arkansas Code § 9-28-402(12)(M), concerning the definition
17 of "exempt child welfare agency" under the Child Welfare Agency Licensing
18 Act, is amended to read as follows:

19 (M) Any intellectual or other developmental disabilities
20 services waiver provider licensed under § 20-48-208 or the Location Act for
21 Community Homes for ~~Developmentally Disabled Persons~~ Individuals with
22 Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

23
24 SECTION 6. Arkansas Code § 10-3-203(3)(A)(iii), concerning the subject
25 matter jurisdiction of the House Committee on Public Health, Welfare, and
26 Labor, is amended to read as follows:

27 (iii) House Committee on Public Health, Welfare, and
28 Labor – matters pertaining to public health, mental health, ~~mental~~
29 ~~retardation~~ intellectual and other developmental disabilities, public
30 welfare, human relations and resources, environmental affairs, water and air
31 pollution, labor and labor relations, similar legislation, and resolutions
32 germane to the subject matter of the House Committee on Public Health,
33 Welfare, and Labor;

34
35 SECTION 7. Arkansas Code § 10-3-203(3)(B)(i), concerning the subject
36 matter jurisdiction of the Senate Committee on Public Health, Welfare, and

1 Labor, is amended to read as follows:

2 (i) Senate Committee on Public Health, Welfare, and
3 Labor – matters pertaining to public health, mental health, ~~mental~~
4 ~~retardation~~ intellectual and other developmental disabilities, public
5 welfare, human relations and resources, the aged and problems of the aging,
6 environmental affairs, water and air pollution, labor and labor relations,
7 and similar legislation;

8

9 SECTION 8. Arkansas Code § 12-12-1513(a)(2), concerning status as a
10 registered sex offender, is amended to read as follows:

11 (2) Certain agencies are mandated to perform background checks
12 on persons who work with children, elderly persons, and ~~developmentally~~
13 ~~disabled persons~~ individuals with intellectual or other developmental
14 disabilities;

15

16 SECTION 9. Arkansas Code § 12-12-1603(7), concerning the definition of
17 "individuals with disabilities" within the Criminal History for Volunteers
18 Act, is amended to read as follows:

19 (7) "Individuals with disabilities" means ~~mentally ill or~~
20 ~~developmentally disabled~~ individuals with mental illness or intellectual or
21 other developmental disabilities or with physical or mental impairments that
22 substantially limit one (1) or more of the major life activities of the
23 individual;

24

25 SECTION 10. Arkansas Code § 17-82-701(5), concerning the definition of
26 "public settings" in the dental hygienist collaborative care program, is
27 amended to read as follows:

28 (5) "Public settings" means:

29 (A) Adult long-term care facilities;

30 (B) Charitable health clinics that provide free or
31 reduced-fee services to low-income patients;

32 (C) County incarceration facilities;

33 (D) Facilities that primarily serve ~~developmentally~~
34 ~~disabled persons~~ individuals with intellectual or other developmental
35 disabilities;

36 (E) Head Start programs;

1 (F) Homes of homebound patients who qualify for in-home
2 medical assistance;

3 (G) Hospital long-term care units;

4 (H) Local health units;

5 (I) Schools;

6 (J) Community health centers; and

7 (K) State correctional institutions; and
8

9 SECTION 11. Arkansas Code § 20-8-109(d), concerning the approval of
10 certain new projects by the Health Services Permit Agency, is amended to read
11 as follows:

12 (d)(1) The Health Services Permit Agency shall process all
13 applications or certificates of need for intermediate care facilities for ~~the~~
14 individuals with intellectual or other developmental disabilities with
15 fifteen (15) or fewer beds ~~which~~ that were pending on April 4, 1987, and
16 shall for a period of thirty (30) days after April 4, 1987, accept additional
17 applications for such facilities.

18 (2) The applications shall be processed utilizing the criteria
19 and procedures in existence before April 4, 1987, and in addition the Health
20 Services Permit Agency shall consider as a primary factor the experience of
21 each applicant in serving ~~the developmentally disabled population~~ individuals
22 with intellectual or other developmental disabilities.
23

24 SECTION 12. Arkansas Code § 20-10-802(12), concerning the exceptions
25 from licensing requirements for home healthcare services, is amended to read
26 as follows:

27 (12) Persons providing services to one (1) or more
28 ~~developmentally disabled persons~~ individuals with intellectual or other
29 developmental disabilities, as defined in § 20-48-101, under a license or
30 certificate from the Division of Developmental Disabilities Services of the
31 Department of Human Services.
32

33 SECTION 13. Arkansas Code § 20-15-302(c)(1), concerning the testing of
34 newborns relating to phenylketonuria, hypothyroidism, and sickle-cell anemia,
35 is amended to read as follows:

36 (c)(1) The department shall establish and maintain a program of

1 reviewing and following up on positive cases so that measures may be taken to
2 prevent intellectual and other developmental disability or other permanent
3 disabilities.

4
5 SECTION 14. Arkansas Code § 20-46-502(1), concerning the definition of
6 "adults with long-term severe mental illness" as to intensive residential
7 treatment, is amended to read as follows:

8 (1)(A) "Adults with long-term severe mental illness" means a
9 person, eighteen (18) years of age or over, who meets criteria for service
10 eligibility as defined by the Division of Aging, Adult, and Behavioral Health
11 Services of the Department of Human Services.

12 (B) Individuals whose sole disability results from
13 alcoholism, drug abuse, or intellectual or other developmental disability are
14 excluded from this definition; and

15
16 SECTION 15. Arkansas Code § 20-47-202(12), concerning the definition
17 of "mental illness" related to commitment and treatment of persons with
18 mental illness, is amended to read as follows:

19 (12)(A) "Mental illness" means a substantial impairment of
20 emotional processes, the ability to exercise conscious control of one's
21 actions, or the ability to perceive reality or to reason, when the impairment
22 is manifested by instances of extremely abnormal behavior or extremely faulty
23 perceptions.

24 (B) Mental illness does not include impairment solely
25 caused by:

26 (i) Epilepsy;

27 (ii) ~~Developmental~~ Intellectual or other
28 developmental disability;

29 (iii) Continuous or noncontinuous periods of
30 intoxication caused by substances such as alcohol or drugs; or

31 (iv) Dependence upon or addiction to any substance
32 such as alcohol or drugs;

33
34 SECTION 16. Arkansas Code § 20-47-406(a) and (b), concerning
35 Department of Human Services agreements for medical care of indigent mentally
36 ill or tubercular, are amended to read as follows:

1 (a) The Arkansas State Hospital and other state institutions are
2 authorized to enter into agreements with the Department of Human Services to
3 establish and maintain a medical care program for the indigent mentally ill,
4 ~~mentally retarded~~ individuals with intellectual and developmental
5 disabilities, and tubercular at the Arkansas State Hospital and any other
6 state institution and to transfer funds to the Department of Human Services
7 Fund pursuant to the agreement.

8 (b) The agreement made between the Arkansas State Hospital or other
9 institution and the department shall be in compliance with federal law and
10 shall meet qualifications necessary for federal funds to be paid for the care
11 of indigent mentally ill, ~~mentally retarded~~ intellectually and
12 developmentally disabled, and tubercular in the Arkansas State Hospital or
13 other institution.

14
15 SECTION 17. Arkansas Code § 20-48-101(2) and (3), concerning the
16 definitions of "developmental disability" and "existing operations" regarding
17 the treatment of individuals with developmental disabilities, are amended to
18 read as follows:

19 (2) "~~Developmental~~ Intellectual and developmental disability" means a
20 disability of a person that:

21 (A)(i) Is attributable to ~~intellectual disability, an~~
22 impairment of general intellectual functioning or adaptive behavior,
23 including cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

24 (ii) Is attributable to any other condition of a
25 person found to be closely related to intellectual and developmental
26 disability because the condition results in an impairment of general
27 intellectual functioning or adaptive behavior similar to that of a person
28 with an intellectual and developmental disability or requires treatment and
29 services similar to that required for a person with an intellectual and
30 developmental disability; or

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

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

36 (C) Has continued or can be expected to continue

1 indefinitely; and

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

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

10 (A) ~~A developmental day treatment clinic services~~
11 ~~preschool program or adult development program~~ A licensed early intervention
12 day treatment program or adult developmental day treatment program;

13 (B) A licensed developmental disability services group
14 home in operation and recognized by the ~~division~~ Division of Developmental
15 Disabilities Services of the Department of Human Services on or before July
16 1, 1995;

17 (C) An intermediate care facility ~~for the persons with~~
18 ~~intellectual disabilities program with fifteen (15) beds or less~~ for
19 individuals with intellectual disabilities that has fifteen (15) beds or
20 fewer beds; or

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

23

24 SECTION 18. Arkansas Code § 20-48-104 is amended to read as follows:

25 20-48-104. Intermediate Care Facility for Persons with Intellectual
26 and Developmental Disabilities program – Administration.

27 (a) The operation of the community-based Intermediate Care Facility
28 for Persons with Intellectual and Developmental Disabilities program will be
29 subject to the oversight of a five-member committee composed of three (3)
30 members of the House of Representatives to be appointed by the Speaker of the
31 House of Representatives and two (2) members of the Senate to be appointed by
32 the President Pro Tempore of the Senate.

33 (b) The committee shall provide oversight for the operation of the
34 program and make recommendations, within the appropriate federal regulations
35 and guidelines, to the Division of Developmental Disabilities Services and
36 the Office of Long-Term Care to establish and clarify the mission, goals,

1 levels of services, and scope of the program and to provide consistency in
2 state ~~regulations~~ rules, guidelines, standards, and policies.

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

7

8 SECTION 19. Arkansas Code § 20-48-201 and 20-48-202 are amended to
9 read as follows:

10 20-48-201. Title.

11 This subchapter shall be known and may be cited as the "Arkansas
12 Intellectual and Developmental Disabilities Act".

13

14 20-48-202. Definitions.

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

16 ~~(1) "Board" means the Board of Developmental Disabilities~~
17 ~~Services;~~

18 ~~(2) "Center" means a human development center;~~

19 ~~(3)~~(1) "Community" means either region or locality;

20 ~~(4)~~(2)(A) "Coordinate" means to ~~bring resources to bear~~ utilize
21 resources in appropriate sequence and relationship to provide the proper
22 services for individuals with intellectual and developmental disabilities.

23 (B) "Coordinate" implies a working relationship with, but
24 not administrative authority over, public agencies providing services to
25 individuals with intellectual and developmental disabilities;

26 ~~(5) "Director" means the Director of the Department of Human~~
27 ~~Services;~~

28 ~~(6) "Division" means the Division of Developmental Disabilities~~
29 ~~Services of the Department of Human Services or the appropriate division as~~
30 ~~determined by the Director of the Department of Human Services;~~

31 ~~(7)~~(3) "Individual" means a person without regard to
32 chronological age;

33 (4) "Intellectual and developmental disability" means the same
34 as defined in § 20-48-603(1)(A);

35 ~~(8)~~(5) "Locality" means a geographical area defined by the
36 division Division of Developmental Disabilities of the Department of Human

1 Services or the appropriate division as determined by the Director of the
2 Department of Human Services usually consisting of a municipality or county
3 but not excluding other areas within easy commuting distance;

4 ~~(9)~~(6) "Services for individuals with intellectual disabilities"
5 or "services" means all services pertaining to and incidental to the
6 prevention, detection, diagnosis, evaluation, treatment, care, custody,
7 education, training, rehabilitation, or supervision of individuals with
8 intellectual disabilities;

9 ~~(10)~~(7) "Private organizations" means organizations, persons,
10 firms, individuals, corporations, or associations;

11 ~~(11)~~(8) "Public agencies" means all agencies, departments,
12 boards, institutions, commissions, officers, officials, political
13 subdivisions and agencies thereof, and school districts of this state;

14 ~~(12)~~(9) "Region" means a geographical area defined by the
15 division, usually consisting of all or parts of two (2) or more counties,
16 which is created to provide services for individuals with intellectual and
17 developmental disabilities when the services cannot be provided feasibly or
18 practically at the local level;

19 ~~(13)~~(10)(A) "Individual with intellectual and developmental
20 disabilities" means:

21 ~~(A)~~(i) A person with a mental deficit requiring him or her
22 to have special evaluation, treatment, care, education, training,
23 supervision, or control in his or her home or community, or in a state
24 institution for persons with intellectual disabilities; or

25 ~~(B)~~(ii) A person with intellectual and developmental
26 disabilities who may not exhibit an intellectual deficit on standard
27 psychological tests but who, because of other handicaps, functions as a
28 person with intellectual disabilities.

29 (B) "Individual with intellectual and developmental
30 disabilities" does not include ~~Not included is~~ a person whose primary ~~problem~~
31 condition is caused by mental illness, emotional disturbance, physical
32 handicap, or sensory defect; and

33 ~~(14)~~(11) "Superintendent" means the chief administrative officer
34 assigned full-time to a human development center.

35
36 SECTION 20. Arkansas Code § 20-48-205 is amended to read as follows:

1 20-48-205. Board of Developmental Disabilities Services – Powers and
2 duties.

3 (a) The Board of Developmental Disabilities Services:

4 (1) Shall:

5 (A) ~~Have~~ have charge of the properties used for the
6 purposes of the human development centers;

7 ~~(2) Shall exercise supervision over the appointment,~~
8 ~~performance of duties which includes such matters as off-premises assignments~~
9 ~~for educational or training purposes, removal of all employees, and the~~
10 ~~fixing of their compensation~~

11 (B) Supervise:

12 (i) Appointment of employees;

13 (ii) Performance of duties by employees, including
14 off-premises assignments for educational or training purposes;

15 (iii) Removal of employees; and

16 (iv) Fixing of employee compensation; and

17 ~~(3)(C) Shall exercise supervision over~~ Supervise
18 expenditures of the human development centers; and

19 ~~(4)(2) May:~~

20 (A) ~~accept~~ Accept and hold in trust real, personal, or
21 mixed property received by grant, gift, will, or otherwise;

22 ~~(5)(B) May make purchases of~~ Purchase land or receive
23 grants or gifts of land and take deeds therefor in the name of the State of
24 Arkansas;

25 ~~(6)(C) May accept~~ Accept grants or gifts of money from any
26 source whatever and use the money for any of ~~its~~ the powers and purposes of
27 the board; and

28 ~~(7)(D) May take~~ Take all action and execute all documents
29 necessary or desirable to carry out ~~its~~ the powers and purposes of the board.

30 (b) The board may make ~~such regulations respecting~~ rules regarding the
31 care, custody, training, and discipline of individuals with intellectual and
32 developmental disabilities in the human development centers or receiving
33 services for individuals with intellectual and developmental disabilities and
34 respecting the management of the human development centers and ~~their~~ the
35 affairs as ~~it~~ the board may deem necessary or desirable to the proper
36 performance of ~~its~~ powers and purposes of the board.

1 (c) The board is prohibited from promulgating any rule ~~or regulation~~
2 that would set the salary of any employee at the local level unless
3 specifically required to do so by the United States Government.
4

5 SECTION 21. Arkansas Code § 20-48-206(b), concerning the powers and
6 duties of the Board of Developmental Disabilities Services regarding human
7 development centers, is amended to read as follows:

8 (b)(1) ~~In this regard, admissions~~ Admissions to the institutional
9 facilities of the human development centers shall be on the basis of a
10 determination by the board that:

11 (A) The individual involved ~~is intellectually disabled~~ has
12 an intellectual and developmental disability;

13 (B) His or her parent or guardian has resided in the state
14 not less than three (3) years before the date of the filing of the petition
15 for his or her admission, or the individual involved is a dependent and a
16 public charge or ward of the state or a political subdivision thereof;

17 (C) The welfare of the individual involved requires the
18 special care, training, or education provided by institutional facilities of
19 the human development center; and

20 (D) The board has adequate funds and institutional
21 facilities available for the care, training, or education of the individual.

22 (2)(A) ~~Also, the~~ The determination of whether an individual ~~is~~
23 ~~intellectually disabled~~ has an intellectual and developmental disability
24 shall be made after there has been an investigation ~~which shall include that~~
25 includes an examination by an evaluation team appointed by the board.

26 (B) The team shall be composed of two (2) or more
27 physicians, psychiatrists, psychologists, or other persons found by the board
28 to be professionally qualified on the basis of training and experience in
29 services for individuals with intellectual and developmental disabilities to
30 make a determination as to whether the individual involved ~~is intellectually~~
31 ~~disabled~~ has an intellectual and developmental disability.

32
33 SECTION 22. Arkansas Code § 20-48-207 is amended to read as follows:
34 20-48-207. Board of Developmental Disabilities Services – Contracts
35 for provision of services.

36 (a) If and to the extent necessary to accomplish the intended purpose

1 of this subchapter to make available the broadest and most effective
2 provision of intellectual and developmental disabilities services to those in
3 need of the services, the Board of Developmental Disabilities Services is
4 authorized to contract for the providing of intellectual and developmental
5 disabilities services by other public agencies or private organizations.

6 (b) In this regard, the board ~~is authorized to promulgate regulations~~
7 may promulgate rules and fix standards necessary to properly ensure that such
8 intellectual and developmental disabilities services are furnished in a
9 proper and reasonable manner and on an economical basis.

10
11 SECTION 23. Arkansas Code § 20-48-208(a) and (b), concerning the
12 license for facilities and institutions providing services for individuals
13 with developmental disabilities, are amended to read as follows:

14 (a) The Board of Developmental Disabilities Services shall:

15 (1) Regulate ~~regulate~~ the providing of intellectual and
16 developmental disabilities services by private organizations and public
17 agencies; and

18 (2) ~~The board shall promulgate regulations~~ Promuglate rules
19 covering the issuance, suspension, and revocation of licenses and fixing the
20 standards for construction, reconstruction, maintenance, and operation of
21 institutions and facilities, or parts thereof, operated primarily for the
22 providing of intellectual and developmental disabilities services, unless the
23 facilities or institutions in their entirety are licensed by the Office of
24 Long-Term Care.

25 (b) ~~No~~ A public agency or private organization shall not operate any
26 institution or facility for the provision of intellectual and developmental
27 disabilities services unless ~~it~~ the private agency or private organization
28 has a license in effect.

29
30 SECTION 24. Arkansas Code §§ 20-48-209 – 20-48-212 are amended to read
31 as follows:

32 20-48-209. Board of Developmental Disabilities Services – Planning and
33 implementation.

34 (a)(1) The Board of Developmental Disabilities Services is designated
35 as the single state agency for the purpose of full participation under any
36 federal act requiring the designation of a single state agency concerning

1 planning, formulation, and implementation of programs, construction and
2 operation of facilities, financing of facilities and programs, or otherwise
3 pertaining to the obtaining and rendition of intellectual and developmental
4 disabilities services.

5 ~~(2) However, this shall not be construed as depriving~~
6 subdivision (a)(1) of this section does not deprive other public agencies of
7 jurisdiction over or the right to plan for and control and operate programs
8 that pertain to intellectual and developmental disabilities services but
9 which fall within the primary jurisdiction of other public agencies such as
10 programs administered by the Arkansas School for the Deaf, Arkansas School
11 for the Blind, Career Education and Workforce Development Board, State Board
12 of Education, Department of Health, and the Department of Human Services.

13 (b)(1) The Board of Developmental Disabilities Services ~~is authorized~~
14 ~~to~~ may coordinate the planning and implementation of intellectual and
15 developmental disabilities programs and institutional and community
16 activities of all public agencies.

17 ~~(2) However, this shall not be construed as depriving~~
18 subdivision (b)(1) of this section does not deprive other public agencies of
19 jurisdiction over or the right to plan for and control and operate programs
20 that pertain to intellectual and developmental disabilities services but
21 which fall within the primary jurisdiction of other public agencies such as
22 programs administered by the Arkansas School for the Deaf, Arkansas School
23 for the Blind, Career Education and Workforce Development Board, State Board
24 of Education, Department of Health, and the Department of Human Services.

25 (c)(1) Effective planning and coordination is essential to the public
26 interest.

27 (2) In order to achieve this to the fullest extent possible, the
28 Board of Developmental Disabilities Services ~~is authorized to~~ may establish
29 and promulgate ~~regulations~~ rules fixing standards for intellectual and
30 developmental disabilities programs and activities and ~~to~~ evaluate
31 intellectual and developmental disabilities programs and activities of public
32 agencies.

33
34 20-48-210. Deputy Director of Division of Developmental Disabilities
35 Services.

36 (a)(1) There is created the office of the Deputy Director of the

1 Division of Developmental Disabilities Services of the Department of Human
2 Services.

3 (2) The deputy director shall:

4 (A) ~~Be~~ Be appointed by and shall serve at the pleasure of
5 the Board of Developmental Disabilities Services;

6 ~~(b)~~(B) ~~The deputy director shall be~~ Be a person of proven
7 administrative ability and professional qualifications, preferably holding a
8 Ph.D. or equivalent, but including at least a master's degree in psychology,
9 education, social service, or other field of study approved by the board and
10 shall have at least five (5) years' experience in intellectual and
11 developmental disabilities services;

12 ~~(c)~~(C) ~~The deputy director shall be~~ Be the executive secretary of the
13 board and shall maintain an official set of minutes of all board action; and

14 ~~(d)~~(D) ~~The deputy director shall be~~ Be the executive officer of the
15 Division of Developmental Disabilities Services and shall operate and manage
16 the division, subject to the control of the board.

17 ~~(e)~~(b) The board may delegate to the deputy director any powers of the
18 board upon such terms and for such duration as the board shall specify.

19

20 20-48-211. Board of Developmental Disabilities Services – Community
21 centers.

22 (a)(1) The Board of Developmental Disabilities Services ~~is authorized~~
23 ~~to~~ may take the necessary action to establish and maintain, or to cause to be
24 established and maintained, community centers, alone or together with public
25 agencies or private organizations, at localities determined to be appropriate
26 for the better providing of or for assistance in the providing of
27 intellectual and developmental disabilities services ~~for~~ in any region or
28 locality ~~in~~ of the state.

29 (2) Community centers may be organized on a formal or informal
30 basis as shall be determined to best suit the circumstances at any particular
31 region or locality, including without limitation organization under the
32 provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206
33 and 4-28-209 – 4-28-224.

34 (b)(1) Within the limits of available funds, a program for furnishing
35 intellectual and developmental disabilities services shall be developed for
36 each community center which may include a state grants-in-aid program.

1 ~~(2) In this regard, the board is authorized to~~ The board may
2 promulgate ~~regulations~~ rules covering the establishment and operation of
3 community centers, the formulation and implementation of intellectual and
4 developmental disabilities programs and activities for community centers, and
5 the funding of the programs and activities.

6 (c) The board is prohibited from promulgating any rule ~~or regulation~~
7 that would set the salary of any employee of a community-based program unless
8 specifically required to do so by the United States Government.

9
10 20-48-212. Amount requested for ~~Arkansas~~ Special Olympics Arkansas.

11 (a) The Board of Developmental Disabilities Services, when preparing
12 its biennial budget request for submission to the Governor and the
13 Legislative Council, shall consult with Special Olympics Arkansas concerning
14 the amount which is to be submitted as the request for each year of the
15 forthcoming biennium for a grant to Special Olympics Arkansas.

16 (b) The amount ~~as may be~~ determined by Special Olympics Arkansas shall
17 be submitted as the ~~Division of Developmental Disabilities~~ board's request to
18 the Governor and to the Legislative Council.

19
20 SECTION 25. Arkansas Code § 20-48-301 is amended to read as follows:

21 20-48-301. Purpose.

22 ~~It is the~~ The purpose of this subchapter is to permit the Board of
23 Developmental Disabilities Services, ~~a division of the Department of Human~~
24 ~~Services,~~ to cooperate with public agencies or private nonprofit
25 organizations of adjoining states to provide services for residents of
26 Arkansas ~~who are intellectually disabled or developmentally disabled~~ with
27 intellectual and other developmental disabilities.

28
29 SECTION 26. Arkansas Code § 20-48-302(a), concerning the authority to
30 participate in cooperative agreements, is amended to read as follows:

31 (a) Subject to the conditions and limitations contained in this
32 subchapter, the Board of Developmental Disabilities Services may enter into
33 agreements with public agencies, private nonprofit organizations, or
34 combinations thereof from adjoining states for the purpose of performing its
35 responsibility to the residents of Arkansas ~~who are intellectually disabled~~
36 ~~or developmentally disabled~~ with intellectual and other developmental

1 disabilities.

2

3 SECTION 27. Arkansas Code §§ 20-48-403 and 20-48-404 are amended to
4 read as follows:

5 20-48-403. Human development centers – Creation.

6 (a) There are created and there shall be maintained institutions for
7 the care, custody, treatment, and training of ~~developmentally disabled~~
8 individuals with intellectual and other developmental disabilities to be
9 known as human development centers.

10 (b) For the purposes of the institutions, the Board of Developmental
11 Disabilities Services is charged with the care and training of
12 ~~developmentally disabled~~ individuals with intellectual and other
13 developmental disabilities.

14

15 20-48-404. Eligibility for admission.

16 (a) An individual may be deemed eligible for admission to a human
17 development center if+

18 ~~(1) Due~~ due to intellectual or other developmental disability,
19 the person is incapable of managing his or her affairs and the person's
20 welfare requires the special care, training, and treatment provided at a
21 human development center.

22 ~~(2)(b)~~ (b) The examining physicians provided for in § 20-48-406
23 shall use standard mental and psychological tests and physical examinations
24 in determining that the individual ~~is developmentally disabled~~ has
25 intellectual or other developmental disabilities and is in need of special
26 training ~~which~~ that is provided for in this subchapter.

27

28 SECTION 28. Arkansas Code § 20-48-405(a), concerning the petition for
29 admission into a human development center, is amended to read as follows:

30 (a) A parent or guardian of an ~~intellectually disabled~~ individual with
31 intellectual and developmental disabilities may file with the Board of
32 Developmental Disabilities Services a verified petition requesting that the
33 individual be admitted to the human development center.

34

35 SECTION 29. Arkansas Code § 20-48-413 is amended to read as follows:

36 20-48-413. Emotionally disturbed individuals with co-occurring

1 intellectual disabilities and behavioral health disabling conditions.

2 (a) The Board of Developmental Disabilities Services ~~is authorized to~~
3 may establish and operate an appropriate facility at such location in the
4 state as it shall determine for the care and treatment of ~~emotionally~~
5 ~~disturbed intellectually disabled~~ individuals with co-occurring intellectual
6 disabilities and behavioral health disabling conditions, and persons with
7 disorganized behavior, including hyperkinetic, hyperactive, or aggressive
8 behaviors ~~who, because of their problem,~~ function as ~~intellectually disabled~~
9 individuals with co-occurring intellectual disabilities and behavioral health
10 disabling conditions.

11 (b) The board ~~is authorized to~~ may make ~~such rules and regulations~~
12 regarding eligibility for admission to the facility, care and treatment of
13 the individuals, discharge from and return to the facility, charges for the
14 maintenance, care, and training of individuals admitted to the facility, and
15 such other matters as the board shall deem necessary to carry out the most
16 effective program for the care and treatment of ~~emotionally disturbed~~
17 ~~intellectually disabled~~ individuals with co-occurring intellectual
18 disabilities and behavioral health disabling conditions of this state.

19
20 SECTION 30. Arkansas Code § 20-48-416 is amended to read as follows:

21 20-48-416. Designation as state agency for carrying out federal acts.

22 (a) The Board of Developmental Disabilities Services is designated as
23 the single state ~~agency~~ entity for carrying out ~~the purposes of any act of~~
24 ~~the United States Congress~~ any federal act or law pertaining to individuals
25 with intellectual disabilities and other forms of developmental disabilities.

26 (b) The board ~~is authorized to~~ may take all action of every nature
27 whatever necessary or desirable in complying with the requirements of any
28 federal act or law and accomplishing the purposes thereof, including, without
29 limitation:

30 (1) The receiving, handling, and disbursing of grants and funds
31 appropriated by any federal act or law;

32 (2) The making of provisions to assure full consideration of all
33 aspects of services essential to planning for comprehensive state and
34 community action to combat the effects of intellectual and developmental
35 disabilities and provide service for individuals with intellectual and
36 developmental disabilities, including services in the fields of education,

1 employment, rehabilitation, habilitation, welfare, health, and the law, and
 2 services provided through community programs for and institutions for
 3 individuals with intellectual and developmental disabilities;

4 (3) The preparing and submitting of plans for expenditure of
 5 such grants and funds and providing the assurance required by any federal act
 6 or law as to carrying out the purposes of any federal act or law;

7 (4) The preparing and submitting of reports of the activities of
 8 ~~the center~~ human developmental centers in carrying out the purposes of any
 9 federal act or law in such form and containing such information as may be
 10 required by any federal act or law and keeping ~~such~~ records and affording
 11 access ~~thereto necessary~~ to the records in order to assure correctness and
 12 verification of such reports as may be required by any federal act or law;

13 (5) The providing for such fiscal control and fund accounting
 14 procedures as may be necessary to assure proper disbursement of and
 15 accounting for grants and funds paid to the human development center in
 16 accordance with the requirements of any federal act or law; and

17 (6) The doing of all things and taking of all action to carry
 18 out any plans for expenditures of the grants and funds in accordance with and
 19 for the accomplishment of the purposes of any federal act or law.

20 (c)(1) This section shall be liberally construed.

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

24 (3) This section ~~shall be construed as being~~ is supplementary to
 25 any existing purposes and powers authorized to be accomplished by the human
 26 development centers or the board.

27
 28 SECTION 31. Arkansas Code §§ 20-48-601 and 20-48-602 are amended to
 29 read as follows:

30 20-48-601. Title.

31 This subchapter shall be known as the "Location Act for Community Homes
 32 for ~~Developmentally Disabled Persons~~ Individuals with Intellectual and
 33 Developmental Disabilities".

34
 35 20-48-602. Purpose.

36 (a) The General Assembly declares that it is the goal of this

1 subchapter to improve the quality of life of all ~~developmentally disabled~~
2 ~~persons~~ individuals with intellectual or other developmental disabilities and
3 to integrate ~~developmentally disabled persons~~ individuals with intellectual
4 or other developmental disabilities into the mainstream of society by
5 ensuring them the availability of community residential opportunities in the
6 residential areas of this state.

7 (b) In order to implement this goal, this subchapter should be
8 liberally construed toward that end.

9
10 SECTION 32. Arkansas Code § 20-48-603(1) and (2), concerning the
11 definition of "developmental disability" and "developmentally disabled
12 person" regarding the Location Act for Community Homes for Developmentally
13 Disabled Persons, are amended to read as follows:

14 (1)(A) "~~Developmental Intellectual and developmental~~ disability"
15 means a disability of a person that:

16 (i) Is attributable to ~~intellectual disability~~, an
17 impairment of general intellectual functioning or adaptive behavior,
18 including cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

19 (ii) Is attributable to any other condition of a
20 person found to be closely related to intellectual and developmental
21 disability because ~~it~~ the condition results in impairment of general
22 intellectual functioning or adaptive behavior similar to that of individuals
23 with intellectual and developmental disabilities or requires treatment and
24 services similar to those required for the persons;

25 (iii) Is attributable to dyslexia resulting from
26 intellectual and developmental disability, cerebral palsy, epilepsy, or
27 autism; and

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

30 (B) "~~Developmental Intellectual and developmental~~
31 disability" does not refer to other forms of mental disease or defect not
32 defined in this section;

33 (2) "~~Developmentally disabled person~~ Individual with an
34 intellectual and developmental disability" means a person with ~~a~~ an
35 intellectual and developmental disability as defined in this section;

36

1 SECTION 33. Arkansas Code § 20-48-605(a), concerning the issuance and
2 renewal of licenses for the Location Act for Community Homes for
3 Developmentally Disabled Persons, is amended to read as follows:

4 (a) For the purposes of safeguarding the health and safety of
5 ~~developmentally disabled persons~~ individuals with intellectual or other
6 developmental disabilities and avoiding over-concentration of Family Homes I
7 and Family Homes II, either alone or in conjunction with similar community-
8 based residences, the Division of Developmental Disabilities Services shall
9 inspect and license the operation of family homes and may renew or revoke
10 their licenses.

11
12 SECTION 34. Arkansas Code § 20-48-611(a), concerning the voidness of
13 restrictions by private property agreement for the Location Act for Community
14 Homes for Developmentally Disabled Persons, is amended to read as follows:

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

23
24 SECTION 35. Arkansas Code § 20-48-703 is amended to read as follows:
25 20-48-703. Eligibility.

26 (a)(1) Eligibility for services and appropriate placement in the least
27 restrictive environment for individuals with intellectual and developmental
28 disabilities under any of the service models included in the state's Medicaid
29 plan with the Centers for Medicare & and Medicaid Services or for services
30 covered from state general revenue dollars shall be made by the
31 interdisciplinary team composed in keeping with federal and state laws
32 pertaining to individuals with special needs.

33 (2) ~~This Subdivision (a)(1) of this~~ section does not negate nor
34 preclude the rights of individuals with intellectual and developmental
35 disabilities under existing federal and state laws.

36 (b)(1) Subject to approval by the Centers for Medicare & and Medicaid

1 Services, the Department of Human Services will accept an individualized
2 family service plan or an individualized program plan developed in conformity
3 with all applicable state and federal laws as prior authorization for
4 Medicaid-covered therapies provided to persons with intellectual and
5 developmental disabilities.

6 (2) Prior authorization does not preclude postpayment reviews or
7 other utilization control measures.

8 (c)(1) For individuals with intellectual and developmental
9 disabilities who, pursuant to the diagnosis, evaluation, and assessments
10 conducted by the interdisciplinary team, in conformity with all applicable
11 federal and state laws, are found to fall within the eligibility guidelines
12 adopted pursuant to this subchapter, and where the individual's primary care
13 physician, independent of the service provider, serves as the gatekeeper and
14 prescribes ~~day treatment~~ early intervention day treatment or adult
15 developmental day treatment services, or both, ~~referred to as developmental~~
16 ~~day treatment services under the present developmental day treatment clinic~~
17 ~~services model~~, prior approval is not required for up to five (5) hours of
18 daily services.

19 (2) ~~Should~~ If the funding model for the ~~day treatment~~ early
20 intervention day treatment and adult developmental day treatment services ~~be~~
21 is changed in the state's Medicaid plan with the Centers for Medicare & and
22 Medicaid Services, the five (5) hours per day shall remain the ~~floor~~ minimum
23 number of hours to afford those families who choose to keep their
24 ~~developmentally disabled~~ child or adult with an intellectual or other
25 developmental disability in the community, thereby bearing a considerable
26 responsibility for the care and expenses related to the treatment and care.

27
28 SECTION 36. Arkansas Code § 20-48-704(b), concerning the code system
29 of reimbursement for certain services, is amended to read as follows:

30 (b) ~~In the event that it is evident that the developmental day~~
31 ~~treatment clinic~~ If the early intervention day treatment or adult
32 developmental day treatment services codes, or both, ~~are will be~~ excluded by
33 the Centers for Medicare & and Medicaid Services, the Division of Medical
34 Services of the Department of Human Services shall take all necessary steps
35 to apply to the administration for approval of a service model that will
36 continue to provide an array of community-based service options for children

1 and adults comparable to or greater than those under the present
2 ~~developmental day treatment clinic~~ early intervention day treatment and adult
3 developmental day treatment services model.
4

5 SECTION 37. Arkansas Code § 20-48-705 is amended to read as follows:

6 20-48-705. Membership of nonprofit organizations.

7 A nonprofit organization licensed or certified by the Division of
8 Developmental Disabilities Services of the Department of Human Services to
9 serve adults shall include an individual with intellectual or other
10 developmental disabilities as an ex officio member of the nonprofit
11 organization's board of directors or other governing body.
12

13 SECTION 38. Arkansas Code § 20-48-812(a), concerning the definitions
14 regarding required criminal history records checks for service providers of
15 services for individuals with developmental disabilities, is amended to read
16 as follows:

17 (a) As used in this section:

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

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

24 (A) ~~An Alternative Community Services Waiver Program~~
25 ~~provider certified by the Division of Developmental Disabilities Services of~~
26 ~~the Department of Human Services~~ A Community and Employment Supports Services
27 waiver provider;

28 (B) ~~An early intervention program provider certified by~~
29 ~~the division~~ A First Connections provider; or

30 (C) ~~A nonprofit community program as defined by § 20-48-~~
31 ~~101~~ An early intervention day treatment or adult developmental day treatment
32 provider.
33

34 SECTION 39. Arkansas Code § 20-48-901(1) and (2), concerning the
35 definitions of "gross receipts" and "intermediate care facility for
36 individuals with developmental disabilities", are amended to read as follows:

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

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

7 (2)(A) "Intermediate care facility for individuals with
8 intellectual and developmental disabilities" means a residential institution
9 maintained for the care and training of persons with intellectual and
10 developmental disabilities, ~~including without limitation intellectual~~
11 ~~disabilities.~~

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

15 ~~(C)~~(B) "Intermediate care facility for individuals with
16 intellectual and developmental disabilities" does not include:

- 17 (i) Offices of private physicians and surgeons;
18 (ii) Residential care facilities;
19 (iii) Assisted living facilities;
20 (iv) Hospitals;
21 (v) Institutions operated by the United States
22 Government;
23 (vi) Life care facilities;
24 (vii) Nursing facilities; or
25 (viii) A facility which is conducted by and for
26 those who rely exclusively upon treatment by prayer for healing in accordance
27 with tenets or practices of a recognized religious denomination; and
28

29 SECTION 40. Arkansas Code § 20-48-902 is amended to read as follows:

30 20-48-902. Calculation of provider fee.

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

34 (2)(A) The provider fee shall be an amount calculated by the
35 Division of Medical Services of the Department of Human Services to produce
36 an aggregate provider fee payment equal to six percent (6%) of the aggregate

1 gross receipts of all intermediate care facilities for individuals with
2 intellectual or other developmental disabilities.

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

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

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

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

15 (c) ~~No~~ An intermediate care facility for individuals with intellectual
16 or other developmental disabilities ~~shall be~~ is not guaranteed, expressly or
17 otherwise, that any additional moneys paid to the intermediate care facility
18 for individuals with intellectual or other developmental disabilities will
19 equal or exceed the amount of its provider fee.

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

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

29
30 SECTION 41. Arkansas Code § 20-48-904(a)(3), concerning the use of
31 funds regarding intermediate care facilities, are amended to read as follows:

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

36 (A) Continued operation of and rate increases for:

1 (i) Intermediate care facilities for individuals
2 with intellectual and developmental disabilities;

3 (ii) ~~Developmental day treatment clinic services~~
4 ~~provided to persons with developmental disabilities by providers licensed by~~
5 ~~the Division of Developmental Disabilities Services of the Department of~~
6 ~~Human Services under this chapter~~ Early intervention day treatment and adult
7 developmental day treatment service providers; and

8 (iii) Services provided to persons with
9 developmental disabilities under the ~~Alternative Community Services Waiver~~
10 ~~Program by providers certified to provide waiver services by the Division of~~
11 ~~Developmental Disabilities Services of the Department of Human Services~~
12 Community and Employment Supports Services waiver;

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

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

18 (D) Public guardianship of adults.

19
20 SECTION 42. Arkansas Code § 20-48-904(b), concerning the use of funds
21 regarding intermediate care facilities, are amended to read as follows:

22 (b)(1) The designated account moneys in the Arkansas Medicaid Program
23 Trust Fund from the provider fee on intermediate care facilities for
24 individuals with intellectual or other developmental disabilities that are
25 unused at the end of a fiscal year shall be carried forward.

26 (2) The designated account moneys in the Arkansas Medicaid
27 Program Trust Fund from the provider fee on intermediate care facilities for
28 individuals with intellectual or other developmental disabilities may not be
29 used to supplant other local, state, or federal funds.

30
31 SECTION 43. Arkansas Code § 20-48-1001(1) and (2), concerning the
32 definitions of "Alternative Community Services Waiver Program" and "gross
33 receipts" relating to the Alternative Community Services Waiver Program
34 provider fee, are amended to read as follows:

35 (1) ~~"Alternative Community and Employment Supports Services~~
36 Waiver Program" means the home and community-based waiver program authorized

1 by the Centers for Medicare & and Medicaid Services under section 1915(c) of
2 the Social Security Act, 42 U.S.C. § 1396 et seq., and administered by the
3 Division of Developmental Disabilities Services of the Department of Human
4 Services;

5 (2)(A) "Gross receipts" means compensation paid to a provider
6 for services provided through, or identical to those provided under, the
7 ~~Alternative~~ Community and Employment Supports Services Waiver Program.

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

10

11 SECTION 44. Arkansas Code § 20-48-1002(a)(1), concerning the
12 Alternative Community Services Waiver Program provider fee, is amended to
13 read as follows:

14 (a)(1) There is imposed a provider fee on services provided through,
15 or identical to those provided under, the ~~Alternative~~ Community and
16 Employment Supports Services Waiver Program to be calculated in accordance
17 with this section.

18

19 SECTION 45. Arkansas Code § 20-48-1002(c), concerning the Alternative
20 Community Services Waiver Program provider fee, is amended to read as
21 follows:

22 (c) A provider of services under the ~~Alternative~~ Community and
23 Employment Supports Services Waiver Program shall not be guaranteed,
24 expressly or otherwise, that any additional moneys paid to the provider for
25 services under the ~~Alternative~~ Community and Employment Supports Services
26 Waiver Program will equal or exceed the amount of its provider fee.

27

28 SECTION 46. Arkansas Code § 20-48-1004(a)(3)(A), concerning the use of
29 funds relating to the Alternative Community Services Waiver Program provider
30 fee, is amended to read as follows:

31 (A) For the amount resulting from the first five and one-
32 half percent (5.5%) of the provider fee:

33 (i) A minimum of fifty percent (50%) shall be used
34 for the support and enhancement of services under the ~~Alternative~~ Community
35 and Employment Supports Services Waiver Program to persons with developmental
36 disabilities; and

1 (ii) An amount not to exceed fifty percent (50%) may
 2 be used by the Division of Medical Services of the Department of Human
 3 Services; and

4
 5 SECTION 47. Arkansas Code §§ 20-48-1101 – 20-48-1103 are amended to
 6 read as follows:

7 20-48-1101. Legislative intent.

8 The intent of this subchapter is to avoid unnecessary expansion in
 9 Medicaid costs and services related to ~~child health management services and~~
 10 ~~developmental day treatment clinic~~ early intervention day treatment services
 11 for children or any successor program providing early intervention day
 12 treatment to children.

13
 14 20-48-1102. Definitions.

15 As used in this subchapter:

16 (1) “Accredited entity” means a corporate entity that:

17 (A) Has successfully completed an ongoing accreditation
 18 process that is offered by a national accrediting organization and is
 19 related to the delivery of early intervention day treatment services; and

20 ~~(i) Related to the delivery of child health~~
 21 ~~management services;~~

22 ~~(ii) Related to the delivery of developmental day~~
 23 ~~treatment clinic services for children; or~~

24 ~~(iii) Related to the delivery of early intervention~~
 25 ~~day treatment services provided by a successor program; and~~

26 ~~(B) One (1) or more of the following:~~

27 ~~(i) Satisfies all certification criteria established~~
 28 ~~by the Department of Human Services for child health management services;~~

29 ~~(ii) Satisfies all licensure criteria for~~
 30 ~~developmental day treatment clinic services for children established by the~~
 31 ~~Division of Developmental Disabilities Services of the Department of Human~~
 32 ~~Services; or~~

33 ~~(iii) Satisfies all certification and licensure~~
 34 ~~criteria established by a regulatory entity governing any successor program;~~

35 (B) Satisfies all certification and licensure criteria
 36 established by the Department of Human Services for the delivery of early

1 intervention day treatment services;

2 ~~(2) “Child health management services” means an array of clinic~~
3 ~~services for children;~~

4 ~~(A) Intended to provide full medical multidiscipline~~
5 ~~diagnosis, evaluation, and treatment of developmental delays in Medicaid~~
6 ~~recipients; and~~

7 ~~(B) That is diagnostic, screening, evaluative, preventive,~~
8 ~~therapeutic, palliative, or rehabilitative services, including early~~
9 ~~intervention day treatment services;~~

10 ~~(3)(A) “Child health management services operated by an academic~~
11 ~~medical center” means an academic medical center program specializing in~~
12 ~~developmental pediatries that is administratively staffed and operated by an~~
13 ~~academic medical center and under the direction of a board-certified or~~
14 ~~board-eligible developmental pediatrician.~~

15 ~~(B) An academic medical center consists of a medical~~
16 ~~school and its primary teaching hospitals and clinical programs.~~

17 ~~(C) For a child health management services program~~
18 ~~operated by an academic medical center, services may be provided at different~~
19 ~~sites operated by the academic medical center as long as the child health~~
20 ~~management services program falls under one (1) administrative structure~~
21 ~~within the academic medical center;~~

22 ~~(4) “Developmental day treatment clinic services for children”~~
23 ~~means early intervention day treatment provided to children by a nonprofit~~
24 ~~community program that:~~

25 ~~(A) Is licensed to provide center-based community services~~
26 ~~by the Division of Developmental Disabilities Services; and~~

27 ~~(B) Serves as a quasi-governmental instrumentality of the~~
28 ~~state by providing support and services to persons who have a developmental~~
29 ~~disability or delay and would otherwise require support and services through~~
30 ~~state-operated programs and facilities;~~

31 ~~(5)(A)(2)(A)~~ “Early intervention day treatment” means services
32 provided by a pediatric day treatment program run by early childhood
33 specialists, overseen by a physician, and serving children with developmental
34 disabilities, developmental delays, or a medical condition that puts them at
35 risk for developmental delay.

36 (B) Early intervention day treatment includes without

1 limitation diagnostic, screening, evaluative, preventive, therapeutic,
2 palliative, and rehabilitative and habilitative services, including speech,
3 occupational, and physical therapies and any medical or remedial services
4 recommended by a physician for the maximum reduction of physical or mental
5 disability and restoration of the child to the best possible functional
6 level.

7 (C) ~~Child health management services and developmental day~~
8 ~~treatment clinic services~~ Early intervention day treatment or a successor
9 program ~~constitute~~ constitutes the state's early intervention day treatment
10 program;

11 (3)(A) "Early intervention day treatment services operated by an
12 academic medical center" means an academic medical center program
13 specializing in developmental pediatrics that is administratively staffed and
14 operated by an academic medical center and under the direction of a board-
15 certified or board-eligible developmental pediatrician.

16 (B) An academic medical center consists of a medical
17 school and its primary teaching hospitals and clinical programs.

18 (C) "Early intervention day treatment services operated by
19 an academic medical center" may be provided at different sites operated by
20 the academic medical center if the early intervention day treatment services
21 program falls under one (1) administrative structure within the academic
22 medical center;

23 ~~(6)(4)~~ "Existing operations" means services provided by a ~~child~~
24 ~~health management services program or a developmental day treatment clinic~~ an
25 early intervention day treatment services program that has submitted a
26 completed application to the Division of Medical Services of the Department
27 of Human Services to serve as a Medicaid provider no later than July 1, 2013;

28 ~~(7)(5)~~ "Medicaid" means the medical assistance program
29 authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et
30 seq., and established under § 20-77-101 et seq., that provides for payments
31 for medical goods or services on behalf of indigent families with dependent
32 children and of ~~aged, blind, or disabled~~ individuals who are aged, blind, or
33 disabled and whose income and resources are insufficient to meet the cost of
34 necessary medical services;

35 ~~(8)(6)~~ "National accrediting organization" includes without
36 limitation:

1 (A) The CARF International; or
2 (B) Any other similar national accrediting organization
3 recognized by the Division of Developmental Disabilities Services; and

4 ~~(9)~~(7) "Successor program" means a program:

5 (A) That provides early intervention day treatment to
6 children;

7 (B) That is created as a replacement for, combination of,
8 or derived in whole or in part from the ~~child health management services~~
9 ~~program and the developmental day treatment clinic~~ early intervention day
10 treatment services program for children; and

11 (C) In which the for-profit and nonprofit providers from
12 ~~child health management services programs and developmental day treatment~~
13 ~~elinie~~ early intervention day treatment services programs are eligible to
14 participate.

15

16 20-48-1103. Prerequisites for certification and licensure.

17 (a)(1)~~(A)~~ Certification and licensure are required for operation as a
18 ~~child health management services~~ an early intervention day treatment program.

19 ~~(B)~~(2) Certification shall be granted on a county-wide
20 basis.

21 ~~(2)~~(b) Before obtaining certification, a ~~child health management~~
22 an early intervention day treatment services program is required to apply to
23 and obtain the approval of the Division of Developmental Disabilities
24 Services of the Department of Human Services to implement new ~~child health~~
25 ~~management~~ early intervention day treatment services under the criteria
26 established under this subchapter.

27 ~~(3)~~(c) A certified ~~child health management~~ early intervention
28 day treatment services program with existing operations on July 1, 2013,
29 shall not be required to obtain the approval of the division to continue
30 existing operations.

31 ~~(b)(1)(A)~~ Licensure from the division is required for operation of a
32 ~~developmental day treatment clinic for children.~~

33 ~~(B)~~ The division shall grant licensure on a county-wide
34 basis.

35 ~~(2)~~ Before obtaining licensure, a nonprofit community program
36 seeking to operate ~~developmental day treatment clinic services for children~~

1 ~~is required to apply to and obtain the approval of the division to implement~~
2 ~~new developmental day treatment clinic services for children under the~~
3 ~~criteria established under this subchapter.~~

4 ~~(3) A licensed nonprofit community program providing~~
5 ~~developmental day treatment clinic services for children with existing~~
6 ~~operations on July 1, 2013, shall not be required to obtain the approval of~~
7 ~~the division to continue existing operations.~~

8 ~~(c)(1)(A) Licensure or certification from the regulatory authority~~
9 ~~governing a successor program is required for operation as a successor~~
10 ~~program.~~

11 ~~(B) Licensure or certification shall be granted on a~~
12 ~~county-wide basis.~~

13 ~~(2) Before obtaining licensure or certification, a successor~~
14 ~~program is required to apply to and obtain the approval of the division to~~
15 ~~implement new successor program services under the criteria established in~~
16 ~~this subchapter.~~

17 ~~(3) A successor program that was a certified child health~~
18 ~~management services program with existing operations on July 1, 2013, or a~~
19 ~~licensed nonprofit community program providing developmental day treatment~~
20 ~~clinic services for children with existing operations on July 1, 2013, shall~~
21 ~~not be required to obtain the approval of the division to continue operations~~
22 ~~that were in existence on July 1, 2013, but shall be subject to certification~~
23 ~~or licensure surveys and rules applicable to the successor program.~~

24
25 SECTION 48. Arkansas Code § 20-49-101(3), concerning the definition of
26 "incompetent" regarding sterilization of mental incompetents, is amended to
27 read as follows:

28 (3) "Incompetent person" shall mean a person as to whom it is
29 proved:

30 (A) He or she is incapable of caring for himself or
31 herself by reason of intellectual and developmental disability, mental
32 illness, imbecility, idiocy, or other mental incapacity;

33 (B) He or she manifests sexual inclinations which make it
34 probable that he or she will procreate children unless he or she is rendered
35 incapable of procreation; and

36 (C) There is no probability that his or her condition will

1 improve so that he or she will become capable of caring for himself or
2 herself.

3

4 SECTION 49. Arkansas Code § 21-15-101(7), concerning the definition of
5 "developmentally disabled person" as to criminal background checks for public
6 officers and employees, is amended to read as follows:

7 (7) ~~"Developmentally disabled person"~~ "Individual with an
8 intellectual or developmental disability" means a person with a disability
9 that is attributable to:

10 (A) ~~Mental retardation,~~ Impairment of general intellectual
11 functioning or adaptive behavior, including without limitation cerebral
12 palsy, spina bifida, Down syndrome, epilepsy, or autism;

13 (B) Dyslexia resulting from a disability associated with
14 ~~mental retardation~~ intellectual and developmental disabilities, cerebral
15 palsy, epilepsy, or autism; or

16 (C) Any other condition found to be closely related to
17 ~~mental retardation~~ intellectual and developmental disabilities as described
18 in subdivision (7)(A) of this section because it results in an impairment of
19 general intellectual functioning or adaptive behavior similar to those of
20 ~~mentally retarded~~ persons with intellectual and developmental disabilities or
21 requires treatment and services similar to those required for ~~mentally~~
22 ~~retarded~~ persons with intellectual and developmental disabilities;

23

24 SECTION 50. Arkansas Code § 23-75-111(b)(1), concerning subscription
25 contracts relating to hospital and medical service corporations, is amended
26 to read as follows:

27 (b)(1) In any hospital service corporation contract, any medical
28 service corporation contract, or any hospital and medical service corporation
29 contract, whether group or individual, that contains a provision whereby
30 coverage of a dependent in a family group terminates at a specified age,
31 there shall also be a provision that coverage of an unmarried dependent who
32 is incapable of sustaining employment by reason of ~~mental retardation~~
33 intellectual and developmental disability or physical disability, who became
34 so incapacitated prior to the attainment of nineteen (19) years of age and
35 who is chiefly dependent upon the contract holder or certificate holder for
36 support and maintenance, shall not terminate, but coverage shall continue so

1 long as the contract or certificate remains in force and so long as the
2 dependent remains in such a condition.

3
4 SECTION 51. Arkansas Code § 23-85-131(b)(1), concerning age limits and
5 exceptions to age limits relating to accident and health insurance, is
6 amended to read as follows:

7 (b)(1) In any accident and health insurance contract that contains a
8 provision whereby coverage of a dependent in a family group terminates at a
9 specified age, there shall also be a provision that coverage of an unmarried
10 dependent who is incapable of sustaining employment by reason of ~~mental~~
11 ~~retardation~~ intellectual and developmental disability or physical disability,
12 who became so incapacitated prior to the attainment of nineteen (19) years of
13 age, and who is chiefly dependent upon the policyholder for support and
14 maintenance shall not terminate, but coverage shall continue so long as the
15 contract remains in force and so long as the dependent remains in such
16 condition.

17
18 SECTION 52. Arkansas Code § 23-86-102(c)(8)(A), concerning blanket
19 accident and health insurance required provisions, is amended to read as
20 follows:

21 (8)(A) In any contract that contains a provision whereby
22 coverage of a dependent in a family group terminates at a specified age,
23 there shall also be a provision that coverage of an unmarried dependent who
24 is incapable of sustaining employment by reason of ~~mental-retardation~~
25 intellectual and developmental disability or physical disability, who became
26 so incapacitated prior to the attainment of nineteen (19) years of age, and
27 who is chiefly dependent upon the employee for support and maintenance shall
28 not terminate, but coverage shall continue so long as the contract remains in
29 force and so long as the dependent remains in such condition.

30
31 SECTION 53. Arkansas Code § 23-86-108(4)(A), concerning group accident
32 and health insurance required provisions, is amended to read as follows:

33 (4)(A) In any contract that contains a provision whereby
34 coverage of a dependent in a family group terminates at a specified age,
35 there shall also be a provision that coverage of an unmarried dependent who
36 is incapable of sustaining employment by reason of ~~mental-retardation~~

1 intellectual and developmental disability or physical disability, who became
2 so incapacitated prior to the attainment of nineteen (19) years of age and
3 who is chiefly dependent upon the employee for support and maintenance, shall
4 not terminate, but coverage shall continue so long as the coverage of the
5 employee or member remains in force and so long as the dependent remains in
6 such condition.

7

8 SECTION 54. Arkansas Code § 25-10-113(b), concerning the disposition
9 of direct services funds by the Department of Human Services, is amended to
10 read as follows:

11 (b) It is the specific intent of this act to prevent the diversion of
12 community grant-in-aid line funds for any purpose that would not provide
13 direct services to ~~developmentally disabled~~ clients with intellectual or
14 other developmental disabilities in community programs.

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/s/Ladyman

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APPROVED: 4/16/19

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