

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

SUBJECT: Autism Waiver and the Autism Waiver Medicaid Provider Manual

DESCRIPTION: Effective March 1, 2020, the Autism Waiver and the Autism Waiver Medicaid Provider Manual are amended to:

- Update language to reflect Autism Spectrum Disorder (ASD), current program, and service names;
- Update requirements for providers and consultants under Enrollment Criteria;
- Pursuant to Acts 2019, No. 874, § 15, expand capacity to provide intensive early intervention treatment for 30 additional children diagnosed with ASD;
- Increase the unduplicated number to account for the increased slots;
- Update benefit limits;
- Combine Plan Implementation and Monitoring service with Individual Assessment services to create one service description: Individual Assessment/Plan Development/Team Training/Monitoring;
- Change scope of coverage's maximum age to "through seven (7) years";
- Recognize that evidence-based practices are from updated National Autism Center's National Standards Project;
- Reflect that the Division of Developmental Disabilities Services took over the administration of the Autism Waiver and is now the operating agency.

PUBLIC COMMENT: A public hearing was held on this rule on January 7, 2020. The public comment period expired January 10, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Brittany Hale, M.Ed., BCBA

COMMENT #1: I, Brittany Hale, M.Ed., BCBA am writing to comment on the proposed Arkansas Autism Waiver policy update for March 1st 2020. Please consider the following comments for the revision of the Arkansas Autism Waiver Medicaid Provider Manual. **RESPONSE:** Thank you for your comment.

COMMENT #2: [Section 210.00 Program Coverage: 211.00 Scope] The description of where services should be rendered is inaccurate and should state "When providing services to children under the Autism Waiver, only natural and community settings that provide inclusive opportunities for the child with ASD will be utilized. Such settings include the home, parks, grocery stores, library, restaurants, ball parks or other settings that are not segregated." **RESPONSE:** Thank you for your comment. The second sentence of the second paragraph of Section 211.000 of the Autism Waiver Medicaid Manual will be amended in its entirety to read: "The setting will primarily be the child's home; but other community locations, identified by the parent (such as the park, grocery store, church, etc.) may be selected based on the skills and behaviors of the child that need to be targeted."

COMMENT #3: [Section 220.000: 220.100 Intensive ASD Intervention Provider] A. 2. - The list of Evidence-Based Practices is incomplete, as it only lists the 2nd Edition, leaving all Evidence-Based Practices approved in the 1st Edition out of the policy. Referencing the National Autism Center's National Standards Project would be effective in providing the listing that is regularly updated to reflect the most current established, emerging and not established treatment practices. **RESPONSE:** Thank you for your comment. The third and fourth sentences of Section 220.100(A)(2) will be combined to read "The evidence-based practices that will be utilized in the program are those recognized in the National Autism Center's National Standards Project, which include, but are not limited to:"

COMMENT #4: [Section 220.000: 220.100 Intensive ASD Intervention Provider] C.-- Per proposed policy, the removal of the consultant role found in the redacted Section C, removes the ongoing oversight of the treatment team, ongoing family training, their ability to address strategies with staff, monthly on site monitoring of the treatment of fidelity of programming, and their ability to modify the treatment plan to best meet the needs of the child.

The role of the consultant is defined in the 1915(c) document on page 66, "This service also includes the oversight of implementation of evidence-based intervention strategies by the lead therapist, the line therapist and the family; ongoing education of family members and key staff regarding treatment; monthly on-site (in-home and community settings) monitoring of treatment effectiveness and implementation fidelity; modification of the ITP, as necessary; and modification of assessment information, as necessary. Monitoring under this service is for the purpose of modifying the ITP and is conducted monthly by the Consultant."

RESPONSE: Thank you for your comment. A Section 220.100(A)(3) of the Proposed Autism Waiver Provider Manual will be added which reads, "Monitoring services will be performed by the Consultant on at least a monthly basis. Monitoring responsibilities will include the oversight of the implementation of evidence-based intervention strategies by the lead therapist, the line therapist and the family; educating family members and key staff regarding treatment; on-site reviewing of treatment effectiveness and implementation fidelity; use data collected to determine the clinical progress of the child and the need for adjustments to the ITP, as necessary; and modifying assessment information, as necessary." Additionally, the title of 220.100 will be changed to "Autism Waiver Services" and Section 220.300 will be deleted and be moved to create Section 220.100(E) since Consultative Clinical and Therapeutic Services are one of the five services offered under the Autism Waiver.

Commenter's Name: Renee Holmes, RN, Director of Autism Services, Partners for Inclusive Communities

COMMENT #1: Thank you for the opportunity to address items listed in the AUTISM 1-19 document. Please see the items below that I would like to address as inconsistent

with the language and scope of the 1915(c) Home and Community Based Waiver Application. **RESPONSE:** Thank you for your comment.

COMMENT #2: [202.100 C- Per proposed policy, "This criterion also applies to any non-profit organization formed as a collaborative organization."] The language in the 1915(c) document removed the non-profit status in 2017. This can be first found in the 1915(c) on page 67, "Includes any organization formed as a collaborative organization made up of a group of licensed/certified providers, as described above." **RESPONSE:** Thank you for your comment. Section 202.100 of the Autism Waiver Medicaid Manual will be amended by removing Section 202.100(B), and removing in its entirety the paragraph in Section 202.100 that begins with "This criterion also applies..." and ends with "...the organization to participate in the program." Additionally, Page 67 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "Must have a minimum of three years' experience providing services to individuals with ASD." Page 70 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "The organization must have a minimum of three (3) years' experience providing services to individuals with ASD." Finally, Page 72 of the Autism Waiver Application in the "Other Standard" section will be amended to remove the first sentence "Must have a minimum of two (2) years' experience providing services to children with ASD."

COMMENT #3: [210.00 Scope- Per proposed policy, "When providing services to children under the Autism Waiver, only natural home and community settings that provide inclusive opportunities for the child with ASD will be utilized. Such settings include the home, schools or daycares, parks, etc."] The locations in the 1915(c) are listed on page 89, "The settings include locations such as the child's home, church, places where the family shops, restaurants, ball parks, etc., all of which meet the new settings definition. There are no segregated settings utilized in this program." Parental presence and participation is a requirement through the autism waiver. This is noted in several instances in the 1915(c) document, as an example from page 94, "Since the parent/guardian will be present and actively involved in treatment provided through the Autism Waiver," the parent is required to remain at any natural community location with the child. **RESPONSE:** Thank you for your comment. The second sentence of the second paragraph of Section 211.000 of the Autism Waiver Medicaid Manual will be amended in its entirety to read: "The setting will primarily be the child's home; but other community locations, identified by the parent (such as the park, grocery store, church, etc.) may be selected based on the skills and behaviors of the child that need to be targeted."

COMMENT #4: [220.100 Intensive ASD Intervention Provider- Per proposed policy, "A Consultant, hired by the Division of Developmental Disabilities Services (DDS) or its contracted vendor, community-based organization, performs this service."] A consultant in the autism waiver program is not hired by the Division of Developmental Disabilities or its contracted vendor. They are hired by the community-based billing organization. The proposed policy language does not reflect the wording of the 1915(c) document that can be found on page 66, "A Consultant, hired by the Arkansas Autism Partnership

(AAP) provider, community-based organization.” **RESPONSE:** Thank you for your comment. Section 220.100 will be amended by deleting the introductory paragraph starting with “A Consultant, hired by...” and ending with “...which includes the following components:”, and inserting an introductory paragraph at the top of Section 220.100(A) above Section 220.100(A)(1) which reads, “A Consultant hired by the ASD Intensive Intervention community provider performs this service, which include the following components:”. Additionally, the first sentence of Page 66 of the Autism Waiver Application will be amended to read “A Consultant hired by the ASD Intensive Intervention community provider performs this service, which include the following components:”

COMMENT #5: [220.100 A. 2.] The list of Evidence Based Practices is incomplete, as it only lists the 2nd Edition, leaving all Evidence Based Practices approved in the 1st Edition out of the policy. Referencing the National Autism Center’s National Standards Project would be effective in providing the listing that is regularly updated to reflect the most current established, emerging and not established treatment practices. **RESPONSE:** Thank you for your comment. The third and fourth sentences of Section 220.100(A)(2) will be combined to read “The evidence-based practices that will be utilized in the program are those recognized in the National Autism Center’s National Standards Project, which include, but are not limited to:”

COMMENT #6: [220.100 C.] Per proposed policy, the removal of the consultant role found in the redacted Section C, removes the ongoing oversight of the treatment team, ongoing family training, their ability to address strategies with staff, monthly on site monitoring of the treatment of fidelity of programming, and their ability to modify the treatment plan to best meet the needs of the child. The role of the consultant is defined in the 1915(c) document on page 66, “This service also includes the oversight of implementation of evidence-based intervention strategies by the Lead therapist, the Line therapist and the family; ongoing education of family members and key staff regarding treatment; monthly on-site (in-home and community settings) monitoring of treatment effectiveness and implementation fidelity; modification of the ITP, as necessary; and modification of assessment information, as necessary. Monitoring under this service is for the purpose of modifying the ITP and is conducted monthly by the Consultant.” **RESPONSE:** Thank you for your comment. A Section 220.100(A)(3) of the Proposed Autism Waiver Provider Manual will be added which reads, “Monitoring services will be performed by the Consultant on at least a monthly basis. Monitoring responsibilities will include the oversight of the implementation of evidence-based intervention strategies by the lead therapist, the line therapist and the family; educating family members and key staff regarding treatment; on-site reviewing of treatment effectiveness and implementation fidelity; use data collected to determine the clinical progress of the child and the need for adjustments to the ITP, as necessary; and modifying assessment information, as necessary.” Additionally, the title of 220.100 will be changed to “Autism Waiver Services” and Section 220.300 will be deleted and be moved to create Section 220.100(E) since Consultative Clinical and Therapeutic Services are one of the five services offered under the Autism Waiver.

COMMENT #7: [230.20 Autism Waiver Procedure Codes] Requesting verification that the procedure codes utilized for the Autism Waiver services will be intensive early intervention codes. The Autism Waiver is an intensive early intervention program and not an Applied Behavior Analysis service. This is defined on page 5 of the 1915(c) document in the Brief Waiver Description, "The Autism Waiver provides intensive one-on-one treatment for children ages 18 months through 7 years with a diagnosis of autism spectrum disorder (ASD). The therapy services are habilitative in nature and are not available to children through the AR Medicaid State Plan. These services are designed to maintain Medicaid eligible participants at home in order to preclude or postpone institutionalization. Specifically, these services are offered to children with ASD who meet the institutional level of care criteria, are the appropriate age, and whose parent's agree to actively participate in the treatment plan. **RESPONSE:** Thank you for your comment. Section 230.200 "Autism Waiver Procedure Codes" will remain a section in the Autism Waiver Medicaid Manual, but that Section will include only the sentence "Click here to view the Autism Waiver procedure codes.", which will have a hidden hyperlink to the a webpage containing the Autism Waiver procedure codes.

COMMENT #8: The services offered through the Autism Waiver program are 1) Individual Assessment/Plan Development/Team Training/ Monitoring; 2) Therapeutic Aides and Behavioral Reinforcers; 3) Lead Therapy; 4) Line Therapy; and 5) Consultative Clinical and Therapeutic Services. The first four services are provided by Intensive Intervention providers. Consultative Clinical and Therapeutic Services are provided by Clinical Services Specialists working with a four-year university program. The goal is to design a system for delivery of intensive one-on-one interventions for young children that 1) utilize proven strategies and interventions that are positive, respectful and safe; 2) include and empower parents/guardians to participate; 3) prepare children with functional skills in natural environments; 4) include independent checks and balances; and 5) provide services in the most effective and cost efficient way." I appreciate your time and consideration of the above comments. **RESPONSE:** Thank you for your comment.

Commenter's Name: Leigh Ann VanGorder, Partners for Inclusive Communities, Regional Waiver Coordinator-Western AR

COMMENT #1: 202.100 C- Per proposed policy, "This criterion also applies to any non-profit organization formed as a collaborative organization." Good Evening, I would like to address and submit items that I feel are inconsistent with the language and scope of the Arkansas Autism Waiver program. Currently the programs that serve Arkansas Autism Waiver are both for profit and non -profit organizations. They must meet criteria as a collaborative organization utilizing licensed and certified personnel. I believe both types of organizations can be effective providers of the Arkansas Autism Waiver program provided they hire and utilize the appropriately licensed and trained staff required in the current Medicaid manual. **RESPONSE:** Thank you for your comment. Section 202.100 of the Autism Waiver Medicaid Manual will be amended by removing Section 202.100(B), and removing in its entirety the paragraph in Section 202.100 that begins with "This criterion also applies..." and ends with "...the organization to participate in

the program.” Additionally, Page 67 of the Autism Waiver Application in the “Other Standard” section will be amended to remove the first sentence “Must have a minimum of three years’ experience providing services to individuals with ASD.” Page 70 of the Autism Waiver Application in the “Other Standard” section will be amended to remove the first sentence “The organization must have a minimum of three (3) years’ experience providing services to individuals with ASD.” Finally, Page 72 of the Autism Waiver Application in the “Other Standard” section will be amended to remove the first sentence “Must have a minimum of two (2) years’ experience providing services to children with ASD.”

COMMENT #2: 210.00 Scope- Per proposed policy, “When providing services to children under the Autism Waiver, only natural home and community settings that provide inclusive opportunities for the child with ASD will be utilized. Such settings include the home, schools or daycares, parks, etc.” The locations in the 1915(c) are listed on page 89, “The settings include locations such as the child’s home, church, places where the family shops, restaurants, ball parks, etc., all of which meet the new settings definition. There are no segregated settings utilized in this program.”

I have worked in the roles of provider liaison, line therapist, lead therapist and consultant for the Autism Waiver program since the program was started. I have seen the positive impact that the program has with children and their families. This is the only program funding ABA that requires services to be provided in the home or community setting. Home and community setting are where children and parents have the most difficulty, partially because it is where they spend, they majority of their time and some skills that they learn in a “school setting” do not generalize to a home or community environment. This program also requires parents to participate in a minimum of 14 hours per week of programming in addition to the programming the child receives from the team of line, lead and consultant therapist. Having a parent participate 14 hours per week would be next to impossible for a working or a two working parent home if services were offered in a clinic setting. The current wrap around approach is what makes such a functional impact in the children’s lives. The therapist is there in the home or natural environment when the melt downs happen and not only guide the child but coach the parent on how to handle a behavior or dangerous situation when it is happening. The parents learn valuable life changing skills and are coached in how to reinforce their children’s behaviors they want to improve and how not to reinforce inadvertently ones they want to extinguish.

I have also worked in a large EIDT program for over 23 years. I have the unique experience of working in both settings. I strongly believe this program gives a child more bang for their buck so to speak in the natural environment and community setting than I believe providing ABA in a school setting would.

RESPONSE: Thank you for your comment. The second sentence of the second paragraph of Section 211.000 of the Autism Waiver Medicaid Manual will be amended in its entirety to read: “The setting will primarily be the child’s home; but other community locations, identified by the parent (such as the park, grocery store, church, etc.) may be selected based on the skills and behaviors of the child that need to be targeted.”

COMMENT #3: 220.100 Intensive ASD Intervention Provider- Per proposed policy, “A Consultant, hired by the Division of Developmental Disabilities Services (DDS) or its contracted vendor, community-based organization, performs this service.” Providers hire all employees of this program. They are not hired by DDS or the contracted vendor. The provider must follow all regulations for staffing requirements in experience, training and background checks. **RESPONSE:** Thank you for your comment. Section 220.100 will be amended by deleting the introductory paragraph starting with “A Consultant, hired by...” and ending with “...which includes the following components:” and inserting an introductory paragraph at the top of Section 220.100(A) above Section 220.100(A)(1) which reads, “A Consultant hired by the ASD Intensive Intervention community provider performs this service, which include the following components:” Additionally, the first sentence of Page 66 of the Autism Waiver Application will be amended to read “A Consultant hired by the ASD Intensive Intervention community provider performs this service, which include the following components:”

COMMENT #4: 220.100 A. 2.- The list of Evidence Based Practices is incomplete, as it only lists the 2nd Edition, leaving all Evidence Based Practices approved in the 1st Edition out of the policy. Referencing the National Autism Center’s National Standards Project would be effective in providing the listing that is regularly updated to reflect the most current established, emerging and not established treatment practices.

RESPONSE: Thank you for your comment. The third and fourth sentences of Section 220.100(A)(2) will be combined to read “The evidence-based practices that will be utilized in the program are those recognized in the National Autism Center’s National Standards Project, which include, but are not limited to:”

COMMENT #5: 220.100 C.- Per proposed policy, the removal of the consultant role found in the redacted Section C, removes the ongoing oversight of the treatment team, ongoing family training, their ability to address strategies with staff, monthly on site monitoring of the treatment of fidelity of programming, and their ability to modify the treatment plan to best meet the needs of the child.

The role of the consultant is an important role for the integrity and functionality of the team. The consultant is the person that completes the evaluation and writes the intervention strategies that are used by the team individualized for the child’s specific needs. Training the lead, line and parents how to implement the evidence-based strategies is an additional important function of the consultant. Removing this role would eliminate the ability to train staff and family members and monitor the effectiveness of the programming.

RESPONSE: Thank you for your comment. A Section 220.100(A)(3) of the Proposed Autism Waiver Provider Manual will be added which reads, “Monitoring services will be performed by the Consultant on at least a monthly basis. Monitoring responsibilities will include the oversight of the implementation of evidence-based intervention strategies by the lead therapist, the line therapist and the family; educating family members and key staff regarding treatment; on-site reviewing of treatment effectiveness and

implementation fidelity; use data collected to determine the clinical progress of the child and the need for adjustments to the ITP, as necessary; and modifying assessment information, as necessary.” Additionally, the title of 220.100 will be changed to “Autism Waiver Services” and Section 220.300 will be deleted and be moved to create Section 220.100(E) since Consultative Clinical and Therapeutic Services are one of the five services offered under the Autism Waiver.

COMMENT #6: 230.20 Autism Waiver Procedure Codes- Requesting verification that the procedure codes utilized for the Autism Waiver services will be intensive early intervention codes. The Autism Waiver is an intensive early intervention program and not an Applied Behavior Analysis service. Applied Behavior Analysis utilizes scientifically based techniques to provide intensive one on one treatment. I have copied and included the brief waiver description from 1915 (c) below for reference.

“The Autism Waiver provides intensive one-on-one treatment for children ages 18 months through 7 years with a diagnosis of autism spectrum disorder (ASD). The therapy services are habilitative in nature and are not available to children through the AR Medicaid State Plan. These services are designed to maintain Medicaid eligible participants at home in order to preclude or postpone institutionalization. Specifically, these services are offered to children with ASD who meet the institutional level of care criteria, are the appropriate age, and whose parent's agree to actively participate in the treatment plan. The services offered through the Autism Waiver program are 1) Individual Assessment/Plan Development/Team Training/ Monitoring; 2) Therapeutic Aides and Behavioral Reinforcers; 3) Lead Therapy; 4) Line Therapy; and 5) Consultative Clinical and Therapeutic Services. The first four services are provided by Intensive Intervention providers. Consultative Clinical and Therapeutic Services are provided by Clinical Services Specialists working with a four-year university program. The goal is to design a system for delivery of intensive one-on-one interventions for young children that 1) utilize proven strategies and interventions that are positive, respectful and safe; 2) include and empower parents/guardians to participate; 3) prepare children with functional skills in natural environments; 4) include independent checks and balances; and 5) provide services in the most effective and cost efficient way.”

RESPONSE: Thank you for your comment. Section 230.200 “Autism Waiver Procedure Codes” will remain a section in the Autism Waiver Medicaid Manual, but that Section will include only the sentence “Click here to view the Autism Waiver procedure codes[.]” which will have a hidden hyperlink to the a webpage containing the Autism Waiver procedure codes.

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

QUESTION #1: Has the proposed waiver been approved by CMS? If not, do you have any idea what the timeline on that approval might be? **ANSWER:** It has not been approved by CMS. Once any changes based on public comment have been made, the proposed waiver will be submitted to CMS for approval. CMS would then have a 90 day

“clock” to review and approve. We can ask for retrospective approval in the same quarter that we submitted the waiver for certain amendments, like adding slots.

QUESTION #2: Pages 67 and 70 of the waiver application indicate that Intensive Intervention Providers must have a minimum of three years’ experience providing services to individuals with ASD. However, page 72 of the waiver and § 202.100(B) of the proposed rules only require two years of experience. Is there a reason for this discrepancy? Why did DHS decide to reduce the amount of experience ASD Intervention Providers must have from three years to two? **ANSWER:** The waiver and manual will be amended so that the years’ experience requirement will be removed from the Intensive Intervention provider type (i.e. at the organization level) and will apply only to the individual based on the particular service that is being provided (i.e. Individual Assessment/Treatment Development/Monitoring, Lead Therapy Intervention, or Line Therapy Intervention).

QUESTION #3: Is there specific authority behind the independence requirement in § 202.500(B)? **ANSWER:** All home and community based waivers require independent case management functions (called conflict free case management). One of the four pillars of conflict free case management is independent service monitoring. Because the consultant acts as a monitor of the treatment plan and services being provided to the beneficiary, DDS felt that the conflict free requirement should apply to them.

QUESTION #4: Ark. Code Ann. § 20-77-124 states that “intensive early intervention treatment” occurs “in the home of the child.” Why do the rule amendments expand this definition to include other settings, such as schools and parks? **ANSWER:** The proposed waiver, on page 66, states, “The location will be primarily the child’s home but other community locations, identified by the parent, such as the park, grocery store, church, etc. might be included.” Section 211.000 will be amended to reflect the language as it appears in the proposed waiver.

QUESTION #5: The benefit limits in § 220.200 are now presented in “hours” rather than “units.” Why has this language changed? **ANSWER:** The units are still included in the service description boxes that tell the procedure codes and modifiers to be billed; however, procedure codes and units are subject to change by CMS and NCCI without any input from the state, so the state chose not to include the units in the descriptions, only the total amount of time that the service can be received.

QUESTION #6: Why has the maximum benefit limit for line therapy decreased? **ANSWER:** This was part of the change that was approved by CMS in 2017; this change must happen to be consistent with our current Waiver.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

According to the agency, the purpose of this rule is to implement a federal rule or regulation. The total cost to implement that federal rule or regulation is \$782,340 for the current fiscal year (\$234,702 in general revenue and \$547,638 in federal funds) and \$1,587,466 for the next fiscal year (\$476,240 in general revenue and \$1,111,226 in federal funds).

The total estimated cost by fiscal year to state, county, and municipal government to implement the amended rule is \$234,702 for the current fiscal year and \$476,240 for the next fiscal year. The agency indicated that this 1915(c) waiver has a 70/30 federal-state match and that the state will incur 30% of the costs while the federal government will incur 70%.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private business, state government, county government, municipal government, or to two (2) or more of those entities combined. It provided the following written findings:

(1) a statement of the rule's basis and purpose

Acts 2019, No. 874, § 15 provides that DDS "shall budget, allocate, and expend up to one million dollars (\$1,000,000) for the elimination of the Autism Waiver Services Program waiting list." No additional funding was provided for this purpose. Therefore, DDS is expanding the number of Waiver slots to include all children on the waitlist.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute

DDS will eliminate the Waitlist for Autism Waiver services by increasing the slots.

(3) a description of the factual evidence that

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs

As of the time Act 874 was passed, there were approximately 30 children on the Autism Waiver waitlist. By increasing the number of slots, DDS will be able to serve all children on the waitlist, as mandated by Act 874. Evidence suggests that children served through the Autism Waiver will need less intensive services later in life.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule
Because we were mandated to eliminate the waitlist, there is no less costly alternative.

(5) A list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule

N/A

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response

CMS requires the state to state a number of “slots” or individuals that will be served by a home and community-based waiver, such as the Autism Waiver. To increase the number of children served, therefore, DDS must increase the number of slots through the public comment and promulgation process.

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives

CMS requires DDS to renew the Autism Waiver every five years, so this Waiver is continuously being reviewed to ensure that it is meeting CMS requirements and meeting the needs of Arkansas families.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance. See Ark. Code Ann. § 20-76-201(1). It is specifically authorized to maintain an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). The Department is also required to “seek a Medicaid waiver from the Centers for Medicare and Medicaid Services to provide intensive early intervention treatment to any eligible child who has been diagnosed with an autism spectrum disorder.” Ark. Code Ann. § 20-77-124(b)(1). This responsibility applies “only as funding becomes available for that purpose.” Ark. Code Ann. § 20-77-124(c)(1).

The Department has the authority to make rules that are needed or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions have the authority to promulgate rules as necessary to conform programs they administer to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

Portions of this rule implement Act 874 of 2019, which made an appropriation for personal services and operating expenses for the Division of Developmental Disabilities Services for the fiscal year ending June 30, 2020. The Act required the Division to “budget, allocate, and expend up to one million dollars (\$1,000,000) for the elimination of the Autism Waiver Services Program waiting list.” Act 874, § 15 (2019).

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Developmental Disabilities Services
DIVISION DIRECTOR Melissa Stone
CONTACT PERSON Mac Golden
ADDRESS PO Box 1437, Slot S295, Little Rock, AR 72203-1437
PHONE NO. 501-320-6383 **FAX NO.** 501-404-4619 **E-MAIL** Mac.E.Golden@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Melissa Stone
PRESENTER E-MAIL melissa.stone@dhs.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Autism Waiver and Autism Provider Manual
- 2. What is the subject of the proposed rule? See attached.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No X
If yes, please provide the federal rule, regulation, and/or statute citation. _____
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No X
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes _____ No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Arkansas Code §§ 20-76-201, §20-77-107, § 20-77-124, § 25-10-129, and Acts 2019, No. 874, § 15.

7. What is the purpose of this proposed rule? Why is it necessary?
See attached.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://humanservices.arkansas.gov/resources/promulgation-of-new-rules>

9. Will a public hearing be held on this proposed rule? Yes No _____
If yes, please complete the following:

Date: January 7, 2020

Time: 4:00 p.m.

Place: Darraugh Center Auditorium, Main Library, 100 Rock Street, Little Rock, AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
January 10, 2020

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
03/01/2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Position unknown: parents of children currently on Autism Waiver waitlist.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Developmental Disabilities Services
PERSON COMPLETING THIS STATEMENT Lucas Silva
TELEPHONE NO. 501-396-6469 **FAX NO.** _____ **EMAIL:** lucas.silva@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Autism Waiver and Autism Provider Manual

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No
If an agency is proposing a more costly rule, please state the following:
 - (a) How the additional benefits of the more costly rule justify its additional cost;

 - (b) The reason for adoption of the more costly rule;

 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue \$234,702
Federal Funds \$547,638
Cash Funds _____
Special Revenue _____

Next Fiscal Year

General Revenue \$476,240
Federal Funds \$1,111,226
Cash Funds _____
Special Revenue _____

Other (Identify) _____
 Total _____ **\$782,340**

Other (Identify) _____
 Total _____ **\$1,587,466**

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____ **\$0**

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____ **\$0**

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____ **\$0**

\$ _____ **\$0**

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____ **\$234,702**

\$ _____ **\$476,240**

This 1915(c) waiver has a 70/30 Federal-State match. The state will incur 30-percent of the costs while the Federal Government will incur 70-percent.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ **X** _____ No _____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

Acts 2019, No. 874, § 15 provides that DDS " shall budget, allocate, and expend up to on million dollars (\$1,000,000) for the elimination of the Autism Waiver Services Program waiting list". No additional funding was provided for this purpose. Therefore, DDS is expanding the number of Waiver slots to include all children on the waitlist.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

DDS will eliminate the Waitlist for Autism Waiver services by increasing the slots.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

As of the time Act 874 was passed, there were approximately 30 children on the Autism Waiver waitlist. By increasing the number of slots, DDS will be able to serve all children on the waitlist, as mandated by Act 874. Evidence suggests that children served through the Autism Waiver will need less intensive services later in life.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

Because we were mandated to eliminate the waitlist, there is no less costly alternative.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

N/A

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

CMS requires the state to state a number of "slots" or individuals that will be served by a home and community-based waiver, such as the Autism Waiver. To increase the number of children served, therefore, DDS must increase the number of slots through the public comment and promulgation process.

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

CMS requires DDS to renew the Autism Waiver every five years, so this Waiver is continuously being reviewed to ensure that is is meeting CMS requirements and meeting the needs of Arkansas families.

Statement of Necessity and Rule Summary
Autism Waiver and the Autism Waiver Medicaid Provider Manual

Statement of Necessity

Acts 2019, No. 874, § 15, requires the Division of Developmental Disabilities Services (DDS) to eliminate the waiting list for the Autism Waiver Services Program. To implement Act 874, this promulgation adds 30 slots to the current participant limits of the Autism Waiver program. In addition, this promulgation updates language, benefit limits, procedure codes, and job requirements and qualifications for consultants providing services in the Autism Waiver Medicaid Provider Manual to reflect the Autism Waiver as approved by the Centers for Medicare and Medicaid Service.

Rule Summary

Effective January 1, 2020, the Autism Waiver and the Autism Waiver Medicaid Provider Manual are amended to:

- Update language to reflect Autism Spectrum Disorder (ASD), current program, and service names.
- Update requirements for providers and consultants under Enrollment Criteria.
- Pursuant to Acts 2019, No. 874, § 15, expand capacity to provide intensive early intervention treatment for 30 additional children diagnosed with Autism Spectrum Disorder (ASD).
- Increase the unduplicated number to account for the increased slots.
- Update benefit limits.
- Combine Plan Implementation and Monitoring service with Individual Assessment to create one service description: Individual Assessment/Plan Development/Team Training/Monitoring.
- Change scope of coverage's maximum age to "through seven (7) years"
- Recognize that evidence-based practices are from updated National Autism Center's National Standards Project, Second Edition.
- Reflect that the Division of Developmental Disabilities Services took over the administration of the Autism Waiver and is now the operating agency.