

EXHIBIT I

DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES

SUBJECT: Early Intervention Day Treatment-New-18; State Plan Amendment #2018-004; and DDS Standards for Certification and Monitoring for Center-based Community Services

DESCRIPTION: Pursuant to Ark. Code Ann. § 20-48-1101 et seq., DDS is combining the current Developmental Day Treatment Clinic Services (DDTCS) for children and Child Health Management Services (CHMS) into one successor program, now called Early Intervention Day Treatment (EIDT).

This new program combines eligibility criteria for both programs, specifically (1) a developmental assessment; and (2) the medical (nursing) or therapeutic needs of the beneficiary. The EIDT program will:

- (1) Ensure children with the highest needs can access the full array of core services;
- (2) Expand family choice of providers, instead of dividing clinics between programs;
- (3) Tighten child-staff ratios to increase success, quality, and monitoring for high-need children; and
- (4) Streamline billable codes whereby eliminating the need for prior authorization process and implementing a retrospective process.

Current DDTCS and CHMS centers will be grandfathered in as EIDT licensed programs under the licensing standards until June 30, 2019, at which time they will have to renew their license as an EIDT.

Children receiving services in DDTCS or CHMS centers as of July 1, 2018, and meet the eligibility criteria promulgated on October 1, 2017, for either a DDTCS children's program or a CHMS program, will be allowed enrollment in EIDT until June 30, 2019, as long as they meet the former criteria on July 1, 2018, and continue to meet the former criteria until June 30, 2019.

PUBLIC COMMENT: A public hearing was held on April 18, 2018. The public comment period expired on May 8, 2018. The Department received several Public Comments, an 84-page summary of which is also attached to the agenda online.

The specific comments received and DDS responses on EARLY INTERVENTION DAY TREATMENT (EIDT) are found on pages 24-84.

EXHIBIT I

FURTHER CLARIFICATIONS MADE BY DDS:

- In the Early Intervention Day Treatment (EIDT) manual, we are clarifying that evaluation services are billable once per year, instead of saying calendar year.
- In the Early Intervention Day Treatment (EIDT) manual, we are clarifying the intent of nursing services by removing the reference to optional services in the title in Section 215.000.
- In the Early Intervention day Treatment (EIDT) manual, we are clarifying that the summer program is available to age 21 not 20.

The Department does not yet have approval from CMS. The Department states in the summary that it will not sunset DDTCS or CHMS programs without CMS approval of the new programs.

The proposed effective date is July 1, 2018.

FINANCIAL IMPACT: The total estimated savings for the current fiscal year is \$13,299,199.71 (\$3,909,964.71 in general revenue and \$9,389,235 in federal funds); and the total estimated savings for the next fiscal year is \$40,065,626.50 (\$11,000,715.72 in general revenue and \$29,064,910.78 in federal funds).

LEGAL AUTHORIZATION: The Department of Human Services is authorized to “make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith.” Arkansas Code Annotated § 20-76-201 (12). DHS is authorized to establish and maintain an indigent medical care program. *See* Ark. Code Ann. § 20-77-107. DHS is also authorized to promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. *See* Ark. Code Ann. § 25-10-129(b).

The Department’s Division of Developmental Disabilities Services (“DDS”) is responsible for the overall coordination of services for Arkansans with developmental disabilities as defined in Ark. Code Ann. §20-48-101. In 2013, DHS was required by law to convene stakeholders to assist in determining the feasibility of combining the child health treatment clinic services program for children into a successor program. *See* Ark. Code Ann. § 20-48-1108. The Division is authorized to adopt rules to implement programs and was required by law to work with stakeholders, including without limitation, representatives of the Child Health Management Services Association and the Developmental Disabilities Provider Association, in the development of rules. *See* Ark. Code Ann. § 20-48-1107. DHS states that the new DDS center –based community services standards will apply to any day treatment program in Arkansas for children and adults, including “successor programs,” as defined in Ark. Code Ann. § 20-48-1101 et seq.

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

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Developmental Disabilities Services
DIVISION DIRECTOR Melissa Stone
CONTACT PERSON Elizabeth Pitman
ADDRESS P.O. Box 1437, Slot N502
PHONE NO. (501) 682-4936 FAX NO. (501) 682-8380 E-MAIL Elizabeth.pitman@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:

**Donna K. Davis
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? Early Intervention Day Treatment-New-18; State Plan Amendment #2018-004; Child Health Management Services 1-18, Developmental Day Treatment Services 1-18 and DDS Standards for Certification and Monitoring for Center-based Community Services
2. What is the subject of the proposed rule? Creation of a new center-based service array for children which is run by early childhood specialists and serving children with developmental disabilities or delays and a medical condition.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
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
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 regulation. The EIDT program replaces the existing DDTCS and CHMS programs. This combined program will: 1) ensure children with the highest needs can access the full array of services; 2) expand family choice of providers, instead of dividing clinics between programs; 3) tighten child-staff ratios to increase success, quality and monitoring for high-need children; and 4) streamline billable codes whereby eliminating the need for a prior authorization process and implementing a retrospective review process.

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. Replaces the current Developmental Day Treatment Clinic Services (DDTCS) for children and the Child Health Management Services (CHMS) programs.

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."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A.C.A. 20-48-1101 et seq.

7. What is the purpose of this proposed rule? Why is it necessary? The EIDT is the "successor program" authorized by statute to replace the current DDTCS and CHMS programs.

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). <http://humanservices.arkansas.gov/ddds/Pages/default.aspx>

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

Date: April 18, 2018

Time: 5:00 p.m.

Central Arkansas Library, Darragh
Center Auditorium, 100 Rock Street,

Place: Little Rock, AR

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
May 8, 2018

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
July 1, 2018

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.

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

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. Developmental Disabilities Provider Association- _Against, Child Health Management Services Providers- For

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Human Services

DIVISION Division of Developmental Disabilities Services

PERSON COMPLETING THIS STATEMENT Elizabeth Pitman

TELEPHONE 501-682-4936 **FAX** 501-682-8380 **EMAIL:** Elizabeth.pitman@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 Early Intervention Day Treatment-New-18; State Plan Amendment #2018-004; and DDS Standards for Certification and Monitoring for Center-based Community Services

- 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?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
General Revenue _____	General Revenue _____
Federal Funds _____	Federal Funds _____
Cash Funds _____	Cash Funds _____
Special Revenue _____	Special Revenue _____
Other (Identify) _____	Other (Identify) _____

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue	<u>(\$3,909,964.71) savings</u>
Federal Funds	<u>(\$9,389,235.00) savings</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>(\$13,299,199.71) savings</u>

General Revenue	<u>(\$11,000,715.72) savings</u>
Federal Funds	<u>(\$29,064,910.78) savings</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>(\$40,065,626.50) savings</u>

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

\$ 0

\$ 0

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 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;

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

(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;

- (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;
- (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;
- (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
- (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.

EARLY INTERVENTION DAY TREATMENT (EIDT) PROGRAM SUMMARY

EIDT Generally

Early Intervention Day Treatment means services provided by a pediatric day treatment program run by early childhood specialists, overseen by a physician and serving children with developmental disabilities, developmental delays, or a medical condition that puts them at risk for a developmental delay.

Early Intervention Day Treatment (EIDT) includes diagnostic, screening, evaluation, preventative, therapeutic, palliative, rehabilitative, and habilitative services. This includes speech, occupational, physical therapies and any medical or remedial services recommended by a physician for the maximum reduction of physical or mental disability and restoration of the child to the best possible function level. EIDT is available year-round to children aged 0-6; and in the summer months for children aged 6-21.

EIDT Core Services

Habilitative services and Evaluation

Physical Evaluation and Therapy

Occupational Evaluation and Therapy

Speech Evaluation and Therapy

Day Habilitative Services in Summer for aged 6-21

Nursing Services are available for the medically fragile, those with complex health needs or both, if prescribed by PCP.

Eligibility

To receive EIDT day habilitation services, the beneficiary must have a documented developmental disability or delay, as shown on the results of an annual comprehensive developmental evaluation. The comprehensive annual developmental evaluation must include a norm referenced (standardized) evaluation and a criterion referenced evaluation. The norm referenced evaluation must be the most current addition of the Battelle Developmental Inventory (BDI). The Criterion referenced evaluation must be the most current edition of one of the following and appropriate for the child's age:

Hawaii Early Learning Profile (HELP)

Learning Accomplishment Profile (LAP)

Early Learning Accomplishment Profile (E-LAP)

Brigance Inventory of Early Development (IED)

A. Evaluation that shows:

1. For ages 0-36 months, a score of greater than 25% delay in at least two of five domains: motor, social, cognitive, self-help/adaptive, or communication on both the BDI and the criterion referenced;

2. For ages 3-6, a score of at least two standard deviations below the mean in at least two of the five domains: motor, social, cognitive, self-help/adaptive, or communication on the BDI and a greater than 25% delay on the criterion referenced test;
 3. The same two areas of delay on both the BDI and the criterion referenced test.
- B. In addition to having a documented developmental disability or delay, the beneficiary must have a documented need for at least one of the following, as shown on a full evaluation for that service:
1. Physical therapy,
 2. Occupational therapy,
 3. Speech therapy, or
 4. Nursing services

Physical, Occupational and Speech Therapy evaluations must meet qualifying scores as written in Medicaid Occupational, Physical and Speech Therapy Provider manual.

For children who have a documented delay in the areas of social emotional and adaptive only, a referral must be made to an appropriate head start, home visiting, or Early Interventions or Part B program. This referral must be documented and placed in the child's evaluation record.

Licensing Requirements

- A. EIDT providers must be licensed as an Early Intervention Day Treatment provider by the Arkansas Department of Human Services, Division of Provider Services and Quality Assurance (DPSQA).
- B. Each provider of EIDT must meet all child care licensing rules, as well as all health and safety requirements, as applicable under local, state and federal laws, rules and regulations.
- C. A copy of all relevant current licenses and certifications must accompany the provider application and the Medicaid contract.

SUMMARY OF EARLY INTERVENTION DAY TREATMENT

Pursuant to Ark. Code Ann. § 20-48-1101 et seq., DDS is combining the current Developmental Day Treatment Clinic Services (DDTCS) for children and Child Health Management Services (CHMS) into one successor program, now called Early Intervention Day Treatment (EIDT).

This new program combines eligibility criteria for both programs, specifically (1) a developmental assessment; and (2) the medical (nursing) or therapeutic needs of the beneficiary. The EIDT program will:

- (1) Ensure children with the highest needs can access the full array of core services;
- (2) Expand family choice of providers, instead of dividing clinics between programs;
- (3) Tighten child-staff ratios to increase success, quality and monitoring for high-need children; and
- (4) Streamline billable codes whereby eliminating the need for prior authorization process and implementing a retrospective process.

Current DDTCS and CHMS centers will be grandfathered in as EIDT licensed programs under the licensing standards until June 30, 2019, at which time they will have to renew their license as an EIDT.

Children receiving services in DDTCS or CHMS centers as of July 1, 2018, and meet the eligibility criteria promulgated on October 1, 2017, for either a DDTCS children's program or a CHMS program, will be allowed enrollment in EIDT until June 30, 2019, as long as they meet the former criteria on July 1, 2018, and continue to meet the former criteria until June 30, 2019.