

# EXHIBIT I

## DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES

**SUBJECT:** Repeal of Community and Employment Supports Waiver Medicaid Provider Manual and Community and Employment Supports Waiver Minimum Certification Standards and Amendments to DDS Policy 1091

**DESCRIPTION:** The proposed changes coincide with the implementation of the PASSE program. The amendments to Policy 1091 are to remove all references to the certification and monitoring of CES Waiver providers. This amendment is proposed in conjunction with the repeal of the CES Waiver Minimum Certification Standards and CES Waiver Provider Manual.

**PUBLIC COMMENT:** DHS held three public hearings, one in Little Rock on August 20, 2018, one in Monticello on September 4, 2018, and one in Hope on September 6, 2018. The public comment period ended on September 12, 2018. DHS received no comments.

DHS has sought approval from CMS, and formal approval is pending.

The proposed effective date of the rule changes is January 1, 2019.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** DHS 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 may 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). DHS may rely, by reference, on federal rules and regulations that apply to the Medicaid program. *See* Ark. Code Ann. § 20-77-107.

The Board of Developmental Disabilities Services may promulgate rules and regulations respecting the care, custody, training, and discipline of developmentally or intellectually disabled individuals in centers or individuals receiving services. *See* Ark. Code Ann. § 20-48-205. The Board of Developmental Disabilities Services is authorized to establish and promulgate regulations fixing standards for programs and activities for developmentally or intellectually disabled individuals. *See* Ark. Code Ann. § 20-48-209.

# EXHIBIT I

## 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  
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NAME OF PRESENTER AT COMMITTEE MEETING Melissa Stone  
PRESENTER E-MAIL Melissa.stone@dhs.arkansas.gov

### INSTRUCTIONS

- Please make copies of this form for future use.
- Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- 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, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Repeal of Community and Employment Supports Waiver Medicaid Provider Manual & Community and Employment Supports Waiver Minimum Certification Standards & Amendments to DDS Policy 1091

2. What is the subject of the proposed rule? The proposed changes coincide with the implementation of the PASSE program. Under that program, current CES Waiver providers will be credentialed through the PASSE.

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?

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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.

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. *The PASSE Manual being promulgated at the same time will set out requirements for the PASSE to credential providers as Home and Community Based Services Providers and to provide Community and Employment Support Waiver Services.*

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."**

*The amendments to Policy 1091 are to remove all references to the certification and monitoring of CES Waiver providers. This amendment is proposed in conjunction with the repeal of the CES Waiver Minimum Certification Standards and CES Waiver Provider Manual.*

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

Ark. Code Ann. 20-77-107; 20-48-101 et seq.

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

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://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx>

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

Date: August 20, 2018; September 6, 2018

Time: 5:00 PM  
Central Library, Darragh Auditorium,  
100 Rock Street  
Little Rock, AR

Hempstead Hall, Blevins Suite,  
University of Arkansas at Hope  
2500 South Main Street  
Place: Hope, AR

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

September 12, 2018

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

January 1, 2019

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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. *Attached*

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). *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: PASSE entities, current CES Waiver providers and beneficiaries who are going into the PASSE or their guardians/caregivers.*

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT**     Department of Human Services

**DIVISION**        Division of Medical Services

**PERSON COMPLETING THIS STATEMENT**   Elizabeth Pitman

**TELEPHONE** 501-682-4936        **FAX** \_\_\_\_\_        **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**   Repeal of CES Provider Manual and Minimum Certification Standards

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?

<b><u>Current Fiscal Year</u></b>		<b><u>Next Fiscal Year</u></b>	
General Revenue	<u>0</u>	General Revenue	<u>0</u>
Federal Funds	<u>0</u>	Federal Funds	<u>0</u>
Cash Funds	<u>0</u>	Cash Funds	<u>0</u>
Special Revenue	<u>0</u>	Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>	Other (Identify)	<u>0</u>
<b>Total</b>	<b><u>0.00</u></b>	<b>Total</b>	<b><u>0.00</u></b>

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

**Current Fiscal Year**

**Next Fiscal Year**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

0.00

0.00

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**

\$ 0.00  
0.00

\$ 0.00

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**

\$ 0.00

\$ 0.00

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.

ARKANSAS DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS DIRECTOR'S OFFICE POLICY

DDS POLICY 1091

CERTIFICATION AND MONITORING POLICY FOR FIRST CONNECTIONS—  
PART C OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

1. **Purpose.**

The Arkansas Department of Human Services, Division of Developmental Disabilities Services (“**DDS**”) is the lead agency for the federal early intervention program in the State of Arkansas for infants and toddlers with disabilities and their families, under Part C of the Individuals with Disabilities Education Act (“**First Connections**”). DDS, as the lead agency, is responsible for the implementation, general administration and oversight of the First Connections program. As part of its oversight responsibility, DDS must ensure that the activities of participants in the First Connections program align with Part C of the Individuals with Disabilities Education Act (“**IDEA**”) and the guidelines issued by the Office of Special Education Programs (“**OSEP**”). DDS carries out this oversight responsibility through a certification and monitoring program.

This policy has been prepared to implement Ark. Code Ann. 20-48-201 *et. seq.*, for the purpose of establishing the policies and procedures applicable to the First Connections certification and monitoring program. An appeal of any decision made pursuant to this policy may be filed according to procedures outlined in DDS Policy #1076, or any replacement or successor appeals policy.

2. **Scope.**

D.

This policy applies to: (i) individuals and organizations that provide or seek to provide First Connections services (as defined in Section 3 below) through the First Connections program; and (ii) all staff responsible for the certification and monitoring of individuals and organizations participating in the First Connections program.

3. **Definitions**

- A. “*Monitoring Review*” means the ongoing assessment of a Provider by First Connections’ Quality Assurance Unit to ensure program quality and compliance with Part C of IDEA, guidelines issued by OSEP, First Connections Policies and Procedures and First Connections Certification



Standards. Procedures relating to the Monitoring Reviews are provided in Section 7 herein.

- B. “CDS” means the First Connections’ Comprehensive Database System.
- C. “Certification Review” means the review of an individual’s or organization’s licenses and/or certifications, along with any required application, to ensure that the individual or organization possesses all of the qualifications required by the First Connections Certification Standards to be a Provider. A Certification Review may be conducted at any time, but shall at a minimum be conducted once every three (3) years. A Certification Review shall also always be conducted upon initial application to become a new Provider and upon application to provide a new First Connections Service.
- D. “First Connections Certification Standards” means the minimum licensing, certification and other requirements a Provider must obtain and maintain in order to offer a particular First Connections Service as outlined in the certification standards established at any given time by DDS for the First Connections program.
- E. “DDS” means the Arkansas Department of Human Services, Division of Developmental Disabilities Services, the lead agency for First Connections.
- F. “First Connections Services” means any of the following services performed by a Provider through the First Connections program:
  - 1. Service Coordination;
  - 2. Developmental Therapy/Therapy Assistant Services;
  - 3. Speech Therapy Services;
  - 4. Physical Therapy Services;
  - 5. Occupational Therapy Services;
  - 6. Assistive Technology/Adaptive Equipment;
  - 7. Health Services;
  - 8. Social Work Services;
  - 9. Nutritional Services;
  - 10. Transportation;
  - 11. Vision Services;
  - 12. Multi-Disciplinary Evaluation;
  - 13. Medical Diagnostic Services;
  - 14. Psychological Services;
  - 15. Audiological;
  - 16. Family Training, Counseling and Home Visits; and
  - 17. Signed and Cued language.

- G. “*First Connections*” means the 0-3 program in the State of Arkansas administered by DDS in accordance with Part C of the IDEA.
- H. “*Monitoring Specialist*” means the member of the First Connections Quality Assurance, Certification and Licensure Unit responsible for overseeing and conducting certification and monitoring activities related to a First Connections Provider, including, but not limited to, all Certification Reviews and Periodic Monitoring Reviews.
- I. “*Periodic Monitoring Review*” means any evaluation of a program and/or provider to ensure program quality and compliance with Part C of IDEA, guidelines issued by OSEP, First Connections Policies and Procedures, and First Connections Certification Standards. Procedures relating to a Periodic Monitoring Review are provided in Section 8.
- J. “*First Connections Policies and Procedures*” means the rules, regulations, policies and procedures established at any given time by DDS (and approved by OSEP) for the First Connections program that prospective or current Providers must remain in substantial compliance with to participate in First Connections program.
- K. “*Provider*” means an individual or organization certified to perform one or more First Connections service(s).

#### **4. DDS Certification and Monitoring Program Generally.**

Federal regulations require DDS to ensure that only qualified personnel are providing First Connections services, and that all certified Providers are performing First Connections services in a manner that complies with the applicable federal and state regulations and guidelines. As a result, DDS has established the First Connections Certification Standards and First Connections Policies and Procedures with which all Providers must be in substantial compliance in order to participate in the First Connections program. The purpose of the certification and monitoring program is to ensure that all participants in the First Connections program are in substantial compliance with these First Connections Policies and Procedures and First Connections Certification Standards at all times.

The certification status of a Provider is dependent on the extent of the Provider’s substantial compliance at any given time with the currently effective First Connections Policies and Procedures, and First Connections Certification Standards, as determined through Periodic Monitoring Reviews. DDS shall

separately certify an individual or organization for each First Connections service that the individual or organization seeks to provide. A certification is valid and effective only for the individual or organization to which the certification is issued, and a certification may not be transferred to another individual or organization.

Once certified to provide a First Connections service, the Provider must be able to produce a copy of the certification upon request and also appropriately upload the certification into CDS.

## 5. **Certification Status Levels.**

Each Provider will always be certified under one of the following classifications:

- “*Temporary Certification*” is the preliminary certification status granted to a new Provider, or an existing Provider offering a new First Connections service, upon the Provider demonstrating compliance with the First Connections Certification Standards relating to the service(s) seeking to be offered. Temporary Certification will be provided for a term of up to one hundred eighty (180) days, and is discussed in more detail in Section 6 herein.
- “*Regular Certification*” is the certification status granted to a Provider when the Provider is found to be in substantial compliance with all First Connections Certification Standards and First Connections Policies and Procedures.
- “*Regular Certification with Requirements*” is a downgrade from Regular Certification given to a Provider when they are found to be substantially out of compliance with applicable First Connections Certification Standards and/or First Connections Policies and Procedures by a Monitoring Specialist during a Periodic Monitoring Review. A downgrade to Regular Certification with Requirements does not affect a Provider’s ability to offer First Connections services, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Monitoring Specialist can provide written documentation of a Provider’s efforts towards correcting any non-compliance issues, the Monitoring Specialist may grant up to a sixty (60) day extension to the preliminary corrective period. Under no circumstances may a corrective period be longer than ninety (90) days.
- “*Suspended Certification*” means that a Provider is removed from the CDS database as a Provider and is prohibited from providing any First Connections services.

## 6. **Procedural Guidelines: New Provider Certification Process**

- A. **Initial Application Process.** In order to deliver any First Connections service through the First Connections program, an individual or organization must first request, complete and submit an application packet. Potential applicants can contact the First Connections' central office to obtain the contact information of a Monitoring Specialist that will provide the applicant with an application packet. Completed applications are to be returned to the Monitoring Specialist who issued it. Only completed applications will be considered.

All owners of the Provider must be listed on the application for ownership. If a change of ownership occurs, it must be reported to First Connections within thirty (30) days.

- B. **Temporary Certification.** If the Monitoring Specialist determines that the application and supporting documentation satisfy First Connections Certification Standards, the applicant is notified in writing that Temporary Certification status has been granted. Temporary Certification status permits the applicant to begin providing the applicable First Connections services in the county or counties selected in the application. After services are initiated, the Monitoring Specialist will conduct Periodic Monitoring Reviews, as deemed necessary, to monitor the applicant's compliance with First Connections Certification Standards and First Connections Policies and Procedures.

- C. **Regular Certification or Denial of Certification.** At least thirty (30) days prior to the expiration of the applicant's Temporary Certification, the Monitoring Specialist will conduct a Monitoring Review. If the Monitoring Specialist determines that the Provider is in substantial compliance with the First Connections Certification Standards and First Connections Policies and Procedures, the Provider is granted Regular Certification status. If the Monitoring Specialist determines that the Provider is not in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures, the Monitoring Specialist may impose corrective actions and/or enforcement remedies (see Section 9 for additional details). If the Provider is unable to achieve substantial compliance with applicable First Connections Certification Standards and First Connections Policies and Procedures prior to the expiration of the Temporary Certification, Regular Certification will be denied, and the applicant will no longer be permitted to provide the applicable First Connections services.

An applicant that is denied Regular Certification will have to wait until the next DHS determined open enrollment for new providers before they will be allowed to apply for certification under the First Connections program again.

7. **Procedural Guidelines: General Supervision/Monitoring Reviews:**

A Periodic Monitoring Review of a Provider may be conducted by a Monitoring Specialist at any time and for any reason. A Monitoring Specialist will conduct a Monitoring Review of every assigned Provider to ensure continued substantial compliance by the Provider with IDEA program requirements, First Connections Certification Standards, and First Connections Policies and Procedures. Monitoring Reviews may be conducted through on-site visits, electronic off-site records review, or a combination of both. Monitoring Specialists, as part of a Monitoring Review, may conduct fiscal monitoring, may interview staff and may interview parents of children currently or formerly served.

A Periodic Monitoring Review may involve only off-site information review through CDS by the Monitoring Specialist, and a Monitoring Specialist may or may not provide advance notice to a Provider of their intent to conduct a Periodic Monitoring Review. Examples of situations where Periodic Monitoring Reviews might be conducted include, but are not limited to:

- During Temporary Certification for a new Provider;
- As a follow-up to a Monitoring Review report, to monitor whether non-compliance issues set out in the report have been corrected;
- Conducting random, unscheduled monitoring throughout the year to ensure consistent compliance with First Connections Certification Standards and First Connections Policies and Procedures;
- At the end of a specified timeframe relating to a corrective action, enforcement remedy or certification downgrade to determine if required action has been performed;
- When any information gathering is necessary to investigate a formal concern or complaint (as provided in the First Connections Policies and Procedures) filing with DDS; and
- Any other situation where DDS or the Monitoring Specialist determines that a Periodic Monitoring Review is warranted.

A. Off-site Information Review.

The objective of off-site information review is to analyze various sources of Provider information available, primarily through CDS, to identify any areas of concern, non-compliance or other issues, and to focus the efforts of the Monitoring Specialist during any on-site review, if an on-site review is deemed necessary. The Monitoring Specialist may collect and analyze information from all available sources, including without limitation:

- Service concerns or formal complaints submitted to DDS during the prior year;
- Review of attendance of any required training, personnel development, or technical assistance requested by the QA Monitoring Specialist;
- Fiscal audit;
- Documentation from the Provider requested in advance;
- The results of any Periodic Monitoring Reviews during the prior year, and;
- Contact with the parents of individuals served by the Provider.

Certifications are renewed every three (3) years. Each Provider organization is responsible for ensuring that every one of its employee Providers has all necessary certification material uploaded appropriately into CDS prior to certification expiration date. Monitoring Specialists may conduct a Certification Review of a Provider at any time to ensure compliance with First Connections Certification Standards and to confirm all the necessary certification material has been uploaded into CDS.

If the Monitoring Specialist determines that potential instances of non-compliance with Part C Program requirements set forth by IDEA and/or the Office of Special Education Programs or First Connections Certification Standards and/or First Connections Policies and Procedures or other concerns and issues found during the off-site information review warrant additional investigation and review, the Monitoring Specialist may set up dates for conducting on-site information collection and review with the Provider Program Administrator.

#### B. On-site Information Review

The Monitoring Specialist will contact the individual listed as the Executive Director of the Provider Program to arrange a date and time for the on-site information review and identify which staff need to be present/involved. Each Provider will be responsible for providing the Monitoring Specialist access to its premises, records, staff, and individuals and families served to facilitate the on-site information review. The Monitoring Specialist will request any additional information that the Provider must submit prior to the on-site review. If the Monitoring Specialist has questions and needs additional information during the on-site review, he/she will request it from the Provider at the visit or request that it be sent following the on-site visit.

The extent and depth of the on-site information review necessary shall be determined on a case-by-case basis by the Monitoring Specialist based upon the severity and/or urgency of the non-compliance or other issues and concerns discovered by the Monitoring Specialist during the off-site information review.

An on-site information review may consist of any one or more of the following:

- Review of Provider on-site paper or electronic records
- Interviews with Provider administrators or other staff
- Interviews with parent(s) of individuals served by the Provider
- Tour of any Provider facilities
- Any other reasonable information gathering activities requested by the Monitoring Specialist

To the extent feasible, the Monitoring Specialist will attempt to maintain open and ongoing dialogue with the Executive Director of the Provider throughout the on-site information review and shall take reasonable steps to minimize the disruption to the Provider's day-to-day operations during any on-site information review.

The Monitoring Specialist will conduct an exit interview at the end of the on-site review. During the exit interview, the Monitoring Specialist will review all noted areas of noncompliance.

8. **Monitoring Review Report**

The Monitoring Review report will describe the collective findings of the Monitoring Specialist during the QA Monitoring Review and identify the specific IDEA and/or First Connections Certification Standards and/or First Connections Policies and Procedures with which the Provider is out of compliance.

A Periodic Monitoring Review report will be prepared and sent to a Provider only (i) if non-compliance with the First Connections Certification Standards and/or First Connections Policies and Procedures was found during the Periodic Monitoring Review, (ii) if the Periodic Monitoring Review was a follow-up to a prior corrective action, enforcement remedy or certification downgrade; or (iii) if the Monitoring Specialist feels the circumstances require a Periodic Monitoring Review report. If a Periodic Monitoring Review report is prepared, then the report will set out the findings, any corrective action and/or other enforcement remedy/ies that are to be initiated (explained in more detail in Section 9), and, if applicable, a timeline for completion.

A Monitoring Specialist is required to initiate a referral to the Medicaid Audit division for investigation, if, in the course of any Periodic Monitoring Review, they identify instances of non-compliance with Medicaid billing. The results of the Medicaid Audit alone may result in DDS imposing enforcement remedies on a Provider, including, but not limited to, the recoupment of funds and/or de-certification. Any Provider placed on the Medicaid excluded provider list or that has its Medicaid billing number terminated or suspended will be automatically de-certified as a Provider in the First Connections program.

9. **Enforcement Remedies**

DDS may impose various enforcement remedies upon a Provider when a Monitoring Specialist discovers non-compliance with IDEA regulations, OSEP Part C Program requirements, First Connections Certification Standards, and/or First Connections Policies and Procedures. This section lists in detail the various enforcement remedies, in approximately increasing order of severity, which DDS may impose upon a Provider when a Monitoring Specialist discovers ongoing non-compliance. These enforcement remedies are not mutually exclusive, and any one or more of these remedies may apply to a Provider simultaneously. Additionally, enforcement remedies may be applied to only one or more First Connections services provided by a Provider (and not affect other First Connections services offered by the Provider) or may be applied to an entire organizational Provider and every one of its employee Providers.

The number and severity of enforcement remedies applied to a Provider will be determined on a case-by-case basis by the Monitoring Specialist who conducted Monitoring Review, as applicable. The enforcement remedies applied will be based in part upon:

- Frequency of Non-compliance: Providers which are habitually found to be in non-compliance will face increasingly severe enforcement remedies.
- Responsiveness in Correcting Non-compliance: The less responsive a Provider is in correcting previous and/or current issues of non-compliance within timelines the more severe the enforcement remedy.
- Re-lapse Non-compliance: Providers found to be out of compliance in areas previously addressed will face increasingly severe enforcement remedies when later found out of compliance for the same issue.
- Non-compliance Constituting Intentional Fraud: Non-compliance (either monetary or document falsification or other attempts to cover up an issue of non-compliance) constituting intentional fraud will result in more severe enforcement remedies.

Provider action or inaction that jeopardizes the health or safety of an individual (child served or family member) will be reported to the appropriate agencies for investigation. Substantiated reports will result in de-certification of the Provider.

Reports of noncompliance will be referred to the Division of Child Care and Early Childhood Education for any Providers who are also licensed by them.



A Monitoring Specialist must obtain the consent of the First Connections Part C Coordinator prior to imposing any of the enforcement remedies set out in subsection D through H below. An appeal of any enforcement remedy outlined in subsection D through H below may be filed according to procedures outlined in DDS Policy #1076, or any DDS replacement or successor appeals policy.

A. Directed In-Service Training/Targeted Technical Assistance.

Directed In-Service Training and/or Targeted Technical Assistance is mandatory, required, targeted support, training, and/or technical assistance to assist Providers in correcting compliance deficiencies. The Monitoring Specialist determines: (i) the topic/s of training; (ii) the length of training/technical assistance; and (iii) the Provider staff that need to be in attendance (which may include all Provider staff). First Connections' Training Unit will collaborate with QA and the Provider program to provide the in-service training and/or targeted technical assistance either on site or via one or more live Webinar(s).

B. Directed Plan of Correction.

A Directed Plan of Correction is a plan of action developed by the Monitoring Specialist that includes whatever the Monitoring Specialist reasonably believes is required to correct the various areas of Provider non-compliance. Achieving substantial compliance through completion of the Directed Plan of Correction is the responsibility of the Provider. A time frame for each specific action will be specified in the plan.

C. Downgrade Certification to "Regular Certification with Requirements."

If a Provider is not in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures within the timeframe stated in a Monitoring Review Report, the status of the Provider will be downgraded to a Regular Certification with Requirements.

A downgrade to Regular Certification with Requirements does not affect a Provider's ability to offer First Connections services, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Monitoring Specialist can document a Provider's efforts towards correcting any non-compliance issues, the Monitoring Specialist may grant up to a sixty (60) day extension to the preliminary corrective period, but under no circumstances may a corrective period be longer than ninety (90) days.

During the correction period, the Provider shall submit weekly progress reports regarding compliance efforts to the Monitoring Specialist. In order to achieve restoration of its Regular Certification, the Provider must correct all identified

deficiencies and demonstrate substantial compliance with all state and federal policies, guidelines and requirements. Failure of the Provider to correct all deficiencies and move into substantial compliance may result in suspended certification, withholding of payments, and/or recoupment of funds.

D. Withhold Payment for Services.

Withholding payments to a Provider relating to invoices for First Connections services rendered will be reserved for specific circumstances, including, but not limited to, the following:

- A suspended or de-certified Provider (i.e. a Provider that is not certified to perform First Connections services) submitting an invoice for the performance of a First Connections service;
- Reasonable evidence that a Provider has engaged in fraudulent activities;
- Withholding of funds until the Provider follows through with agreed to provisions of a Directed Plan of Correction or other enforcement remedy; and
- Any other circumstance where there is reasonable and documented justification for withholding the payment of funds.

E. Repayment of Funds.

If justified by the circumstances, DDS reserves the right to require the repayment of funds previously paid to a Provider relating to First Connections services. Such circumstances include, but are not limited to, the following:

- Payments were attributable to First Connections services that were not actually performed;
- Payments were attributable to a First Connections service that may have been performed but has not been delivered after documented attempts (i.e.: evaluation was completed but First Connections did not receive the evaluation report and the report is not present in the child's electronic record);
- Payments were attributable to First Connections services that were not performed in accordance with the First Connections Certification Standards and/or First Connections Policies and Procedures;
- Overpayments made by First Connections to a Provider;

- Repayment required by court order, federal agency or other applicable state or federal law; and
- Any other circumstance where the lead agency has reasonable, documented justification for requiring the re-payment of funds previously paid to a Provider.

F. Moratorium on Expansion.

Moratorium on Expansion is an enforcement remedy that prohibits a Provider from expanding capacity for current First Connections Service delivery in existing certified service areas and expanding to offer current or new First Connections in new service areas. While a provider is in this status, they may continue to offer services to existing families on their caseload, however First Connections will withhold referrals for new families and children until the provider has been restored to Regular Certification. A Moratorium on Expansion shall remain in place until the Provider is in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures, and the Monitoring Specialist believes the Provider is willing and able to remain in substantial compliance.

G. Downgrade Certification to “Suspended Certification.”

A downgrade in certification to Suspended Certification removes a Provider from the CDS database, and prohibits a Provider from providing First Connections services. A Provider will not be assigned new individuals or families entering First Connections while under Suspended Certification. Additionally, families of children already being served the Provider will immediately be contacted and informed of the Suspended Certification, and will be given the opportunity to be re-assigned to another area Provider in good standing. During the term of a Suspended Certification, the Provider shall submit weekly progress reports regarding its compliance efforts until all non-compliance deficiencies have been corrected. Suspended Certification status will not be removed until the Monitoring Specialist has determined the Provider has returned to substantial compliance with the First Connections Certification Standards and First Connections Policies and Procedures. The failure of a Provider to substantially comply within sixty (60) calendar days of its downgrade to Suspended Certification will result in de-certification of the Provider.

H. Revocation of Certification.

De-certification of a Provider prevents the Provider from performing any further First Connections services as of the date of de-certification, and the Provider will be removed from CDS. If the Provider is an organization, the same would apply to

its entire staff of employee Providers. All individuals actively receiving First Connections services from the Provider will be re-assigned to other area Providers in good standing. DDS may withhold any payments to a de-certified Provider for a reasonable amount of time to determine the appropriateness of the requested payment, even if the First Connections services submitted for payment were performed prior to de-certification. A Provider that is de-certified will have to wait a minimum of three (3) years before they will be allowed to apply for certification under the First Connections program again.

PROPOSED