

DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES

SUBJECT: DDS Admin. 1089: Expansion of Children's Early Intervention Day Treatment Services

DESCRIPTION: This rule manages the expansion of new sites for DDTCS, CHMS, or any successor program in compliance with Act 1017 of 2013. Its purpose is to avoid unnecessary expansion in Medicaid costs and services related to child health management services and developmental day treatment clinic services for children or any successor program providing early intervention day treatment to children.

PUBLIC COMMENT: A public hearing was held on November 20, 2013. The public comment period expired November 29, 2013. The Department received the following public comments:

Sara Israel, Executive Director

Developmental Disabilities Providers Association

COMMENT: At its November meeting, the DDPA Board of Directors voted unanimously to support the managed expansion rules recently published by DDS. We appreciate the opportunity to be consulted in their development, and your time and attention in responding to our member questions and concerns.

I would like to add that there was general disappointment among many of our members that there were so many applications for new CHMS programs prior to the July 1 deadline, thus undermining the intent of Act 1017 of 2013. It was our hope that the act authorizing the new managed expansion rules would serve as a check on growth in the CHMS program. As we now know, the July 1 deadline was a miscalculation.

Still, we very much appreciate your support and work on this issue.

Support Solutions, Inc.

COMMENT: In reviewing policy 1089, it was noted that only licensed providers are allowed to provide DDTCS and open new DDTCS programs. That's what we were just talking about. DDS prefers providers to use DDTCS options for cost savings on waiver services. Support Solutions has not been able to use this resource due to the behavioral issues of the individuals we support. It is evident to us that part of the underserved populations include individuals with behavioral challenges.

Support Solutions is an LLC which has been providing residential services in Arkansas since 2011. Support Solutions is a CARF accredited agency that is a certified provider in Arkansas. In 2013, Support Solutions has increased the individuals supported from 29 to 49, with six more individuals that have been referred to our services and they are waiting, kind of in the queue. In most cases, these are individuals that no other provider in Arkansas is willing to support. These -- or no other provider in Arkansas is willing to support these individuals in the community due to their often serious past behavioral histories. Support Solutions believes, as a certified provider, that revisions to the Policy

1089 should include the allowance of certified providers to operate DDTCS programs. At the conclusion of Policy 1089, it references DHS policy 1088, which identifies exclusions of provider types. However, it does not list certified providers as an exclusion as a provider.

Support Solutions has always and will be interested in providing services to this underserved population in Arkansas. By making revisions to the Policy 1089 include -- should include "certified providers" and it would allow Support Solutions, which is a for-profit company, an equal opportunity.

RESPONSE: The revision to the policy was primarily focused on the pre-school Developmental Day Treatment Clinic Service ("DDTCS") centers, which are somewhat similarly situated to the Children's Health Management Services ("CHMS") centers. That was the focus of Act 1017 that brought about this proposed revision. Because the existing DDS expansion policy does encompass both children and adult services, DDS did not feel the need to create a separate policy for children's services, but instead addressed the distinction by creating two subsections in the proposed policy: Part A, which will govern expansion of adult DDTCS services, and Part B, which will govern expansion of children's services in both DDTCS and CHMS centers.

The nonprofit community providers who are licensed by DDS to operate DDTCS centers enjoy a status recognized in statute (Ark. Code Ann. § 20-48-101). The process required for DDS to issue a new license to an organization is very prescribed (see, Ark. Code Ann. § 20-48-105) and makes no provision for issuing a license to operate a DDTCS center to providers who are certified to provide waiver services.

The proposed effective date for the rule is March 1, 2014.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Ark. Code Ann. § 20-48-1107, derived from Acts 2013, No. 1017, authorizes the Division of Developmental Disability Services of the Department of Human services to adopt rules regarding the certification and licensure of child health management services programs, developmental day treatment clinic services programs, or successor programs. Ark. Code Ann. § 20-48-1104 bestows unto the Division the authority to determine whether a county is underserved for purposes of expansion of early intervention day treatment services for children.

Ark. Code Ann. § 20-48-208 directs the Board of Developmental Disabilities Services* to regulate and license organizations for the provision of developmental disabilities services for adults with developmental disabilities. Ark. Code Ann. § 20-48-105 grants the Division the authority to determine whether a county is underserved for purposes of expansion of nonresidential services to adults with developmental disabilities.

*Acts 1971, No. 38, § 12 transferred the Board to the Department of Human Services. Acts 1985, No. 348, § 3, transferred the functions, powers, and duties of the Board with respect to programs and services for individuals with developmental disabilities to the Department of Human Services and its divisions.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Developmental Disabilities Services
DIVISION DIRECTOR James C. "Charlie" Green, PhD
CONTACT PERSON Jim Brader
ADDRESS P.O. Box 1437, Slot N-501, Little Rock, AR 72203-1437
PHONE NO. (501) 682-4747 FAX NO. 501-682-8380 E-MAIL james.brader@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Jim Brader
PRESENTER E-MAIL james.brader@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

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1. What is the short title of this rule? DDS Admin 1089, Expansion of Children's Early Intervention Day Treatment Services
2. What is the subject of the proposed rule? Managing the expansion of sites offering DDTCS or CHMS services, or the sites of any successor program.
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. Act 1017 of 2013 placed regulation of the expansion of new CHMS or DDTCS sites under the Division of Developmental Disabilities Services. Prior to that Act only DDTCS sites were governed by DDS policy.

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. DDS Admin Rule 1089 governed the expansion of new sites offering DDTCS 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."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code Ann §§ 20-48-208; 20-48-105; 20-48-1107.

7. What is the purpose of this proposed rule? Why is it necessary? This rule manages the expansion of new sites for DDTCS, CHMS, or any successor program in compliance with Act 1017 of 2013. Its purpose is to avoid unnecessary expansion in Medicaid costs and services related to child health management services and developmental day treatment clinic services for children or any successor program providing early intervention day treatment to children

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://www.medicaid.state.ar.us/InternetSolution/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: 11/20/13

Time: 5:00 p.m. to 6:30 p.m.

Arkansas Enterprises for the
Developmentally Disabled, Inc.
Administration Office
105 East Roosevelt Road

Place: Little Rock, AR 72206

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

11/29/13

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



FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Developmental Disabilities Services
PERSON COMPLETING THIS STATEMENT Jim Brader
TELEPHONE NO. (501)682-4747 **FAX NO.** (501)682-8380 **EMAIL:** james.brader@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 DDS Admin 1089, Expansion of Children's Early Intervention Day Treatment 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?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total \$0 _____

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

\$ \$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.

