

EXHIBIT E

DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES

SUBJECT: DDS Policy 1076 - Appeals

DESCRIPTION: DDS operates five (5) Human Development Centers, a Medicaid waiver that offers home and community based services, and a variety of community programs and services. DDS Policy 1076 provides the process for appealing decisions made by DDS regarding all of the programs it operates.

Policy 1076 was amended to reflect the appeals procedure in the Medicaid Provider Manual. Pursuant to this manual, all reconsiderations and appeals of DDS decisions shall be made in accordance with the Administrative Procedure Act, the Medicaid Fairness Act, and the Medicaid Provider Manual.

PUBLIC COMMENT: A public hearing was held on August 8, 2017. The public comment period expired on August 11, 2017. The Department provided the following public comment summary:

Comment: The existing policy includes very specific information regarding timelines for appeals, how to file appeals, and the appeals process for various DDS Programs. The proposed policy eliminates that information. Unless the information is shared with consumers in another format, beneficiaries will have difficulty accessing information necessary to challenge the State action. DRA recommends that DDS provide clear information to beneficiaries on their rights to challenge adverse actions in an easily accessible format if it will not be included in Policy 1076. In addition, the changes to Policy 1076 make it seem as if an appeal to the DDS Director or designee for reconsideration is the first step in the appeals process, which is vastly different than a beneficiary's rights under the existing policy. DRA recommends clarification on this issue so that beneficiaries are aware of their rights to appeal adverse decisions and to request hearings, when and if appropriate.

Response: We agree with your point and will go into greater detail with clients when apprising them of their appeal rights.

The agency states that this CMS approval is not required for this rule. The proposed effective date is October 1, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to the Arkansas Administrative Procedure Act ("APA"), codified at Arkansas Code Annotated §§ 25-15-201 through 25-15-219, an agency shall adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available. *See* Ark. Code Ann. § 25-15-203(a)(2). Likewise, Ark. Code Ann. § 20-77-1716 permits the Department of Human Services ("Department") to promulgate rules to implement the Medicaid Fairness Act ("MFA"), codified at Ark. Code Ann. §§ 20-77-1701 through 20-77-1718. Within the MFA, the General Assembly clarified its intent that providers have the right to fair and impartial administrative appeals and emphasized that the right of appeal was to be liberally construed and not limited through technical or procedural arguments by the Department.

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See Ark. Code Ann. § 20-77-1704(a). In accord with the MFA, a provider appeal shall be governed by the APA, unless otherwise provided in the MFA. *See Ark. Code Ann. § 20-77-1704(b)(1)(B)(i).* *See also Ark. Code Ann. § 25-15-213* (concerning hearings, generally, under the APA).

EXHIBIT E

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? DDS Policy 1076—Appeals

2. What is the subject of the proposed rule? Modify and update the DDS Appeals policy.

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. _____

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."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. § 25-15-201 et seq, Medicaid Fairness Act, Ark. Code Ann. § 20-77-1701 et seq.
7. What is the purpose of this proposed rule? Why is it necessary? Modify the appeals policy to align with the Medicaid Provider Manual and Medicaid appeals policy.
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: August 8, 2017
- Time: 4:30 p.m.
- Arkansas Enterprises for the Developmentally Disabled
105 East Roosevelt Road
- Place: Little Rock, AR 72206
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
August 11, 2017
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
October 1, 2017
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. Recipients of services, their parents/guardians, Community Programs, Service Providers, Care Coordinators, other interested parties and DDS employees

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 DDS Policy 1076—Appeals

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	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

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

Current Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</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

\$ 0

Next Fiscal Year

\$ 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

\$ 0

Next Fiscal Year

\$ 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.

SUMMARY OF DDS POLICY 1076 APPEALS

The Department of Human Services Division of Developmental Disability Services (DDS) operates five (5) Human Development Centers, a Medicaid Waiver that offers Home and Community Based Services, and a variety of Community Programs and Services. DDS Policy 1076 provides the process for appealing decisions made by DDS regarding all of the programs it operates.

Policy 1076 was amended to reflect the appeals procedure in the Medicaid Provider Manual. Pursuant to this Manual, all reconsiderations and appeals of DDS decisions shall be made in accordance with the Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq.; the Medicaid Fairness Act, Ark. Code Ann. § 20-77-1701 et seq.; and the Medicaid Provider Manual §§ 160.000, 190.000, and 191.000.