

EXHIBIT F

DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES

SUBJECT: Human Development Center (HDC) Admission and Discharge Rules Policy 1086

DESCRIPTION: DDS operates five (5) Human Development Centers (HDC) for individuals with intellectual/developmental disabilities. As the operational agency, and by delegation from the DDS Board, DDS proposes the following changes to the HDC Admissions and Discharge Policy (Policy 1086):

1. Require that individuals entering an HDC or being discharged into Home and Community Based Settings undergo an Independent Assessment for functional needs in accordance with the Independent Assessment Manual.
2. Update the Categorically Qualifying Diagnosis to include Spina Bifida and Down Syndrome so that it reflects the definition established by Ark. Code Ann. § 20-48-101.
3. Incorporate the level of care criteria used by the psychological evaluation team to assess whether someone meets the institutional level of care. This is the criterion that is currently being used to assess level of care need for an HDC.

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 summary of the public comments it received:

Comment: Section II(a)(3) of the policy discussed the use of an Annual Status review for HDC residents which would, in part, be used to determine continued eligibility for HDC services. There is no mention of what role, if any, the new Independent Assessment will fill as part of the residents' annual review, or if residents will be re-assessed periodically. The Independent Assessment will be used to screen all prospective incoming residents for eligibility, but will not be applied retroactively to the individuals currently residing in the centers. It is unclear if current residents will be assessed moving forward as part of their annual review, or if they will be exempt from the Assessment in perpetuity.

Response: Only clients who are transitioning into or out of an HDC will be required to receive an independent assessment. Current HDC clients will be exempt from the IA requirement unless they choose to transition into the community. They will continue to meet annual long-term care eligibility requirements.

Comment: Under Section II(e)(3) of the policy, which deals with criteria for discharge from the centers, it states that "[e]ven without a request for discharge, an HDC Superintendent must discharge an individual upon determination by HDC professionals that that individual is no longer eligible for admission or retention." More clarity is needed with regard to how the use of the new Independent Assessment tool will affect HDC eligibility moving forward, and what the process will be for any residents of the centers who are determined to no longer qualify for Tier 3 services.

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Response: The IA will not be used on current HDC clients. The manuals clearly outline the process of how this tool will be used on incoming HDC clients.

Comment: There is also no mention of how the Independent Assessment will apply in the case of Emergency Referrals. In circumstances in which an individual is assessed at Tier 2 but requires an emergency admission, it is unclear whether that assessment will disqualify them from receiving those emergency services or whether they will be provided with respite care and not be formally admitted. Again, more clarity in the rules on this issue is needed.

Response: Respite care will be available upon need. There is a provision for assessment after emergency placement.

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

FINANCIAL IMPACT: Please see the financial impact statement accompanying the Independent Assessment Manual which details the total cost of incorporating the Independent Assessments, including the costs associated with the HDCs utilizing the assessment.

LEGAL AUTHORIZATION: With respect to human development centers, the Board of Developmental Disabilities Services (“Board”) “is charged with the care and training of mentally defective individuals.” Ark. Code Ann. § 20-48-403(b). The Board “may make such regulations respecting the care, custody, training, and discipline of retarded individuals in the centers or receiving mental retardation services and respecting the management of the [human development] centers and their affairs as it may deem necessary or desirable to the proper performance of its powers and purposes.” Ark. Code Ann. § 20-48-205(b). *See also* Ark. Code Ann. § 20-48-415(i) (providing that the Board “may make such rules and regulations respecting the care, custody, training, and discipline of individuals admitted to the [human development] centers and the management thereof and of its affairs as it may deem for the best interest of the centers and the State of Arkansas”). The Board is further permitted to delegate to the Deputy Director of the Division of Developmental Disabilities Services of the Department of Human Services any powers of the Board upon such terms and for such duration as the Board shall specify. *See* Ark. Code Ann. § 20-48-210(e).

EXHIBIT F

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? Human Development Center (HDC) Admission and Discharge Rules (Policy 1086)

2. What is the subject of the proposed rule? Modify and update the HDC Admission and discharge rules.

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. § 20-48-101

7. What is the purpose of this proposed rule? Why is it necessary? Modify and update the Human Development Center Admission and Discharge Rules to include the Independent Assessment of individuals being admitted or discharged into home and community based settings; update the eligibility criteria to mirror A.C.A. 20-48-101; and incorporate the level of care criteria used by DDS' psychological team to determine if someone meets institutional level of care.

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. Families or other interested parties of individuals being admitted into or discharged from Human Development Centers.

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 1086—HDC Admissions and Discharge

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

Please see the financial impact statement accompanying the Independent Assessment Manual, which details the total cost of incorporating the Independent Assessments, including the costs associated with the HDCs utilizing the assessment.

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 1086
HUMAN DEVELOPMENT CENTER
ADMISSION AND DISCHARGE RULES**

The Department of Human Services Division of Developmental Disability Services (DDS) operates five (5) Human Development Centers (HDC) for individuals with intellectual/developmental disabilities. As the operational agency, and by delegation from the Developmental Disabilities Services Board, DDS proposes the following changes to the HDC Admissions and Discharge Policy (Policy #1086):

- Require that individuals entering an HDC or being discharged into Home and Community Based Settings undergo an Independent Assessment for functional needs in accordance with the Independent Assessment Manual.
- Update the Categorically Qualifying Diagnosis to include Spina Bifida and Downs Syndrome so that it reflects the definition established by A.C.A § 20-48-101.
- Incorporate the level of care criteria used by the psychological evaluation team to assess whether someone meets the institutional level of care. This is the criterion that is currently being used to assess level of care need for an HDC.

