

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011

# A Bill

HOUSE BILL 1211

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5 By: Representatives Mayberry, T. Baker, Benedict, Collins-Smith, E. Elliott, Gillam, Hammer,  
6 Hickerson, Hobbs, Hopper, Lampkin, Murdock, Post, Ratliff, F. Smith, G. Smith, T. Steele, T.  
7 Thompson, Wardlaw, Westerman  
8 By: Senators Lavery, Bledsoe, Elliott, D. Johnson

## For An Act To Be Entitled

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10 AN ACT TO CLARIFY THE DEFINITION OF A QUALIFYING  
11 DIAGNOSIS THAT ESTABLISHES CATEGORICAL ELIGIBILITY  
12 FOR DEVELOPMENTAL DISABILITY SERVICES; AND FOR OTHER  
13 PURPOSES.  
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## Subtitle

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17 AN ACT TO CLARIFY THE DEFINITION OF A  
18 QUALIFYING DIAGNOSIS THAT ESTABLISHES  
19 CATEGORICAL ELIGIBILITY FOR DEVELOPMENTAL  
20 DISABILITY SERVICES.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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26 SECTION 1. Arkansas Code § 4-88-201, is amended to read as follows:  
27 4-88-201. Definitions.

28 (a) "Elder person" means a person who is sixty (60) years of age or  
29 older.

30 (b) "Disabled person" means a person who has a physical or mental  
31 impairment which substantially limits one (1) or more of such person's major  
32 life activities.

33 (1) As used in this subsection, "physical or mental impairment"  
34 means any of the following:

35 (A) Any physiological disorder or condition, cosmetic  
36 disfigurement, or anatomical loss substantially affecting one (1) or more of



1 the following body systems: neurological; musculoskeletal; special sense  
2 organs; respiratory, including speech organs; cardiovascular; reproductive;  
3 digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

4 (B) Any mental or psychological disorder, such as mental  
5 retardation, organic brain syndrome, emotional or mental illness, and  
6 specific learning disabilities.

7 (2) The term "physical or mental impairment" includes, but is  
8 not limited to, such diseases and conditions as orthopedic, visual, speech  
9 and hearing impairment, cerebral palsy, spina bifida, Down syndrome,  
10 epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease,  
11 diabetes, mental retardation, and emotional illness.

12 (c) "Substantially limits" means substantially interferes with or  
13 affects over an extended period of time. Minor temporary ailments or injuries  
14 shall not be considered physical or mental impairments which substantially  
15 limit a person's major life activities. Examples of minor temporary ailments  
16 are colds, influenza, sprains, or minor injuries.

17 (d) "Major life activities" include functions such as caring for  
18 oneself, performing manual tasks, walking, seeing, hearing, speaking,  
19 breathing, learning, and working.

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21 SECTION 2. Arkansas Code § 20-48-101 is amended to read as follows:

22 20-48-101. Definitions.

23 As used in this chapter:

24 (1)(A) "Accredited nonprofit entity" means a nonprofit entity  
25 that:

26 (i) Has successfully completed an ongoing  
27 accreditation process that is related to the delivery of services to persons  
28 with developmental disabilities and is offered by a national accrediting  
29 organization;

30 (ii) Satisfies the appropriate licensure criteria  
31 established by the Division of Developmental Disabilities Services of the  
32 Department of Human Services; and

33 (iii) Is positioned to provide nonresidential  
34 services to persons with developmental disabilities upon licensure by the  
35 division because no existing nonprofit community provider is interested in  
36 providing the specific category of nonresidential services to persons with

1 developmental disabilities that has been identified by the division as  
 2 underserved.

3 (B) As used in subdivision (1)(A)(i) of this section,  
 4 “national accrediting organization” includes without limitation:

5 (i) The Commission on Accreditation of  
 6 Rehabilitation Facilities; or

7 (ii) Any other similar national accrediting  
 8 organization recognized by the division;

9 (2) “Developmental disability” means a disability of a person  
 10 that:

11 (A)(i) Is attributable to mental retardation, cerebral  
 12 palsy, spina bifida, Down syndrome, epilepsy, or autism;

13 (ii) Is attributable to any other condition of a  
 14 person found to be closely related to mental retardation because the  
 15 condition results in an impairment of general intellectual functioning or  
 16 adaptive behavior similar to that of a person with mental retardation or  
 17 requires treatment and services similar to that required for a person with  
 18 mental retardation; or

19 (iii) Is attributable to dyslexia resulting from a  
 20 disability described in subdivision (2)(A)(i) of this section or subdivision  
 21 (2)(A)(ii) of this section;

22 (B) Originates before the person attains the age of  
 23 twenty-two (22) years;

24 (C) Has continued or can be expected to continue  
 25 indefinitely; and

26 (D) Constitutes a substantial handicap to the person’s  
 27 ability to function without appropriate support services, including, but not  
 28 limited to, planned recreational activities, medical services such as  
 29 physical therapy and speech therapy, and possibilities for sheltered  
 30 employment or job training;

31 (3) “Existing operations” means the provision by a qualified  
 32 nonprofit community provider of one (1) or more of the following services  
 33 without regard to order:

34 (A) A developmental day treatment clinic services  
 35 preschool program or adult development program;

36 (B) A licensed developmental disability services group

1 home in operation and recognized by the division on or before July 1, 1995;

2 (C) An intermediate care facility for the mentally  
3 retarded program with fifteen (15) beds or less; or

4 (D) An apartment complex in operation and serving  
5 individuals with developmental disabilities on or before January 1, 2008;

6 (4) "Human development center" means an institution maintained  
7 for the care and training of persons with developmental disabilities;

8 (5)(A) "Nonprofit community program" means a program that  
9 provides nonresidential services to persons with developmental disabilities  
10 or nonresidential and residential services to persons with developmental  
11 disabilities and is licensed by the division.

12 (B) A nonprofit community program serves as a quasi-  
13 governmental instrumentality of the state by providing support and services  
14 to persons who have a developmental disability or delay and would otherwise  
15 require support and services through state-operated programs and facilities;  
16 and

17 (6)(A) "Qualified nonprofit community program" means a nonprofit  
18 community program that holds a valid nonprofit community program license  
19 issued by the division.

20 (B) "Qualified nonprofit community program" includes:

21 (i) A nonprofit community program that holds a  
22 license that was issued by the division on or before February 1, 2007; and

23 (ii) An accredited nonprofit entity that is awarded  
24 a license as a nonprofit community program by the division after February 1,  
25 2007.

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27 SECTION 3. Arkansas Code § 20-48-603 is amended to read as follows:  
28 20-48-603. Definitions.

29 As used in this subchapter, unless the context otherwise requires:

30 (1)(A) "Developmental disability" means a disability of a person  
31 which:

32 (i) Is attributable to mental retardation, cerebral  
33 palsy, spina bifida, Down syndrome, epilepsy, or autism;

34 (ii) Is attributable to any other condition of a  
35 person found to be closely related to mental retardation because it results  
36 in impairment of general intellectual functioning or adaptive behavior

1 similar to those of mentally retarded persons or requires treatment and  
2 services similar to those required for the persons;

3 (iii) Is attributable to dyslexia resulting from  
4 mental retardation, cerebral palsy, epilepsy, or autism; and

5 (iv) Has continued or can be expected to continue  
6 indefinitely.

7 (B) "Development disability" does not refer to other forms  
8 of mental disease or defect not defined in this section;

9 (2) "Developmentally disabled person" means a person with a  
10 developmental disability as defined in this section;

11 (3) "Division" means the Division of Developmental Disabilities  
12 Services of the Department of Human Services or the staff of the division  
13 where the context so indicates;

14 (4)(A) "Family Home I" means a community-based residential home  
15 licensed by the division that provides room and board, personal care,  
16 habilitation services, and supervision in a single-family environment for not  
17 more than eight (8) developmentally disabled persons; and

18 (B) "Family Home II" means a community-based residential  
19 home licensed by the division that provides room and board, personal care,  
20 habilitation services, and supervision in a multi-family environment for more  
21 than eight (8), but fewer than sixteen (16), developmentally disabled  
22 persons;

23 (5) "Permitted use" means a use by right which is authorized in  
24 residential zoning districts; and

25 (6) "Political subdivision" means a county or municipal  
26 corporation and includes any boards, commissions, or councils governing land  
27 use on behalf of the political subdivision.

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29 SECTION 4. Arkansas Code § 21-15-101 is amended to read as follows:

30 21-15-101. Definitions.

31 As used in this subchapter:

32 (1) "Applicant" means a person applying for employment with a  
33 state agency;

34 (2) "Central registry check" means a review of the databases of  
35 the Child Maltreatment Central Registry, the Adult and Long-Term Care  
36 Facility Resident Maltreatment Central Registry, and the Certified Nursing

1 Assistant/Employment Clearance Registry maintained by the Office of Long-Term  
2 Care of the Division of Medical Services of the Department of Human Services  
3 pursuant to 42 C.F.R. § 483.156 and § 20-10-203;

4 (3) "Child" means a minor under eighteen (18) years of age;

5 (4) "Criminal history check" means a criminal history report  
6 produced by the Identification Bureau of the Department of Arkansas State  
7 Police;

8 (5) "Designated position" means a position in which a person is  
9 employed by a state agency to provide care, supervision, treatment, or any  
10 other services to the elderly, to mentally ill or developmentally disabled  
11 persons, to persons with mental illnesses, or to children who reside in any  
12 state-operated facility or a position in which the applicant or employee will  
13 have direct contact with a child or a person who is elderly, mentally ill, or  
14 developmentally disabled;

15 (6) "Designated financial or information technology position"  
16 means a position designated by a director of a division or office within the  
17 Department of Human Services in which the person placed in the position:

18 (A) Has the authority or capability via computer access or  
19 otherwise to receive payments or to issue, initiate, or approve a contract,  
20 grant, warrant, payment, or procurement in any form;

21 (B) Approves security access to information systems;

22 (C) Authenticates and configures user security access to  
23 information systems;

24 (D) Acts in the capacity of information technology  
25 network, application, or system administrator;

26 (E) Manages or directs information technology network,  
27 application, or system administrators; or

28 (F) Develops, designs, programs, or maintains information  
29 technology networks, applications, or systems;

30 (7) "Developmentally disabled person" means a person with a  
31 disability that is attributable to:

32 (A) Mental retardation, cerebral palsy, spina bifida, Down  
33 syndrome, epilepsy, or autism;

34 (B) Dyslexia resulting from a disability associated with  
35 mental retardation, cerebral palsy, epilepsy, or autism; or

36 (C) Any other condition found to be closely related to

1 mental retardation because it results in an impairment of general  
 2 intellectual functioning or adaptive behavior similar to those of mentally  
 3 retarded persons or requires treatment and services similar to those required  
 4 for mentally retarded persons;

5 (8) "Direct contact" means the ability to interview, question,  
 6 examine, interact with, talk with, or communicate with a child without being  
 7 in the physical presence of a person other than the child;

8 (9) "Elderly" means persons sixty-five (65) years of age or  
 9 older;

10 (10)(A) "Mentally ill persons" means persons who suffer from a  
 11 substantial impairment of emotional processes, or of the ability to exercise  
 12 conscious control of their actions, or of the ability to perceive reality or  
 13 to reason when the impairment is manifested in instances of extremely  
 14 abnormal behavior or extremely faulty perceptions.

15 (B) "Mentally ill persons" does not include persons whose  
 16 impairment is solely caused by epilepsy, continuous or noncontinuous periods  
 17 of intoxication caused by substances such as alcohol or drugs, or dependence  
 18 upon or addiction to any substance such as alcohol or drugs; and

19 (11)(A) "State agency" means any agency, authority, board,  
 20 bureau, commission, council, department, office, or officer of the state  
 21 receiving an appropriation by the General Assembly.

22 (B) "State agency" does not include municipalities,  
 23 townships, counties, school districts, and state-supported institutions of  
 24 higher learning.

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 26 SECTION 5. Arkansas Code § 26-51-503 is amended to read as follows:

27 26-51-503. Support of a child with a developmental disability.

28 (a) In addition to the state income tax credit permitted by § 26-51-  
 29 501(a) and (b), any taxpayer in this state who is maintaining, supporting,  
 30 and caring for an individual with a diagnosis of a developmental disability  
 31 in the taxpayer's home ~~shall be~~ is permitted, in addition to all other income  
 32 tax credits, a credit of five hundred dollars (\$500) for each income year for  
 33 that individual.

34 (b)(1) Any person wishing to take advantage of this tax credit must  
 35 have certification by a licensed physician, licensed psychologist, or  
 36 licensed psychological examiner that the individual has a diagnosis of a

1 developmental disability.

2 (2) The certification shall be valid for five (5) years for  
3 income tax purposes.

4 (3) If any person wishes to take advantage of this tax credit  
5 after using the certification for five (5) income years, the person must have  
6 the individual reevaluated by a licensed physician, licensed psychologist, or  
7 licensed psychological examiner for recertification.

8 (4) The recertification process shall be valid for another five  
9 (5) years for income tax purposes.

10 (c) As used in this section:

11 (1) "Diagnosis of a developmental disability" means a disability  
12 of a person that:

13 (A) Is attributable to:

14 (i) An intellectual disability, cerebral palsy,  
15 epilepsy, spina bifida, Down syndrome or autism;

16 (ii) Another condition of the person found to be  
17 closely related to an intellectual disability because the condition results  
18 in an impairment of general intellectual functioning or adaptive behavior  
19 similar to that of a person with an intellectual disability or requires  
20 treatment and services similar to that required for a person with an  
21 intellectual disability; or

22 (iii) Dyslexia resulting from a disability or  
23 condition described in subdivision (c)(1)(A)(i) or (c)(1)(A)(ii) of this  
24 section;

25 (B) Originates before the person reaches twenty-two (22)  
26 years of age;

27 (C) Has continued or can be expected to continue  
28 indefinitely; and

29 (D) Constitutes a substantial handicap to the person's  
30 ability to function without appropriate support services, including without  
31 limitation:

32 (i) Planned recreational activities;

33 (ii) Medical services such as physical therapy and  
34 speech therapy; and

35 (iii) Possibilities for sheltered employment or job  
36 training; and



1           (2) "Individual" means a child of the taxpayer's blood, an  
2 adopted child, or a dependent within the meaning of § 26-51-501(a)(3)(B).  
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