

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1651

5 By: Representatives Ladyman, C. Cooper
6 By: Senators Irvin, K. Hammer
7

For An Act To Be Entitled

9 AN ACT TO AMEND AND UPDATE THE LAWS REGARDING
10 TREATMENT FOR INDIVIDUALS WITH INTELLECTUAL AND
11 DEVELOPMENTAL DISABILITIES; TO ENSURE RESPECTFUL
12 LANGUAGE IS USED WITHIN THE ARKANSAS CODE REGARDING
13 INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL
14 DISABILITIES; AND FOR OTHER PURPOSES.
15

Subtitle

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17
18 TO AMEND AND UPDATE THE LAWS REGARDING
19 TREATMENT FOR INDIVIDUALS WITH
20 INTELLECTUAL AND DEVELOPMENTAL
21 DISABILITIES; AND TO ENSURE RESPECTFUL
22 LANGUAGE IS USED WITHIN THE ARKANSAS
23 CODE.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 4-88-201(b), concerning the definition of
29 "disabled person" under deceptive trade practices, is amended to read as
30 follows:

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

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

36 (A) Any physiological disorder or condition, cosmetic



1 disfigurement, or anatomical loss substantially affecting one (1) or more of
 2 the following body systems: neurological; musculoskeletal; special sense
 3 organs; respiratory, including speech organs; cardiovascular; reproductive;
 4 digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

5 (B) Any mental or psychological disorder, ~~such as mental~~
 6 ~~retardation~~ including intellectual and developmental disabilities, organic
 7 brain syndrome, emotional or mental illness, and specific learning
 8 disabilities.

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

15
 16 SECTION 2. Arkansas Code § 5-4-618 is amended to read as follows:

17 5-4-618. ~~Mental retardation~~ Defendants with intellectual disabilities.

18 (a)(1) As used in this section, "~~mental retardation~~" "intellectual
 19 disabilities" means:

20 (A) Significantly ~~subaverage~~ below average general
 21 intellectual functioning accompanied by a significant deficit or impairment
 22 in adaptive functioning manifest in the developmental period, but no later
 23 than age eighteen (18) years of age; and

24 (B) A deficit in adaptive behavior.

25 (2) There is a rebuttable presumption of ~~mental retardation~~
 26 intellectual disabilities when a defendant has an intelligence quotient of
 27 sixty-five (65) or below.

28 (b) No defendant with ~~mental retardation~~ intellectual disabilities at
 29 the time of committing capital murder shall be sentenced to death.

30 (c) The defendant has the burden of proving ~~mental retardation~~
 31 intellectual disabilities at the time of committing the offense by a
 32 preponderance of the evidence.

33 (d)(1) A defendant on trial for capital murder shall raise the special
 34 sentencing provision of ~~mental retardation~~ intellectual disabilities by
 35 motion prior to trial.

36 (2)(A) Prior to trial, the court shall determine if the

1 defendant has ~~mental retardation~~ an intellectual disability.

2 (B)(i) If the court determines that the defendant does not
3 have ~~mental retardation~~ an intellectual disability, the defendant may raise
4 the question of ~~mental retardation~~ an intellectual disability to the jury for
5 determination de novo during the sentencing phase of the trial.

6 (ii) At the time the jury retires to decide
7 mitigating and aggravating circumstances, the jury shall be given a special
8 verdict form on ~~mental retardation~~ an intellectual disability.

9 (iii) If the jury unanimously determines that the
10 defendant had ~~mental retardation~~ an intellectual disability at the time of
11 the commission of capital murder, then the defendant will automatically be
12 sentenced to life imprisonment without possibility of parole.

13 (C) If the court determines that the defendant has ~~mental~~
14 ~~retardation~~ an intellectual disability, then:

15 (i) The jury is not "death qualified"; and

16 (ii) The jury shall sentence the defendant to life
17 imprisonment without possibility of parole upon conviction.

18 (e) However, this section is not deemed to:

19 (1) Require unanimity for consideration of any mitigating
20 circumstance; or

21 (2) Supersede any suggested mitigating circumstance regarding
22 mental defect or disease currently found in § 5-4-605.

23
24 SECTION 3. Arkansas Code § 9-28-402(12)(F) and (G), concerning the
25 definition of "exempt child welfare agency" under the Child Welfare Agency
26 Licensing Act, are amended to read as follows:

27 (F) Human development centers regulated by the Board of
28 Developmental Disabilities Services pursuant to the Location Act for
29 Community Homes for ~~Developmentally Disabled Persons~~ Individuals with
30 Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

31 (G) Any facility licensed as a family home pursuant to the
32 Location Act for Community Homes for ~~Developmentally Disabled Persons~~
33 Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et
34 seq.;

35
36 SECTION 4. Arkansas Code § 9-28-402(12)(M), concerning the definition

1 of "exempt child welfare agency" under the Child Welfare Agency Licensing
2 Act, is amended to read as follows:

3 (M) Any intellectual or other developmental disabilities
4 services waiver provider licensed under § 20-48-208 or the Location Act for
5 Community Homes for ~~Developmentally Disabled Persons~~ Individuals with
6 Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

7
8 SECTION 5. Arkansas Code § 10-3-203(3)(A)(iii), concerning the subject
9 matter jurisdiction of the House Committee on Public Health, Welfare, and
10 Labor, is amended to read as follows:

11 (iii) House Committee on Public Health, Welfare, and
12 Labor – matters pertaining to public health, mental health, ~~mental~~
13 ~~retardation~~ intellectual and other developmental disabilities, public
14 welfare, human relations and resources, environmental affairs, water and air
15 pollution, labor and labor relations, similar legislation, and resolutions
16 germane to the subject matter of the House Committee on Public Health,
17 Welfare, and Labor;

18
19 SECTION 6. Arkansas Code § 10-3-203(3)(B)(i), concerning the subject
20 matter jurisdiction of the Senate Committee on Public Health, Welfare, and
21 Labor, is amended to read as follows:

22 (i) Senate Committee on Public Health, Welfare, and
23 Labor – matters pertaining to public health, mental health, ~~mental~~
24 ~~retardation~~ intellectual and other developmental disabilities, public
25 welfare, human relations and resources, the aged and problems of the aging,
26 environmental affairs, water and air pollution, labor and labor relations,
27 and similar legislation;

28
29 SECTION 7. Arkansas Code § 12-12-1513(a)(2), concerning status as a
30 registered sex offender, is amended to read as follows:

31 (2) Certain agencies are mandated to perform background checks
32 on persons who work with children, elderly persons, and ~~developmentally~~
33 ~~disabled persons~~ individuals with intellectual or other developmental
34 disabilities;

35
36 SECTION 8. Arkansas Code § 12-12-1603(7), concerning the definition of

1 "individuals with disabilities" within the Criminal History for Volunteers
 2 Act, is amended to read as follows:

3 (7) "Individuals with disabilities" means ~~mentally ill or~~
 4 ~~developmentally disabled~~ individuals with mental illness or intellectual or
 5 other developmental disabilities or with physical or mental impairments that
 6 substantially limit one (1) or more of the major life activities of the
 7 individual;

8

9 SECTION 9. Arkansas Code § 17-82-701(5), concerning the definition of
 10 "public settings" in the dental hygienist collaborative care program, is
 11 amended to read as follows:

12 (5) "Public settings" means:

13 (A) Adult long-term care facilities;

14 (B) Charitable health clinics that provide free or
 15 reduced-fee services to low-income patients;

16 (C) County incarceration facilities;

17 (D) Facilities that primarily serve ~~developmentally~~
 18 ~~disabled persons~~ individuals with intellectual or other developmental
 19 disabilities;

20 (E) Head Start programs;

21 (F) Homes of homebound patients who qualify for in-home
 22 medical assistance;

23 (G) Hospital long-term care units;

24 (H) Local health units;

25 (I) Schools;

26 (J) Community health centers; and

27 (K) State correctional institutions; and

28

29 SECTION 10. Arkansas Code § 20-8-109(d), concerning the approval of
 30 certain new projects by the Health Services Permit Agency, is amended to read
 31 as follows:

32 (d)(1) The Health Services Permit Agency shall process all
 33 applications or certificates of need for intermediate care facilities for ~~the~~
 34 individuals with intellectual or other developmental disabilities with
 35 fifteen (15) or fewer beds ~~which~~ that were pending on April 4, 1987, and
 36 shall for a period of thirty (30) days after April 4, 1987, accept additional

1 applications for such facilities.

2 (2) The applications shall be processed utilizing the criteria
3 and procedures in existence before April 4, 1987, and in addition the Health
4 Services Permit Agency shall consider as a primary factor the experience of
5 each applicant in serving ~~the developmentally disabled population~~ individuals
6 with intellectual or other developmental disabilities.

7
8 SECTION 11. Arkansas Code § 20-10-802(12), concerning the exceptions
9 from licensing requirements for home healthcare services, is amended to read
10 as follows:

11 (12) Persons providing services to one (1) or more
12 ~~developmentally disabled persons~~ individuals with intellectual or other
13 developmental disabilities, as defined in § 20-48-101, under a license or
14 certificate from the Division of Developmental Disabilities Services of the
15 Department of Human Services.

16
17 SECTION 12. Arkansas Code § 20-15-302(c)(1), concerning the testing of
18 newborns relating to phenylketonuria, hypothyroidism, and sickle-cell anemia,
19 is amended to read as follows:

20 (c)(1) The department shall establish and maintain a program of
21 reviewing and following up on positive cases so that measures may be taken to
22 prevent intellectual and other developmental disability or other permanent
23 disabilities.

24
25 SECTION 13. Arkansas Code § 20-46-502(1), concerning the definition of
26 "adults with long-term severe mental illness" as to intensive residential
27 treatment, is amended to read as follows:

28 (1)(A) "Adults with long-term severe mental illness" means a
29 person, eighteen (18) years of age or over, who meets criteria for service
30 eligibility as defined by the Division of Aging, Adult, and Behavioral Health
31 Services of the Department of Human Services.

32 (B) Individuals whose sole disability results from
33 alcoholism, drug abuse, or intellectual or other developmental disability are
34 excluded from this definition; and

35
36 SECTION 14. Arkansas Code § 20-47-202(12), concerning the definition

1 of "mental illness" related to commitment and treatment of persons with
 2 mental illness, is amended to read as follows:

3 (12)(A) "Mental illness" means a substantial impairment of
 4 emotional processes, the ability to exercise conscious control of one's
 5 actions, or the ability to perceive reality or to reason, when the impairment
 6 is manifested by instances of extremely abnormal behavior or extremely faulty
 7 perceptions.

8 (B) Mental illness does not include impairment solely
 9 caused by:

- 10 (i) Epilepsy;
- 11 (ii) ~~Developmental~~ Intellectual or other
 12 developmental disability;
- 13 (iii) Continuous or noncontinuous periods of
 14 intoxication caused by substances such as alcohol or drugs; or
- 15 (iv) Dependence upon or addiction to any substance
 16 such as alcohol or drugs;

17
 18 SECTION 15. Arkansas Code § 20-47-406(a) and (b), concerning
 19 Department of Human Services agreements for medical care of indigent mentally
 20 ill or tubercular, are amended to read as follows:

21 (a) The Arkansas State Hospital and other state institutions are
 22 authorized to enter into agreements with the Department of Human Services to
 23 establish and maintain a medical care program for the indigent mentally ill,
 24 ~~mentally retarded~~ individuals with intellectual and developmental
 25 disabilities, and tubercular at the Arkansas State Hospital and any other
 26 state institution and to transfer funds to the Department of Human Services
 27 Fund pursuant to the agreement.

28 (b) The agreement made between the Arkansas State Hospital or other
 29 institution and the department shall be in compliance with federal law and
 30 shall meet qualifications necessary for federal funds to be paid for the care
 31 of indigent mentally ill, ~~mentally retarded~~ intellectually and
 32 developmentally disabled, and tubercular in the Arkansas State Hospital or
 33 other institution.

34
 35 SECTION 16. Arkansas Code § 20-48-101(2) and (3), concerning the
 36 definitions of "developmental disability" and "existing operations" regarding

1 the treatment of individuals with developmental disabilities, are amended to
2 read as follows:

3 (2) "~~Developmental~~ Intellectual and developmental disability" means a
4 disability of a person that:

5 (A)(i) Is attributable to ~~intellectual disability, an~~
6 impairment of general intellectual functioning or adaptive behavior,
7 including cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

8 (ii) Is attributable to any other condition of a
9 person found to be closely related to intellectual and developmental
10 disability because the condition results in an impairment of general
11 intellectual functioning or adaptive behavior similar to that of a person
12 with an intellectual and developmental disability or requires treatment and
13 services similar to that required for a person with an intellectual and
14 developmental disability; or

15 (iii) Is attributable to dyslexia resulting from a
16 disability described in subdivision (2)(A)(i) ~~of this section~~ or subdivision
17 (2)(A)(ii) of this section;

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

20 (C) Has continued or can be expected to continue
21 indefinitely; and

22 (D) Constitutes a substantial ~~handicap~~ impairment to the
23 person's ability to function without appropriate support services, including,
24 but not limited to, planned recreational activities, medical services such as
25 physical therapy and speech therapy, and ~~possibilities for~~ sheltered
26 employment or job training;

27 (3) "Existing operations" means the provision by a qualified
28 ~~nonprofit~~ community provider of one (1) or more of the following services
29 without regard to order:

30 (A) ~~A developmental day treatment clinic services~~
31 ~~preschool program or adult development program~~ A licensed early intervention
32 day treatment program or adult developmental day treatment program;

33 (B) A licensed developmental disability services group
34 home in operation and recognized by the ~~division~~ Division of Developmental
35 Disabilities Services of the Department of Human Services on or before July
36 1, 1995;

1 (C) An intermediate care facility ~~for the persons with~~
 2 ~~intellectual disabilities program with fifteen (15) beds or less for~~
 3 individuals with intellectual disabilities that has fifteen (15) beds or
 4 fewer beds; or

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

7
 8 SECTION 17. Arkansas Code § 20-48-104 is amended to read as follows:

9 20-48-104. Intermediate Care Facility for Persons with Intellectual
 10 and Developmental Disabilities program – Administration.

11 (a) The operation of the community-based Intermediate Care Facility
 12 for Persons with Intellectual and Developmental Disabilities program will be
 13 subject to the oversight of a five-member committee composed of three (3)
 14 members of the House of Representatives to be appointed by the Speaker of the
 15 House of Representatives and two (2) members of the Senate to be appointed by
 16 the President Pro Tempore of the Senate.

17 (b) The committee shall provide oversight for the operation of the
 18 program and make recommendations, within the appropriate federal regulations
 19 and guidelines, to the Division of Developmental Disabilities Services and
 20 the Office of Long-Term Care to establish and clarify the mission, goals,
 21 levels of services, and scope of the program and to provide consistency in
 22 state ~~regulations~~ rules, guidelines, standards, and policies.

23 (c) The committee shall also make recommendations for adequate funding
 24 to ensure the fiscal integrity of the program to allow it to be operated
 25 pursuant to the state rules and federal regulations, guidelines, standards,
 26 and policies.

27
 28 SECTION 18. Arkansas Code § 20-48-201 and 20-48-202 are amended to
 29 read as follows:

30 20-48-201. Title.

31 This subchapter shall be known and may be cited as the “Arkansas
 32 Intellectual and Developmental Disabilities Act”.

33
 34 20-48-202. Definitions.

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

36 ~~(1) “Board” means the Board of Developmental Disabilities~~

1 ~~Services;~~

2 ~~(2) "Center" means a human development center;~~

3 ~~(3)(1) "Community" means either region or locality;~~

4 ~~(4)(2)(A) "Coordinate" means to bring resources to bear~~ utilize
 5 resources in appropriate sequence and relationship to provide the proper
 6 services for individuals with intellectual and developmental disabilities.

7 (B) "Coordinate" implies a working relationship with, but
 8 not administrative authority over, public agencies providing services to
 9 individuals with intellectual and developmental disabilities;

10 ~~(5) "Director" means the Director of the Department of Human~~
 11 ~~Services;~~

12 ~~(6) "Division" means the Division of Developmental Disabilities~~
 13 ~~Services of the Department of Human Services or the appropriate division as~~
 14 ~~determined by the Director of the Department of Human Services;~~

15 ~~(7)(3) "Individual" means a person without regard to~~
 16 ~~chronological age;~~

17 (4) "Intellectual and developmental disability" means the same
 18 as defined in § 20-48-603(1)(A);

19 ~~(8)(5) "Locality" means a geographical area defined by the~~
 20 ~~division~~ Division of Developmental Disabilities of the Department of Human
 21 Services or the appropriate division as determined by the Director of the
 22 Department of Human Services usually consisting of a municipality or county
 23 but not excluding other areas within easy commuting distance;

24 ~~(9)(6) "Services for individuals with intellectual disabilities"~~
 25 ~~or "services" means all services pertaining to and incidental to the~~
 26 ~~prevention, detection, diagnosis, evaluation, treatment, care, custody,~~
 27 ~~education, training, rehabilitation, or supervision of individuals with~~
 28 ~~intellectual disabilities;~~

29 ~~(10)(7) "Private organizations" means organizations, persons,~~
 30 ~~firms, individuals, corporations, or associations;~~

31 ~~(11)(8) "Public agencies" means all agencies, departments,~~
 32 ~~boards, institutions, commissions, officers, officials, political~~
 33 ~~subdivisions and agencies thereof, and school districts of this state;~~

34 ~~(12)(9) "Region" means a geographical area defined by the~~
 35 ~~division, usually consisting of all or parts of two (2) or more counties,~~
 36 ~~which is created to provide services for individuals with intellectual~~ and

1 developmental disabilities when the services cannot be provided feasibly or
 2 practically at the local level;

3 ~~(13)~~(10)(A) “Individual with intellectual and developmental
 4 disabilities” means:

5 ~~(A)~~(i) A person with a mental deficit requiring him or her
 6 to have special evaluation, treatment, care, education, training,
 7 supervision, or control in his or her home or community, or in a state
 8 institution for persons with intellectual disabilities; or

9 ~~(B)~~(ii) A person with intellectual and developmental
 10 disabilities who may not exhibit an intellectual deficit on standard
 11 psychological tests but who, because of other handicaps, functions as a
 12 person with intellectual disabilities.

13 (B) "Individual with intellectual and developmental
 14 disabilities" does not include ~~Not included is~~ a person whose primary ~~problem~~
 15 condition is caused by mental illness, emotional disturbance, physical
 16 handicap, or sensory defect; and

17 ~~(14)~~(11) “Superintendent” means the chief administrative officer
 18 assigned full-time to a human development center.

19
 20 SECTION 19. Arkansas Code § 20-48-205 is amended to read as follows:

21 20-48-205. Board of Developmental Disabilities Services – Powers and
 22 duties.

23 (a) The Board of Developmental Disabilities Services:

24 (1) Shall:

25 (A) Have ~~have~~ charge of the properties used for the
 26 purposes of the human development centers;

27 ~~(2) Shall exercise supervision over the appointment,~~
 28 ~~performance of duties which includes such matters as off-premises assignments~~
 29 ~~for educational or training purposes, removal of all employees, and the~~
 30 ~~fixing of their compensation~~

31 (B) Supervise:

32 (i) Appointment of employees;

33 (ii) Performance of duties by employees, including
 34 off-premises assignments for educational or training purposes;

35 (iii) Removal of employees; and

36 (iv) Fixing of employee compensation; and

1 ~~(3)(C)~~ Shall exercise supervision over Supervise
 2 expenditures of the human development centers; and

3 ~~(4)(2)~~ May:

4 (A) ~~accept~~ Accept and hold in trust real, personal, or
 5 mixed property received by grant, gift, will, or otherwise;

6 ~~(5)(B)~~ May make purchases of Purchase land or receive
 7 grants or gifts of land and take deeds therefor in the name of the State of
 8 Arkansas;

9 ~~(6)(C)~~ May ~~accept~~ Accept grants or gifts of money from any
 10 source whatever and use the money for any of ~~its~~ the powers and purposes of
 11 the board; and

12 ~~(7)(D)~~ May take Take all action and execute all documents
 13 necessary or desirable to carry out ~~its~~ the powers and purposes of the board.

14 (b) The board may make ~~such regulations respecting~~ rules regarding the
 15 care, custody, training, and discipline of individuals with intellectual and
 16 developmental disabilities in the human development centers or receiving
 17 services for individuals with intellectual and developmental disabilities and
 18 respecting the management of the human development centers and ~~their~~ the
 19 affairs as ~~it~~ the board may deem necessary or desirable to the proper
 20 performance of ~~its~~ powers and purposes of the board.

21 (c) The board is prohibited from promulgating any rule ~~or regulation~~
 22 that would set the salary of any employee at the local level unless
 23 specifically required to do so by the United States Government.

24
 25 SECTION 20. Arkansas Code § 20-48-206(b), concerning the powers and
 26 duties of the Board of Developmental Disabilities Services regarding human
 27 development centers, is amended to read as follows:

28 (b)(1) ~~In this regard, admissions~~ Admissions to the institutional
 29 facilities of the human development centers shall be on the basis of a
 30 determination by the board that:

31 (A) The individual involved ~~is intellectually disabled~~ has
 32 an intellectual and developmental disability;

33 (B) His or her parent or guardian has resided in the state
 34 not less than three (3) years before the date of the filing of the petition
 35 for his or her admission, or the individual involved is a dependent and a
 36 public charge or ward of the state or a political subdivision thereof;

1 (C) The welfare of the individual involved requires the
 2 special care, training, or education provided by institutional facilities of
 3 the human development center; and

4 (D) The board has adequate funds and institutional
 5 facilities available for the care, training, or education of the individual.

6 (2)(A) ~~Also, the~~ The determination of whether an individual ~~is~~
 7 ~~intellectually disabled~~ has an intellectual and developmental disability
 8 shall be made after there has been an investigation ~~which shall include that~~
 9 includes an examination by an evaluation team appointed by the board.

10 (B) The team shall be composed of two (2) or more
 11 physicians, psychiatrists, psychologists, or other persons found by the board
 12 to be professionally qualified on the basis of training and experience in
 13 services for individuals with intellectual and developmental disabilities to
 14 make a determination as to whether the individual involved ~~is intellectually~~
 15 ~~disabled~~ has an intellectual and developmental disability.

16
 17 SECTION 21. Arkansas Code § 20-48-207 is amended to read as follows:

18 20-48-207. Board of Developmental Disabilities Services – Contracts
 19 for provision of services.

20 (a) If and to the extent necessary to accomplish the intended purpose
 21 of this subchapter to make available the broadest and most effective
 22 provision of intellectual and developmental disabilities services to those in
 23 need of the services, the Board of Developmental Disabilities Services is
 24 authorized to contract for the providing of intellectual and developmental
 25 disabilities services by other public agencies or private organizations.

26 (b) In this regard, the board ~~is authorized to promulgate regulations~~
 27 may promulgate rules and fix standards necessary to properly ensure that such
 28 intellectual and developmental disabilities services are furnished in a
 29 proper and reasonable manner and on an economical basis.

30
 31 SECTION 22. Arkansas Code § 20-48-208(a) and (b), concerning the
 32 license for facilities and institutions providing services for individuals
 33 with developmental disabilities, are amended to read as follows:

34 (a) The Board of Developmental Disabilities Services shall:

35 (1) Regulate ~~regulate~~ the providing of intellectual and
 36 developmental disabilities services by private organizations and public

1 agencies, ~~;~~ and

2 ~~(2) The board shall promulgate regulations~~ Promuglate rules
3 covering the issuance, suspension, and revocation of licenses and fixing the
4 standards for construction, reconstruction, maintenance, and operation of
5 institutions and facilities, or parts thereof, operated primarily for the
6 providing of intellectual and developmental disabilities services, unless the
7 facilities or institutions in their entirety are licensed by the Office of
8 Long-Term Care.

9 (b) ~~No~~ A public agency or private organization shall not operate any
10 institution or facility for the provision of intellectual and developmental
11 disabilities services unless ~~it~~ the private agency or private organization
12 has a license in effect.

13
14 SECTION 23. Arkansas Code §§ 20-48-209 – 20-48-212 are amended to read
15 as follows:

16 20-48-209. Board of Developmental Disabilities Services – Planning and
17 implementation.

18 (a)(1) The Board of Developmental Disabilities Services is designated
19 as the single state agency for the purpose of full participation under any
20 federal act requiring the designation of a single state agency concerning
21 planning, formulation, and implementation of programs, construction and
22 operation of facilities, financing of facilities and programs, or otherwise
23 pertaining to the obtaining and rendition of intellectual and developmental
24 disabilities services.

25 ~~(2) However, this shall not be construed as depriving~~
26 subdivision (a)(1) of this section does not deprive other public agencies of
27 jurisdiction over or the right to plan for and control and operate programs
28 that pertain to intellectual and developmental disabilities services but
29 which fall within the primary jurisdiction of other public agencies such as
30 programs administered by the Arkansas School for the Deaf, Arkansas School
31 for the Blind, Career Education and Workforce Development Board, State Board
32 of Education, Department of Health, and the Department of Human Services.

33 (b)(1) The Board of Developmental Disabilities Services ~~is authorized~~
34 ~~to~~ may coordinate the planning and implementation of intellectual and
35 developmental disabilities programs and institutional and community
36 activities of all public agencies.

1 (2) However, ~~this shall not be construed as depriving~~
 2 subdivision (b)(1) of this section does not deprive other public agencies of
 3 jurisdiction over or the right to plan for and control and operate programs
 4 that pertain to intellectual and developmental disabilities services but
 5 which fall within the primary jurisdiction of other public agencies such as
 6 programs administered by the Arkansas School for the Deaf, Arkansas School
 7 for the Blind, Career Education and Workforce Development Board, State Board
 8 of Education, Department of Health, and the Department of Human Services.

9 (c)(1) Effective planning and coordination is essential to the public
 10 interest.

11 (2) In order to achieve this to the fullest extent possible, the
 12 Board of Developmental Disabilities Services ~~is authorized to~~ may establish
 13 and promulgate ~~regulations~~ rules fixing standards for intellectual and
 14 developmental disabilities programs and activities and ~~to~~ evaluate
 15 intellectual and developmental disabilities programs and activities of public
 16 agencies.

17
 18 20-48-210. Deputy Director of Division of Developmental Disabilities
 19 Services.

20 (a)(1) There is created the office of the Deputy Director of the
 21 Division of Developmental Disabilities Services of the Department of Human
 22 Services.

23 (2) The deputy director shall:

24 (A) ~~Be~~ Be appointed by and shall serve at the pleasure of
 25 the Board of Developmental Disabilities Services;

26 ~~(b)(B) The deputy director shall be~~ Be a person of proven
 27 administrative ability and professional qualifications, preferably holding a
 28 Ph.D. or equivalent, but including at least a master's degree in psychology,
 29 education, social service, or other field of study approved by the board and
 30 shall have at least five (5) years' experience in intellectual and
 31 developmental disabilities services;

32 ~~(c)(C) The deputy director shall be~~ Be the executive secretary of the
 33 board and shall maintain an official set of minutes of all board action; and

34 ~~(d)(D) The deputy director shall be~~ Be the executive officer of the
 35 Division of Developmental Disabilities Services and shall operate and manage
 36 the division, subject to the control of the board.

1 ~~(e)~~(b) The board may delegate to the deputy director any powers of the
2 board upon such terms and for such duration as the board shall specify.

3
4 20-48-211. Board of Developmental Disabilities Services – Community
5 centers.

6 (a)(1) The Board of Developmental Disabilities Services ~~is authorized~~
7 ~~to~~ may take the necessary action to establish and maintain, or to cause to be
8 established and maintained, community centers, alone or together with public
9 agencies or private organizations, at localities determined to be appropriate
10 for the better providing of or for assistance in the providing of
11 intellectual and developmental disabilities services ~~for~~ in any region or
12 locality ~~in~~ of the state.

13 (2) Community centers may be organized on a formal or informal
14 basis as shall be determined to best suit the circumstances at any particular
15 region or locality, including without limitation organization under the
16 provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 – 4-28-206
17 and 4-28-209 – 4-28-224.

18 (b)(1) Within the limits of available funds, a program for furnishing
19 intellectual and developmental disabilities services shall be developed for
20 each community center which may include a state grants-in-aid program.

21 (2) ~~In this regard, the board is authorized to~~ The board may
22 promulgate ~~regulations~~ rules covering the establishment and operation of
23 community centers, the formulation and implementation of intellectual and
24 developmental disabilities programs and activities for community centers, and
25 the funding of the programs and activities.

26 (c) The board is prohibited from promulgating any rule ~~or regulation~~
27 that would set the salary of any employee of a community-based program unless
28 specifically required to do so by the United States Government.

29
30 20-48-212. Amount requested for ~~Arkansas~~ Special Olympics Arkansas.

31 (a) The Board of Developmental Disabilities Services, when preparing
32 its biennial budget request for submission to the Governor and the
33 Legislative Council, shall consult with Special Olympics Arkansas concerning
34 the amount which is to be submitted as the request for each year of the
35 forthcoming biennium for a grant to Special Olympics Arkansas.

36 (b) The amount ~~as may be~~ determined by Special Olympics Arkansas shall

1 be submitted as the ~~Division of Developmental Disabilities~~ board's request to
2 the Governor and to the Legislative Council.

3
4 SECTION 24. Arkansas Code § 20-48-301 is amended to read as follows:
5 20-48-301. Purpose.

6 ~~It is the~~ The purpose of this subchapter is to permit the Board of
7 Developmental Disabilities Services, ~~a division of the Department of Human~~
8 ~~Services,~~ to cooperate with public agencies or private nonprofit
9 organizations of adjoining states to provide services for residents of
10 Arkansas ~~who are intellectually disabled or developmentally disabled~~ with
11 intellectual and other developmental disabilities.

12
13 SECTION 25. Arkansas Code § 20-48-302(a), concerning the authority to
14 participate in cooperative agreements, is amended to read as follows:

15 (a) Subject to the conditions and limitations contained in this
16 subchapter, the Board of Developmental Disabilities Services may enter into
17 agreements with public agencies, private nonprofit organizations, or
18 combinations thereof from adjoining states for the purpose of performing its
19 responsibility to the residents of Arkansas ~~who are intellectually disabled~~
20 ~~or developmentally disabled~~ with intellectual and other developmental
21 disabilities.

22
23 SECTION 26. Arkansas Code §§ 20-48-403 and 20-48-404 are amended to
24 read as follows:

25 20-48-403. Human development centers – Creation.

26 (a) There are created and there shall be maintained institutions for
27 the care, custody, treatment, and training of ~~developmentally disabled~~
28 individuals with intellectual and other developmental disabilities to be
29 known as human development centers.

30 (b) For the purposes of the institutions, the Board of Developmental
31 Disabilities Services is charged with the care and training of
32 ~~developmentally disabled~~ individuals with intellectual and other
33 developmental disabilities.

34
35 20-48-404. Eligibility for admission.

36 (a) An individual may be deemed eligible for admission to a human

1 development center if+

2 ~~(1)~~ Due due to intellectual or other developmental disability,
 3 the person is incapable of managing his or her affairs and the person's
 4 welfare requires the special care, training, and treatment provided at a
 5 human development center.

6 ~~(2)(b)~~ The examining physicians provided for in § 20-48-406
 7 shall use standard mental and psychological tests and physical examinations
 8 in determining that the individual ~~is developmentally disabled~~ has
 9 intellectual or other developmental disabilities and is in need of special
 10 training ~~which~~ that is provided for in this subchapter.

11
 12 SECTION 27. Arkansas Code § 20-48-405(a), concerning the petition for
 13 admission into a human development center, is amended to read as follows:

14 (a) A parent or guardian of an ~~intellectually disabled~~ individual with
 15 intellectual and developmental disabilities may file with the Board of
 16 Developmental Disabilities Services a verified petition requesting that the
 17 individual be admitted to the human development center.

18
 19 SECTION 28. Arkansas Code § 20-48-413 is amended to read as follows:

20 20-48-413. Emotionally disturbed individuals with co-occurring
 21 intellectual disabilities and behavioral health disabling conditions.

22 (a) The Board of Developmental Disabilities Services ~~is authorized to~~
 23 may establish and operate an appropriate facility at such location in the
 24 state as it shall determine for the care and treatment of ~~emotionally~~
 25 ~~disturbed intellectually disabled~~ individuals with co-occurring intellectual
 26 disabilities and behavioral health disabling conditions, and persons with
 27 disorganized behavior, including hyperkinetic, hyperactive, or aggressive
 28 behaviors who, because of their ~~problem~~ maladaptive behavior, function as
 29 ~~intellectually disabled~~ individuals with co-occurring intellectual
 30 disabilities and behavioral health disabling conditions.

31 (b) The board ~~is authorized to~~ may make ~~such~~ rules ~~and regulations~~
 32 regarding eligibility for admission to the facility, care and treatment of
 33 the individuals, discharge from and return to the facility, charges for the
 34 maintenance, care, and training of individuals admitted to the facility, and
 35 such other matters as the board shall deem necessary to carry out the most
 36 effective program for the care and treatment of ~~emotionally disturbed~~

1 ~~intellectually disabled~~ individuals with co-occurring intellectual
 2 disabilities and behavioral health disabling conditions of this state.

3
 4 SECTION 29. Arkansas Code § 20-48-416 is amended to read as follows:

5 20-48-416. Designation as state agency for carrying out federal acts.

6 (a) The Board of Developmental Disabilities Services is designated as
 7 the single state ~~agency~~ entity for carrying out ~~the purposes of any act of~~
 8 ~~the United States Congress~~ any federal act or law pertaining to individuals
 9 with intellectual disabilities and other forms of developmental disabilities.

10 (b) The board ~~is authorized to~~ may take all action of every nature
 11 whatever necessary or desirable in complying with the requirements of any
 12 federal act or law and accomplishing the purposes thereof, including, without
 13 limitation:

14 (1) The receiving, handling, and disbursing of grants and funds
 15 appropriated by any federal act or law;

16 (2) The making of provisions to assure full consideration of all
 17 aspects of services essential to planning for comprehensive state and
 18 community action to combat the effects of intellectual and developmental
 19 disabilities and provide service for individuals with intellectual and
 20 developmental disabilities, including services in the fields of education,
 21 employment, rehabilitation, habilitation, welfare, health, and the law, and
 22 services provided through community programs for and institutions for
 23 individuals with intellectual and developmental disabilities;

24 (3) The preparing and submitting of plans for expenditure of
 25 such grants and funds and providing the assurance required by any federal act
 26 or law as to carrying out the purposes of any federal act or law;

27 (4) The preparing and submitting of reports of the activities of
 28 ~~the center~~ human developmental centers in carrying out the purposes of any
 29 federal act or law in such form and containing such information as may be
 30 required by any federal act or law and keeping ~~such~~ records and affording
 31 access ~~thereto necessary~~ to the records in order to assure correctness and
 32 verification of such reports as may be required by any federal act or law;

33 (5) The providing for such fiscal control and fund accounting
 34 procedures as may be necessary to assure proper disbursement of and
 35 accounting for grants and funds paid to the human development center in
 36 accordance with the requirements of any federal act or law; and

1 (6) The doing of all things and taking of all action to carry
 2 out any plans for expenditures of the grants and funds in accordance with and
 3 for the accomplishment of the purposes of any federal act or law.

4 (c)(1) This section shall be liberally construed.

5 (2) The enumeration of any object, purpose, power, manner,
 6 method, and thing ~~shall not be deemed to~~ does not exclude like or similar
 7 objects, purposes, powers, manners, methods, or things.

8 (3) This section ~~shall be construed as being~~ is supplementary to
 9 any existing purposes and powers authorized to be accomplished by the human
 10 development centers or the board.

11
 12 SECTION 30. Arkansas Code §§ 20-48-601 and 20-48-602 are amended to
 13 read as follows:

14 20-48-601. Title.

15 This subchapter shall be known as the "Location Act for Community Homes
 16 for ~~Developmentally Disabled Persons~~ Individuals with Intellectual and
 17 Developmental Disabilities".

18
 19 20-48-602. Purpose.

20 (a) The General Assembly declares that it is the goal of this
 21 subchapter to improve the quality of life of all ~~developmentally disabled~~
 22 ~~persons~~ individuals with intellectual or other developmental disabilities and
 23 to integrate ~~developmentally disabled persons~~ individuals with intellectual
 24 or other developmental disabilities into the mainstream of society by
 25 ensuring them the availability of community residential opportunities in the
 26 residential areas of this state.

27 (b) In order to implement this goal, this subchapter should be
 28 liberally construed toward that end.

29
 30 SECTION 31. Arkansas Code § 20-48-603(1) and (2), concerning the
 31 definition of "developmental disability" and "developmentally disabled
 32 person" regarding the Location Act for Community Homes for Developmentally
 33 Disabled Persons, are amended to read as follows:

34 (1)(A) "~~Developmental~~ Intellectual and developmental disability"
 35 means a disability of a person that:

36 (i) Is attributable to ~~intellectual disability,~~ an

1 impairment of general intellectual functioning or adaptive behavior,
 2 including cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

3 (ii) Is attributable to any other condition of a
 4 person found to be closely related to intellectual and developmental
 5 disability because ~~it~~ the condition results in impairment of general
 6 intellectual functioning or adaptive behavior similar to that of individuals
 7 with intellectual and developmental disabilities or requires treatment and
 8 services similar to those required for the persons;

9 (iii) Is attributable to dyslexia resulting from
 10 intellectual and developmental disability, cerebral palsy, epilepsy, or
 11 autism; and

12 (iv) Has continued or can be expected to continue
 13 indefinitely.

14 (B) "~~Developmental~~ Intellectual and developmental
 15 disability" does not refer to other forms of mental disease or defect not
 16 defined in this section;

17 (2) "~~Developmentally disabled person~~ Individual with an
 18 intellectual and developmental disability" means a person with ~~a~~ an
 19 intellectual and developmental disability as defined in this section;
 20

21 SECTION 32. Arkansas Code § 20-48-605(a), concerning the issuance and
 22 renewal of licenses for the Location Act for Community Homes for
 23 Developmentally Disabled Persons, is amended to read as follows:

24 (a) For the purposes of safeguarding the health and safety of
 25 ~~developmentally disabled persons~~ individuals with intellectual or other
 26 developmental disabilities and avoiding over-concentration of Family Homes I
 27 and Family Homes II, either alone or in conjunction with similar community-
 28 based residences, the Division of Developmental Disabilities Services shall
 29 inspect and license the operation of family homes and may renew or revoke
 30 their licenses.
 31

32 SECTION 33. Arkansas Code § 20-48-611(a), concerning the voidness of
 33 restrictions by private property agreement for the Location Act for Community
 34 Homes for Developmentally Disabled Persons, is amended to read as follows:

35 (a) Any restriction, reservation, condition, exception, or covenant in
 36 any subdivision plan, deed, or other instrument of or pertaining to the

1 transfer, sale, lease, or use of property ~~which that~~ would permit residential
 2 use of property but prohibit the use of the property as a Family Home I or
 3 Family Home II for ~~developmentally disabled persons~~ individuals with
 4 intellectual or other developmental disabilities, to the extent of the
 5 prohibition, shall be void as against the public policy of this state and
 6 shall be given no legal or equitable force or effect.

7
 8 SECTION 34. Arkansas Code § 20-48-703 is amended to read as follows:
 9 20-48-703. Eligibility.

10 (a)(1) Eligibility for services and appropriate placement in the least
 11 restrictive environment for individuals with intellectual and developmental
 12 disabilities under any of the service models included in the state's Medicaid
 13 plan with the Centers for Medicare & and Medicaid Services or for services
 14 covered from state general revenue dollars shall be made by the
 15 interdisciplinary team composed in keeping with federal and state laws
 16 pertaining to individuals with special needs.

17 (2) ~~This Subdivision (a)(1) of this~~ section does not negate nor
 18 preclude the rights of individuals with intellectual and developmental
 19 disabilities under existing federal and state laws.

20 (b)(1) Subject to approval by the Centers for Medicare & and Medicaid
 21 Services, the Department of Human Services will accept an individualized
 22 family service plan or an individualized program plan developed in conformity
 23 with all applicable state and federal laws as prior authorization for
 24 Medicaid-covered therapies provided to persons with intellectual and
 25 developmental disabilities.

26 (2) Prior authorization does not preclude postpayment reviews or
 27 other utilization control measures.

28 (c)(1) For individuals with intellectual and developmental
 29 disabilities who, pursuant to the diagnosis, evaluation, and assessments
 30 conducted by the interdisciplinary team, in conformity with all applicable
 31 federal and state laws, are found to fall within the eligibility guidelines
 32 adopted pursuant to this subchapter, and where the individual's primary care
 33 physician, independent of the service provider, serves as the gatekeeper and
 34 prescribes ~~day treatment~~ early intervention day treatment or adult
 35 developmental day treatment services, or both, ~~referred to as developmental~~
 36 ~~day treatment services under the present developmental day treatment clinic~~

1 ~~services model~~, prior approval is not required for up to five (5) hours of
2 daily services.

3 (2) ~~Should~~ If the funding model for the ~~day treatment~~ early
4 intervention day treatment and adult developmental day treatment services ~~be~~
5 is changed in the state's Medicaid plan with the Centers for Medicare & and
6 Medicaid Services, the five (5) hours per day shall remain the ~~floor~~ minimum
7 number of hours to afford those families who choose to keep their
8 ~~developmentally disabled~~ child or adult with an intellectual or other
9 developmental disability in the community, thereby bearing a considerable
10 responsibility for the care and expenses related to the treatment and care.
11

12 SECTION 35. Arkansas Code § 20-48-704(b), concerning the code system
13 of reimbursement for certain services, is amended to read as follows:

14 (b) ~~In the event that it is evident that the developmental day~~
15 ~~treatment clinic~~ If the early intervention day treatment or adult
16 developmental day treatment services codes, or both, are ~~will be~~ excluded by
17 the Centers for Medicare & and Medicaid Services, the Division of Medical
18 Services of the Department of Human Services shall take all necessary steps
19 to apply to the administration for approval of a service model that will
20 continue to provide an array of community-based service options for children
21 and adults comparable to or greater than those under the present
22 ~~developmental day treatment clinic~~ early intervention day treatment and adult
23 developmental day treatment services model.
24

25 SECTION 36. Arkansas Code § 20-48-705 is amended to read as follows:

26 20-48-705. Membership of nonprofit organizations.

27 A nonprofit organization licensed or certified by the Division of
28 Developmental Disabilities Services of the Department of Human Services to
29 serve adults shall include an individual with intellectual or other
30 developmental disabilities as an ex officio member of the nonprofit
31 organization's board of directors or other governing body.
32

33 SECTION 37. Arkansas Code § 20-48-812(a), concerning the definitions
34 regarding required criminal history records checks for service providers of
35 services for individuals with developmental disabilities, is amended to read
36 as follows:

(a) As used in this section:

(1) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure or certification as a service provider or employment with a service provider to provide care as defined in § 20-38-101; and

(2) "Service provider" means any of the following:

(A) ~~An Alternative Community Services Waiver Program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services~~ A Community and Employment Supports Services waiver provider;

(B) ~~An early intervention program provider certified by the division~~ A First Connections provider; or

(C) ~~A nonprofit community program as defined by § 20-48-101~~ An early intervention day treatment or adult developmental day treatment provider.

SECTION 38. Arkansas Code § 20-48-901(1) and (2), concerning the definitions of "gross receipts" and "intermediate care facility for individuals with developmental disabilities", are amended to read as follows:

(1)(A) "Gross receipts" means all compensation paid to intermediate care facilities for individuals with intellectual and developmental disabilities for services provided to residents, including without limitation client participation.

(B) "Gross receipts" does not include charitable contributions;

(2)(A) "Intermediate care facility for individuals with intellectual and developmental disabilities" means a residential institution maintained for the care and training of persons with intellectual and developmental disabilities, ~~including without limitation intellectual disabilities.~~

~~(B) "Intermediate care facility for individuals with developmental disabilities" has the same meaning as "intermediate care facility for the mentally retarded" or "ICF/MR" under federal law.~~

~~(C)~~(B) "Intermediate care facility for individuals with intellectual and developmental disabilities" does not include:

- 1 (i) Offices of private physicians and surgeons;
- 2 (ii) Residential care facilities;
- 3 (iii) Assisted living facilities;
- 4 (iv) Hospitals;
- 5 (v) Institutions operated by the United States
- 6 Government;
- 7 (vi) Life care facilities;
- 8 (vii) Nursing facilities; or
- 9 (viii) A facility which is conducted by and for
- 10 those who rely exclusively upon treatment by prayer for healing in accordance
- 11 with tenets or practices of a recognized religious denomination; and
- 12

13 SECTION 39. Arkansas Code § 20-48-902 is amended to read as follows:
 14 20-48-902. Calculation of provider fee.

15 (a)(1) There is levied a provider fee on intermediate care facilities
 16 for individuals with intellectual or other developmental disabilities to be
 17 calculated in accordance with this section.

18 (2)(A) The provider fee shall be an amount calculated by the
 19 Division of Medical Services of the Department of Human Services to produce
 20 an aggregate provider fee payment equal to six percent (6%) of the aggregate
 21 gross receipts of all intermediate care facilities for individuals with
 22 intellectual or other developmental disabilities.

23 (B) Aggregate provider fees shall not equal or exceed an
 24 amount measured on a state fiscal year basis that may cause a reduction in
 25 federal financial participation in Medicaid.

26 (b)(1)(A) The provider fee of an intermediate facility for individuals
 27 with intellectual or other developmental disabilities shall be payable in
 28 monthly payments.

29 (B) Each monthly payment shall be due and payable for the
 30 previous month by the thirtieth day of each month.

31 (2) The division shall seek approval from the Centers for
 32 Medicare & and Medicaid Services to treat the provider fee of an intermediate
 33 care facility for individuals with intellectual or other developmental
 34 disabilities as an allowable cost for Medicaid reimbursement purposes.

35 (c) ~~No~~ An intermediate care facility for individuals with intellectual
 36 or other developmental disabilities ~~shall be~~ is not guaranteed, expressly or

1 otherwise, that any additional moneys paid to the intermediate care facility
 2 for individuals with intellectual or other developmental disabilities will
 3 equal or exceed the amount of its provider fee.

4 (d)(1) The division shall ensure that the rate of assessment of the
 5 provider fee established in this section maximizes federal funding to the
 6 fullest extent possible.

7 (2) If the division determines that the rate of assessment of
 8 the provider fee established in this section equals or exceeds the maximum
 9 rate of assessment that federal law allows without reduction in federal
 10 financial participation in Medicaid, the division shall lower the rate of
 11 assessment of the provider fee to a rate that maximizes federal funding to
 12 the fullest extent possible.

13
 14 SECTION 40. Arkansas Code § 20-48-904(a)(3), concerning the use of
 15 funds regarding intermediate care facilities, are amended to read as follows:

16 (3) The designated account moneys in the Arkansas Medicaid
 17 Program Trust Fund and the matching federal financial participation under
 18 Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed
 19 on January 1, 2009, shall be used only for:

20 (A) Continued operation of and rate increases for:

21 (i) Intermediate care facilities for individuals
 22 with intellectual and developmental disabilities;

23 (ii) ~~Developmental day treatment clinic services~~
 24 ~~provided to persons with developmental disabilities by providers licensed by~~
 25 ~~the Division of Developmental Disabilities Services of the Department of~~
 26 ~~Human Services under this chapter~~ Early intervention day treatment and adult
 27 developmental day treatment service providers; and

28 (iii) Services provided to persons with
 29 developmental disabilities under the ~~Alternative Community Services Waiver~~
 30 ~~Program by providers certified to provide waiver services by the Division of~~
 31 ~~Developmental Disabilities Services of the Department of Human Services~~
 32 Community and Employment Supports Services waiver;

33 (B) Expansion of the ~~Alternative Community and Employment~~
 34 Supports Services Waiver Program to serve more persons with developmental
 35 disabilities than is approved under the waiver program ~~as of March 1, 2009~~;

36 (C) The Division of Medical Services of the Department of

1 Human Services; and

2 (D) Public guardianship of adults.

3
4 SECTION 41. Arkansas Code § 20-48-904(b), concerning the use of funds
5 regarding intermediate care facilities, are amended to read as follows:

6 (b)(1) The designated account moneys in the Arkansas Medicaid Program
7 Trust Fund from the provider fee on intermediate care facilities for
8 individuals with intellectual or other developmental disabilities that are
9 unused at the end of a fiscal year shall be carried forward.

10 (2) The designated account moneys in the Arkansas Medicaid
11 Program Trust Fund from the provider fee on intermediate care facilities for
12 individuals with intellectual or other developmental disabilities may not be
13 used to supplant other local, state, or federal funds.

14
15 SECTION 42. Arkansas Code § 20-48-1001(1) and (2), concerning the
16 definitions of "Alternative Community Services Waiver Program" and "gross
17 receipts" relating to the Alternative Community Services Waiver Program
18 provider fee, are amended to read as follows:

19 (1) "~~Alternative Community~~ and Employment Supports Services
20 Waiver Program" means the home and community-based waiver program authorized
21 by the Centers for Medicare & and Medicaid Services under section 1915(c) of
22 the Social Security Act, 42 U.S.C. § 1396 et seq., and administered by the
23 Division of Developmental Disabilities Services of the Department of Human
24 Services;

25 (2)(A) "Gross receipts" means compensation paid to a provider
26 for services provided through, or identical to those provided under, the
27 ~~Alternative Community~~ and Employment Supports Services Waiver Program.

28 (B) "Gross receipts" does not include charitable
29 contributions; and

30
31 SECTION 43. Arkansas Code § 20-48-1002(a)(1), concerning the
32 Alternative Community Services Waiver Program provider fee, is amended to
33 read as follows:

34 (a)(1) There is imposed a provider fee on services provided through,
35 or identical to those provided under, the ~~Alternative Community~~ and
36 Employment Supports Services Waiver Program to be calculated in accordance

1 with this section.

2
 3 SECTION 44. Arkansas Code § 20-48-1002(c), concerning the Alternative
 4 Community Services Waiver Program provider fee, is amended to read as
 5 follows:

6 (c) A provider of services under the ~~Alternative Community~~ and
 7 Employment Supports Services Waiver Program shall not be guaranteed,
 8 expressly or otherwise, that any additional moneys paid to the provider for
 9 services under the ~~Alternative Community~~ and Employment Supports Services
 10 Waiver Program will equal or exceed the amount of its provider fee.

11
 12 SECTION 45. Arkansas Code § 20-48-1004(a)(3)(A), concerning the use of
 13 funds relating to the Alternative Community Services Waiver Program provider
 14 fee, is amended to read as follows:

15 (A) For the amount resulting from the first five and one-
 16 half percent (5.5%) of the provider fee:

17 (i) A minimum of fifty percent (50%) shall be used
 18 for the support and enhancement of services under the ~~Alternative Community~~
 19 and Employment Supports Services Waiver Program to persons with developmental
 20 disabilities; and

21 (ii) An amount not to exceed fifty percent (50%) may
 22 be used by the Division of Medical Services of the Department of Human
 23 Services; and

24
 25 SECTION 46. Arkansas Code §§ 20-48-1101 – 20-48-1103 are amended to
 26 read as follows:

27 20-48-1101. Legislative intent.

28 The intent of this subchapter is to avoid unnecessary expansion in
 29 Medicaid costs and services related to ~~child health management services and~~
 30 ~~developmental day treatment clinic~~ early intervention day treatment services
 31 for children or any successor program providing early intervention day
 32 treatment to children.

33
 34 20-48-1102. Definitions.

35 As used in this subchapter:

36 (1) “Accredited entity” means a corporate entity that:

1 (A) Has successfully completed an ongoing accreditation
 2 process that is offered by a national accrediting organization and is+
 3 related to the delivery of early intervention day treatment services; and

4 ~~(i) Related to the delivery of child health
 5 management services;~~

6 ~~(ii) Related to the delivery of developmental day
 7 treatment clinic services for children; or~~

8 ~~(iii) Related to the delivery of early intervention
 9 day treatment services provided by a successor program; and~~

10 ~~(B) One (1) or more of the following:~~

11 ~~(i) Satisfies all certification criteria established
 12 by the Department of Human Services for child health management services;~~

13 ~~(ii) Satisfies all licensure criteria for
 14 developmental day treatment clinic services for children established by the
 15 Division of Developmental Disabilities Services of the Department of Human
 16 Services; or~~

17 ~~(iii) Satisfies all certification and licensure
 18 criteria established by a regulatory entity governing any successor program;~~

19 (B) Satisfies all certification and licensure criteria
 20 established by the Department of Human Services for the delivery of early
 21 intervention day treatment services;

22 ~~(2) "Child health management services" means an array of clinic
 23 services for children;~~

24 ~~(A) Intended to provide full medical multidiscipline
 25 diagnosis, evaluation, and treatment of developmental delays in Medicaid
 26 recipients; and~~

27 ~~(B) That is diagnostic, screening, evaluative, preventive,
 28 therapeutic, palliative, or rehabilitative services, including early
 29 intervention day treatment services;~~

30 ~~(3)(A) "Child health management services operated by an academic
 31 medical center" means an academic medical center program specializing in
 32 developmental pediatrics that is administratively staffed and operated by an
 33 academic medical center and under the direction of a board-certified or
 34 board-eligible developmental pediatrician;~~

35 ~~(B) An academic medical center consists of a medical
 36 school and its primary teaching hospitals and clinical programs;~~

1 ~~(C) For a child health management services program~~
 2 ~~operated by an academic medical center, services may be provided at different~~
 3 ~~sites operated by the academic medical center as long as the child health~~
 4 ~~management services program falls under one (1) administrative structure~~
 5 ~~within the academic medical center;~~

6 ~~(4) "Developmental day treatment clinic services for children"~~
 7 ~~means early intervention day treatment provided to children by a nonprofit~~
 8 ~~community program that:~~

9 ~~(A) Is licensed to provide center-based community services~~
 10 ~~by the Division of Developmental Disabilities Services; and~~

11 ~~(B) Serves as a quasi-governmental instrumentality of the~~
 12 ~~state by providing support and services to persons who have a developmental~~
 13 ~~disability or delay and would otherwise require support and services through~~
 14 ~~state-operated programs and facilities;~~

15 ~~(5)(A)(2)(A)~~ "Early intervention day treatment" means services
 16 provided by a pediatric day treatment program run by early childhood
 17 specialists, overseen by a physician, and serving children with developmental
 18 disabilities, developmental delays, or a medical condition that puts them at
 19 risk for developmental delay.

20 (B) Early intervention day treatment includes without
 21 limitation diagnostic, screening, evaluative, preventive, therapeutic,
 22 palliative, and rehabilitative and habilitative services, including speech,
 23 occupational, and physical therapies and any medical or remedial services
 24 recommended by a physician for the maximum reduction of physical or mental
 25 disability and restoration of the child to the best possible functional
 26 level.

27 ~~(C) Child health management services and developmental day~~
 28 ~~treatment clinic services~~ Early intervention day treatment or a successor
 29 program ~~constitute~~ constitutes the state's early intervention day treatment
 30 program;

31 (3)(A) "Early intervention day treatment services operated by an
 32 academic medical center" means an academic medical center program
 33 specializing in developmental pediatrics that is administratively staffed and
 34 operated by an academic medical center and under the direction of a board-
 35 certified or board-eligible developmental pediatrician.

36 (B) An academic medical center consists of a medical

1 school and its primary teaching hospitals and clinical programs.

2 (C) "Early intervention day treatment services operated by
 3 an academic medical center" may be provided at different sites operated by
 4 the academic medical center if the early intervention day treatment services
 5 program falls under one (1) administrative structure within the academic
 6 medical center;

7 ~~(6)~~(4) "Existing operations" means services provided by a ~~child~~
 8 ~~health management services program or a developmental day treatment clinic~~ an
 9 early intervention day treatment services program that has submitted a
 10 completed application to the Division of Medical Services of the Department
 11 of Human Services to serve as a Medicaid provider no later than July 1, 2013;

12 ~~(7)~~(5) "Medicaid" means the medical assistance program
 13 authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et
 14 seq., and established under § 20-77-101 et seq., that provides for payments
 15 for medical goods or services on behalf of indigent families with dependent
 16 children and of ~~aged, blind, or disabled~~ individuals who are aged, blind, or
 17 disabled and whose income and resources are insufficient to meet the cost of
 18 necessary medical services;

19 ~~(8)~~(6) "National accrediting organization" includes without
 20 limitation:

21 (A) The CARF International; or

22 (B) Any other similar national accrediting organization
 23 recognized by the Division of Developmental Disabilities Services; and

24 ~~(9)~~(7) "Successor program" means a program:

25 (A) That provides early intervention day treatment to
 26 children;

27 (B) That is created as a replacement for, combination of,
 28 or derived in whole or in part from the ~~child health management services~~
 29 ~~program and the developmental day treatment clinic~~ early intervention day
 30 treatment services program for children; and

31 (C) In which the for-profit and nonprofit providers from
 32 ~~child health management services programs and developmental day treatment~~
 33 ~~clinic~~ early intervention day treatment services programs are eligible to
 34 participate.

35
 36 20-48-1103. Prerequisites for certification and licensure.

1 (a)(1)~~(A)~~ Certification and licensure are required for operation as a
 2 ~~child health management services~~ an early intervention day treatment program.

3 ~~(B)(2)~~ Certification shall be granted on a county-wide
 4 basis.

5 ~~(2)(b)~~ Before obtaining certification, a ~~child health management~~
 6 an early intervention day treatment services program is required to apply to
 7 and obtain the approval of the Division of Developmental Disabilities
 8 Services of the Department of Human Services to implement new ~~child health~~
 9 ~~management~~ early intervention day treatment services under the criteria
 10 established under this subchapter.

11 ~~(3)(c)~~ A certified ~~child health management~~ early intervention
 12 day treatment services program with existing operations on July 1, 2013,
 13 shall not be required to obtain the approval of the division to continue
 14 existing operations.

15 ~~(b)(1)(A)~~ Licensure from the division is required for operation of a
 16 developmental day treatment clinic for children.

17 ~~(B)~~ The division shall grant licensure on a county-wide
 18 basis.

19 ~~(2)~~ Before obtaining licensure, a nonprofit community program
 20 seeking to operate developmental day treatment clinic services for children
 21 is required to apply to and obtain the approval of the division to implement
 22 new developmental day treatment clinic services for children under the
 23 criteria established under this subchapter.

24 ~~(3)~~ A licensed nonprofit community program providing
 25 developmental day treatment clinic services for children with existing
 26 operations on July 1, 2013, shall not be required to obtain the approval of
 27 the division to continue existing operations.

28 ~~(c)(1)(A)~~ Licensure or certification from the regulatory authority
 29 governing a successor program is required for operation as a successor
 30 program.

31 ~~(B)~~ Licensure or certification shall be granted on a
 32 county-wide basis.

33 ~~(2)~~ Before obtaining licensure or certification, a successor
 34 program is required to apply to and obtain the approval of the division to
 35 implement new successor program services under the criteria established in
 36 this subchapter.

1 ~~(3) A successor program that was a certified child health~~
 2 ~~management services program with existing operations on July 1, 2013, or a~~
 3 ~~licensed nonprofit community program providing developmental day treatment~~
 4 ~~elinic services for children with existing operations on July 1, 2013, shall~~
 5 ~~not be required to obtain the approval of the division to continue operations~~
 6 ~~that were in existence on July 1, 2013, but shall be subject to certification~~
 7 ~~or licensure surveys and rules applicable to the successor program.~~

8
 9 SECTION 47. Arkansas Code § 20-49-101(3), concerning the definition of
 10 "incompetent" regarding sterilization of mental incompetents, is amended to
 11 read as follows:

12 (3) "Incompetent person" shall mean a person as to whom it is
 13 proved:

14 (A) He or she is incapable of caring for himself or
 15 herself by reason of intellectual and developmental disability, mental
 16 illness, imbecility, idiocy, or other mental incapacity;

17 (B) He or she manifests sexual inclinations which make it
 18 probable that he or she will procreate children unless he or she is rendered
 19 incapable of procreation; and

20 (C) There is no probability that his or her condition will
 21 improve so that he or she will become capable of caring for himself or
 22 herself.

23
 24 SECTION 48. Arkansas Code § 21-15-101(7), concerning the definition of
 25 "developmentally disabled person" as to criminal background checks for public
 26 officers and employees, is amended to read as follows:

27 (7) ~~"Developmentally disabled person"~~ "Individual with an
 28 intellectual or developmental disability" means a person with a disability
 29 that is attributable to:

30 (A) ~~Mental retardation,~~ Impairment of general intellectual
 31 functioning or adaptive behavior, including without limitation cerebral
 32 palsy, spina bifida, Down syndrome, epilepsy, or autism;

33 (B) Dyslexia resulting from a disability associated with
 34 ~~mental retardation~~ intellectual and developmental disabilities, cerebral
 35 palsy, epilepsy, or autism; or

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

1 ~~mental retardation~~ intellectual and developmental disabilities as described
 2 in subdivision (7)(A) of this section because it results in an impairment of
 3 general intellectual functioning or adaptive behavior similar to those of
 4 ~~mentally retarded~~ persons with intellectual and developmental disabilities or
 5 requires treatment and services similar to those required for ~~mentally~~
 6 ~~retarded~~ persons with intellectual and developmental disabilities;

7
 8 SECTION 49. Arkansas Code § 23-75-111(b)(1), concerning subscription
 9 contracts relating to hospital and medical service corporations, is amended
 10 to read as follows:

11 (b)(1) In any hospital service corporation contract, any medical
 12 service corporation contract, or any hospital and medical service corporation
 13 contract, whether group or individual, that contains a provision whereby
 14 coverage of a dependent in a family group terminates at a specified age,
 15 there shall also be a provision that coverage of an unmarried dependent who
 16 is incapable of sustaining employment by reason of ~~mental retardation~~
 17 intellectual and developmental disability or physical disability, who became
 18 so incapacitated prior to the attainment of nineteen (19) years of age and
 19 who is chiefly dependent upon the contract holder or certificate holder for
 20 support and maintenance, shall not terminate, but coverage shall continue so
 21 long as the contract or certificate remains in force and so long as the
 22 dependent remains in such a condition.

23
 24 SECTION 50. Arkansas Code § 23-85-131(b)(1), concerning age limits and
 25 exceptions to age limits relating to accident and health insurance, is
 26 amended to read as follows:

27 (b)(1) In any accident and health insurance contract that contains a
 28 provision whereby coverage of a dependent in a family group terminates at a
 29 specified age, there shall also be a provision that coverage of an unmarried
 30 dependent who is incapable of sustaining employment by reason of ~~mental~~
 31 ~~retardation~~ intellectual and developmental disability or physical disability,
 32 who became so incapacitated prior to the attainment of nineteen (19) years of
 33 age, and who is chiefly dependent upon the policyholder for support and
 34 maintenance shall not terminate, but coverage shall continue so long as the
 35 contract remains in force and so long as the dependent remains in such
 36 condition.

1
2 SECTION 51. Arkansas Code § 23-86-102(c)(8)(A), concerning blanket
3 accident and health insurance required provisions, is amended to read as
4 follows:

5 (8)(A) In any contract that contains a provision whereby
6 coverage of a dependent in a family group terminates at a specified age,
7 there shall also be a provision that coverage of an unmarried dependent who
8 is incapable of sustaining employment by reason of ~~mental retardation~~
9 intellectual and developmental disability or physical disability, who became
10 so incapacitated prior to the attainment of nineteen (19) years of age, and
11 who is chiefly dependent upon the employee for support and maintenance shall
12 not terminate, but coverage shall continue so long as the contract remains in
13 force and so long as the dependent remains in such condition.
14

15 SECTION 52. Arkansas Code § 23-86-108(4)(A), concerning group accident
16 and health insurance required provisions, is amended to read as follows:

17 (4)(A) In any contract that contains a provision whereby
18 coverage of a dependent in a family group terminates at a specified age,
19 there shall also be a provision that coverage of an unmarried dependent who
20 is incapable of sustaining employment by reason of ~~mental retardation~~
21 intellectual and developmental disability or physical disability, who became
22 so incapacitated prior to the attainment of nineteen (19) years of age and
23 who is chiefly dependent upon the employee for support and maintenance, shall
24 not terminate, but coverage shall continue so long as the coverage of the
25 employee or member remains in force and so long as the dependent remains in
26 such condition.
27

28 SECTION 53. Arkansas Code § 25-10-113(b), concerning the disposition
29 of direct services funds by the Department of Human Services, is amended to
30 read as follows:

31 (b) It is the specific intent of this act to prevent the diversion of
32 community grant-in-aid line funds for any purpose that would not provide
33 direct services to ~~developmentally disabled~~ clients with intellectual or
34 other developmental disabilities in community programs.
35
36