

DHS Responses to Public Comments Regarding Early Intervention Day Treatment

Larry Stang

Comment: There is no mention of an annual employee evaluation requirement. We are in the "people helping people" business, and to not require at least an annual employee evaluation, which allows supervisors to interact with employees regarding their work performance, is a recipe for disaster. This requirement should be considered a "minimum standard". Thank you for this opportunity to comment on these proposed rules,

Response: Thank you for your comment. DDS does not consider an annual employee evaluation a required minimum standard. An EIDT provider in compliance with the proposed rules can deliver safe and effective EIDT services to beneficiaries without conducting annual employee evaluations for each employee. An annual employee evaluation may be a very beneficial and perhaps even a best business practice; however, for the above reason DDS believes whether or not to conduct annual employee evaluations is an individual business decision to be made by each EIDT provider and not a required minimum standard.

Diana Beck, Past Director, Conway County Center for Exceptional Children, Inc.

Comment: I would like to express my concern over the standard of 1 toilet for every 10 children. This will cause a major problem at our preschool buildings. When these were built they were built on the premise of 1 toilet/sink for every 15 children (as is the current DCCECE licensing requirement). This new standard will cause us to have to build on (which we cannot afford to do) or we will have to serve fewer children. Please reconsider or grandfather existing facilities in.

Response: Thank you for your comment. Section 401 (a)(6) will be changed to reflect one (1) sink and one (1) toilet for every fifteen (15) beneficiaries.

Leah Coleman

Comment: CHMS Association Comments regarding the Medicaid manual and Rules manual for EIDT: The ECDS (early childhood developmental specialist) qualification for letter A is worded differently in the Medicaid manual and the rules manual. Please make the definitions consistent. It is requested that the word 'an' be used instead of 'current.'

Response: Thank you for your comment. Section 103(i)(2)(A) will be changed to read, "An Early Childhood or Early Childhood Special Education certificate" so that the definition is consistent with the Medicaid Manual.

Comment: In section 302, please be explicit about ratios of students to adults and connect that with room capacity. We understand that EIDT ratios are more stringent than childcare ratios and we wholeheartedly agree with the ratios prescribed; however, know that classrooms were designed to house more children based on previous childcare ratios. Preferable would be consideration of room capacity and link that to the student to adult ratio allowed in each classroom, otherwise number of students able to be served will be drastically affected.

Response: Thank you for your comment. This was not a change during this promulgation. While the proposed minimum staffing ratios are slightly different from the currently effective minimum staffing ratios, the EIDT Medicaid Manual and current minimum standards applicable to EIDTs have never directly tied staffing ratios to room capacity.

Comment: In section 303. Employee Training whole section A and B, please designate specific classes or training necessitated. Please designate where this information will be provided, so that training requirements can be easily met.

Response: Thank you for your comment. Specific classes and trainings were intentionally omitted. It is an individual program business decision as to the content, size, duration, and delivery of the classes and trainings on the topics listed in Section 303.

Comment: In section 401 (a) (6), there is a designation of the number of toilets and sinks needed per child. Some classrooms and buildings were constructed based on different ratios (based on 15 children). Please add a grandfather provision that allows for these facilities based on the old ratios, otherwise number of students able to be served will be drastically affected. See comment number 2 above.

Response: Thank you for your comment. Section 401 (a) (6) will be changed to reflect one (1) sink and one (1) toilet for every fifteen (15) beneficiaries.

Comment: In section 503 – regarding reporting to First Connections and LEA within two days of “first contact”. Please define what “first contact” means, because it could mean a phone inquiry from a parent that does not provide ample information for the reporting. A better method would be referral after receipt of the OPTUM screen results. This change would create a very specific timeline for the referral, namely referral within two days after the clinic receives the OPTUM screener results.

Response: Thank you for your comment. This is an Individuals with Disabilities Education Act requirement and language.

Comment: CCL rules include background checks, a fingerprint check, a child maltreatment check. Currently prescribed background checks should be adequate even though an adult maltreatment check is not included. We believe that these background checks should be ample to cover any possible past maltreatment by prospective employees, including adult maltreatment.

Regarding training for childcare licensing and EIDT, we believe that training should be aligned in those manuals.

Re: section 804 on moratorium, why would DPSQA prohibit acceptance of new beneficiaries? Please describe with specificity the standard for the prohibition of acceptance of new beneficiaries or take this section out completely as there are repercussions listed for violations in previous sections already.

Response: Thank you for your comment. The background check requirements in the proposed rules align the EIDT program with other DDS programs.

DDS believes EIDT employees require specific trainings due to the beneficiary populations served by EIDTs; therefore, required employee trainings may not necessarily align with the Minimum Licensing Requirements for Child Care Centers.

A moratorium on an EIDT program accepting new beneficiaries would be applied to any situation where DPSQA deemed it appropriate given the non-compliance factors listed in Section 803(c).

Comment: Re: underserved designation, DDS/DHS needs to provide a more specific definition regarding the determination, which could include the 30 child service from a contiguous county OR that there is not an EIDT clinic in that county AND contact is made with existing providers from contiguous counties about their interest in expansion prior to expansion allowed. We believe that existing providers should be contacted and given the opportunity to expand, if such expansion is found to meet needs. Re: section 203 Licensure Process, we believe that the word 'may' should be changed to 'will' since it is followed by standards that must be met.

Response: Thank you for your comments. The specific process requirements pertaining to EIDT expansion are set out in the statutes Ark. Code Ann. § 20-48-1101, *et seq.* and in DDS Policy 1089-B. It would be duplicative to copy all these requirements into these rules.

There are certain statutory requirements applicable to EIDTs that would be unnecessarily duplicative to include in the proposed rules. Just because an applicant submits a completed application pursuant to the process set out in Section 203 of the proposed rules, does not necessarily mean an application for a license will be granted. As a result, the use of "may" is appropriate in Section 203.

Comment: Re: section 305 (b) (13) We recommend removing email address from this list. We do not contact guardians in this method (ie. when a child is sick we wouldn't email a parent. And we can't send PHI over email) so it seems unnecessary to request it from them.

Re: Section 401(a) (19) Please consider removing fire extinguishing systems from this number as most buildings follow current fire codes that allow a provider to have outdoor exits from the classrooms and not have a sprinkler system. Also, please specify what an emergency power system means. Does that mean at the very least battery operated emergency lighting and exit signs or is it something more than this? Can a grandfather clause be added? We understand the need for safety, but adding a sprinkler system or a more intensive emergency electrical source to an existing building that had originally met code requirements is very expensive.

Response: Thank you for your comments.

While an EIDT program may elect to not contact a guardian by email, DPSQA may elect to contact a guardian by email.

DDS believes the requirements in Section 401(a)(19) are an appropriate best practice for the safety and welfare of beneficiaries at any facility and should not be subject to grandfathering. Section 401(a)(19) does not require a sprinkler system or anything else to be installed. The proposed rule only requires the essential electrical devices located in an EIDT to have emergency power source in the event of a power outage. The examples listed in Section 401(a)(19) are types systems and devices that run on electricity that would be considered essential electrical devices if located in an EIDT.

Larry Stang

Comment: DDPA Comments on EIDT Medicaid Manual and EIDT Rules 212.200 Prescription Please clarify that it will be acceptable to obtain a faxed or scanned/emailed copy of the prescription for services.

Response: Thank you for your comment. Section 212.200(B) does not require an original signature, so a scanned/emailed and faxed prescription would comply so long as it meets the other requirements of the section.

Comment: 214.110 EIDT Evaluation and Treatment Planning Services
All these required elements cannot be accomplished within the one hour of reimbursement.

Response: Thank you for your comment. This was not changed during this promulgation.

Comment: 214.400 Nursing

Thank you for adding cecostomy or ileostomy tube.

Response: Thank you for your comment.

Comment: 212.600 Medically Necessary Speech-Language Therapy, Occupational Therapy, Physical Therapy, or Nursing Services

There is no indication here or anywhere else in this Manual that a beneficiary who does not require at least one therapy or nursing still may seek EIDT services through the EPSDT process. DHS represented this process to the Court as the way it meets the EPSDT requirements. Existing court precedents require DHS to make the public aware of how they may access services in any alternate way. Please add language to explain this process, including the timeline.

Response: Thank you for your comment. The Child Health Services (EPSDT) program is a standalone Medicaid program that is not tied to EIDT in any way. EPSDT covers any medically necessary service that would lead to the maximum reduction of medical and physical disabilities and restore the child to his or her best possible functional level. EPSDT has its own forms, eligibility, prescription, timelines, and review process requirements. For example, day habilitation is a standalone service that is potentially available through the EPSDT program. Day habilitation under EPSDT may be delivered by a provider that is a licensed EIDT facility, but the applicable eligibility, prescription, timelines, and review process requirements would be those for the EPSDT program, not EIDT.

It would be confusing and against standard practice to reference another Medicaid program such as EPSDT in the proposed EIDT Medicaid Manual or proposed rules. Additionally, any medically necessary Medicaid service is available to an EPSDT eligible beneficiary, not just day habilitation or the other covered EIDT services.

There are numerous options available to alleviate any public awareness concerns that would not involve a potentially confusing intermingling of another Medicaid program's requirements in the proposed EIDT Medicaid Manual or proposed rules.

Comment: 214.100 EIDT Evaluation and Treatment Planning Services

The second and third paragraphs repeat eligibility requirements and seem misplaced in this section.

Response: Thank you for your comment. The second and third paragraphs of Section 214.100 specify the documentary evidence that should be maintained to demonstrate the medical necessity for this specific covered EIDT service.

Comment: 214.200 Day Habilitative Services

Subsection(a) subparagraphs 1 and 2 repeat eligibility requirements and seem misplaced in this section.

Subsection D states the ratio for ECDCs, but below that you have stricken the staff to beneficiary ratios. We realize they are in the Licensure Rules, but it seems like they should be included here along with the ECDC ratio.

Response: Thank you for your comment. The second and third paragraphs of Section 214.200 specify the documentary evidence that should be maintained to demonstrate the medical necessity for this specific covered EIDT service.

DDS has intentionally minimized the duplication of information between the proposed EIDT Medicaid Manual and proposed rules in order to create more succinct documents and to avoid having to promulgate both documents should a change be required.

Comment: EIDT Licensure Manual

General Comments

The rules do not sync with the “DDS Standards for Certification, Investigation and Monitoring for Center-Based Community Services”? How does DHS intend to handle that issue? Note also that the Center-Based Standards apply to group homes as well.

Response: Thank you for your comment. These proposed rules will supersede and replace the DDS Standards for Certification, Investigation and Monitoring for Center-Based Community Services, which will be repealed on the effective date of these proposed rules. Any references to group homes in the DDS Standards for Certification, Investigation and Monitoring for Center-Based Community Services are incorrectly included since group homes do not provide a center-based service, and those standards were specifically limited to EIDT and ADDT programs.

Comment: 103 Definitions

(m) “Employees” – Employees and independent contractors are different legally and ideally should not encompassed in the same definition. While we understand it is easier to include independent contractors in the definition, and some provisions should apply to contractors, other provisions, such as background checks should not apply to ALL contractors, such as vendors and professionals who do not have contact with beneficiaries. You have explained in the text when certain sections apply to independent contractors, so it doesn’t seem necessary to blur the distinction.

Response: Thank you for your comment. Section 103(m) will be broken into subsection (1) and (2). Section 103(m)(1) will remain as currently written. Section 103(m)(2) will be added stating:

(2) “Employee” does not mean an independent contractor if:

- (i) the independent contractor does not assist in the day-to-day operations of the EIDT; and
- (ii) the independent contractor has no beneficiary contact.”

Comment: 302 Employees and Staffing Requirements

In (a)(2), recommend the rules refer readers to the ratios, e.g., “Minimum staffing ratios are set forth in (e).”

In (d)(2)(A) please define “directly” supervised. Does this mean cannot count in ratio and cannot be left alone with a beneficiary?

Response: Thank you for your comment. Section 302(d)(2)(A) will be changed to “Directly and visually supervised by an adult employee when in direct contact beneficiaries;”

Comment: 303 Employee Training

New hire and annual topics with specific categories has been added back to this version – we appreciate the flexibility to make determinations on most needed trainings.

Response: Thank you for your comment. These are basic health and safety trainings for employees that have direct contact with beneficiaries and will be required for such employees in all Medicaid program provider certification manuals.

Comment: 304 Employee Records

(5) Drug screen results. Those should be in medical files not personnel files as required by DOL. We have no opposition to providing a copy to DPSQA, but they should be segregated.

Response: Thank you for your comment. The current Section 304(b) will become Section 304(c) and a new Section 304(b) will be added that states:

- (b) (1) An EIDT must ensure that each personnel record is kept confidential and available only to:
 - (A) Employees who need to know the information contained in the personnel record;
 - (B) Persons or entities who need to know the information contained in the personnel record;
 - (C) DPSQA and any governmental entity with jurisdiction or other authority to access the personnel record;

- (D) The employee; and
- (E) Any other individual authorized in writing by the employee.
- (2) (A) An EIDT must keep personnel records in a file cabinet or room that is always locked.
- (B) (i) An EIDT may use electronic records in addition to or in place of physical records to comply with these standards.
- (ii) An EIDT provider that uses electronic records must take reasonable steps to backup all electronic records and reconstruct a personnel record in the event of a breakdown in the EIDT's electronic records system.

Comment: 305 Beneficiary Service Records

Recommend adding "attributed PASSE information, if applicable."

Response: Thank you for your comment. Section 305(b)(12) will be changed to add, "or managed care organization information, if applicable."

Comment: Facility Requirements

401 General Requirements

Please grandfather in those providers whose centers do not meet new physical plant requirements. It would not be fair to impose new standards on them.

Response: Thank you for your comment. DDS believes the limited number of new physical plant requirements are important for beneficiary safety and welfare and should not be subject to grandfathering.

Comment: Paragraph (5) requires centers to have "an emergency alarm system throughout the building to alert employees and beneficiaries when there is an emergency." Does this have to be a system wide alert or can this be foghorn or other system? Can you change "alarm" to "alert"?

Response: Thank you for your comment. As written, any system would comply that is able to alert employees and beneficiaries throughout the facility when there is an emergency.

Comment: Paragraph (6) requires that each site have "at least one (1) toilet and one (1) sink for every ten (10) beneficiaries with running hot and cold water, toilet tissue, liquid soap, and paper

towels or air dryers.” Was 15 not 10 in the last version. The current standards just require adequacy to meet client needs. It is unfair to impose structural changes on centers already licensed.

Response: Thank you for your comment. Section 401(6) will be changed to reflect one (1) sink and one (1) toilet for every fifteen (15) beneficiaries.

Comment: Paragraph 19 requires an emergency power system “to provide lighting and power to essential electrical devices throughout the EIDT, including without limitation power to exit lighting and fire detection, fire alarm, and fire extinguishing systems.” Many centers do not have this in place, so it could be a costly change if they are not grandfathered in.

Response: DDS believes the requirements in Section 401(a)(19) are an appropriate best practice for the safety and welfare of beneficiaries at any facility and should not be subject to grandfathering. Section 401(a)(19) does not require anything in and of itself to be installed. The proposed rule only requires the essential electrical devices located in an EIDT to have emergency power source in the event of a power outage. The examples listed in Section 401(a)(19) are types systems and devices that run on electricity that would be considered essential electrical devices if located in an EIDT.

Comment: 502 Exits

D has been added since last version. “An EIDT shall remain responsible for the health, safety, and welfare of the exiting beneficiary until all transitions to new service providers are complete.” Please remove. A day program does not provide services 24/7 as waiver can. We cannot remain responsible for an individual’s welfare in that manner. We can coordinate with another provider if they are transitioning to a different program.

This section does not appear to leave room for a child to be discharged for repetitive behaviors that are harmful to peers or staff after implementation of a behavior plan. Is that the intent? It also is not covered in section 603 Behavior Management Plans.

Response: Thank you for your comment. Section 502 (d) will be removed. As written, an EIDT may exit a beneficiary from its program for any lawful reason.

Comment: 505 Appropriate Referrals for Beneficiaries Failing to Qualify

This section requires providers to provide families with referrals to “other available services” if they do not meet the EIDT medical necessity requirements. There is no mention of the EPSDT process for children who do not meet the one-therapy/nursing rule. Please explain this process, including the timeline.

Response: Thank you for your comment. The Child Health Services (EPSDT) program is a standalone Medicaid program that is not tied to EIDT in any way. EPSDT covers any medically necessary service that would lead to the maximum reduction of medical and physical disabilities and restore the child to his or her best possible functional level. EPSDT has its own forms, eligibility, prescription, timelines, and review process requirements. For example, day habilitation is a standalone service that is potentially available through the EPSDT program. Day habilitation under EPSDT may be delivered by a provider that is a licensed EIDT facility, but the applicable eligibility, prescription, timelines, and review process requirements would be those for the EPSDT program, not EIDT.

It would be confusing and against standard practice to reference another Medicaid program such as EPSDT in the proposed EIDT Medicaid Manual or proposed rules. Additionally, any medically necessary Medicaid service is available to an EPSDT eligible beneficiary, not just day habilitation or the other covered EIDT services.

There are numerous options available to alleviate any public awareness concerns that would not involve a potentially confusing intermingling of another Medicaid program's requirements in the proposed EIDT Medicaid Manual or proposed rules.

Comment: 601 Arrivals, Departures, and Transportation

601(a)(2) requires: "(B) Documentation of arrivals to and departures from an EIDT must include without limitation the beneficiary's name, age, and date of birth, date and time of arrival and departure, name of the person or entity that provided transportation, and method of transportation" We may not know the name of the person that provided transportation when it is a transportation broker/subcontractor or family dropping off individuals. It would be more appropriate in those situations to notate the transportation company or family?

Response: Thank you for your comment. The age requirement will be removed from Section 601(a)(2)(B).

Comment: 602 Medications

EIDTs do not routinely "administer" medications. It is possible that a nurse may administer some under the nursing service, but non-nursing staff generally are not allowed to "administer" medications.

Response: Thank you for your comment.

Comment: 702 Reporting Requirements

In (a)(1) reports of a certain type of even are required to be submitted within one hour of the event. One hour is a very short time frame. We understand the need to report quickly and same

day, but perhaps more leeway (4 hours) could be considered. The priority needs to be taking care of the individual served first, the family second, any staff involved third and then reporting.

Response: Thank you for your comment. DDS believes death or serious injury should be reported immediately, meaning the current one (1) hour is appropriate.

Comment: 801 Monitoring

In (b)(5) could you consider putting time frames around the monitoring process, the timeline for an EIDT to respond to requests for information, and that all requests for information be submitted to the EIDT in writing?

Response: Thank you for your comment. The length of time for monitoring will vary from case to case. Section 801(b)(3) and (b)(4) will be changed to include the word “Written” as the first word in the subsection. The applicable timeline for an EIDT to respond to requests for information will be included in any written request for information from DPSQA and may vary in length of time depending on the nature of the request.

Comment: 805 Transfer of Beneficiaries

(b) says “An EIDT must continue providing services until the beneficiary is transferred to his or her new service provider of choice.” It is not within the EIDT’s control as to when another provider the beneficiary has chosen will accept the individual. If the individual chooses to remain, and is complying with health and safety requirements, it is not an issue, but it should not be mandated.

Response: Thank you for your comment. Section 805(b) will be revised to insert “If directed by DPSQA,…” at the beginning.

Comment: 1001 Reconsideration of Adverse Regulatory Actions

(a)(1) Reconsiderations should be handled by someone not involved in the original determination nor reporting to someone who was.

Response: Thank you for your comment. A reconsideration request under Section 1001 is required to be addressed to and will be conducted by the DPSQA Office of the Director, which means it would not be conducted by an individual involved in the original determination or anyone reporting to an individual that was involved in the original determination.

(d) Can you make it clear that DHS will not proceed with allowing an expansion based on underserved determination until any appeal is resolved. Otherwise, an appeal becomes pointless.

Response: Thank you for your comment. An appeal right would exist only when DDS declines a request for a county to be declared underserved. There is no appeal right if DDS were to grant a request to declare a county underserved.

Alicia Quinn

Public hearing held remotely 10-16-20 at 12:00p.m.

Comment: Hi. I was wondering, in the EIDT manual, it has the link to the codes, the billing codes. I know you said they're not going to be in the manual anymore, but I was just wondering if we would be able to review those codes, specifically, because the link doesn't take us anywhere?

Response (at the time of the hearing): MS. STONE: they are on a fee schedule and we got similar question from the therapists on the therapy rule changes. Let me see if I can get the fee schedule posted, okay?

Response: Thank you for your comment.

Chassidy, ARkids

Comment: I was just wondering if there was any way to get a clearer definition of what constitutes an underserved county?

Response: Thank you for your comment. The process requirements pertaining to EIDT expansion are set out in the statutes Ark. Code Ann. § 20-48-1101, *et seq.* and in DDS Policy 1089-B.

Tina Rano, UAMS Pediatrics

Public hearing held remotely 10-16-20 at 12:00p.m.

Comment: I'm wondering when it says to view or print the billable EIDT evaluation management planning codes, I know you guys said that there was going to be a link to the fee schedule and that kind of thing, but is this going to be a more substantial listing of the codes that's going to tell the units that are expected and that kind of thing like they do currently in the manual or is it just going to be the fee schedule?

Response (at the time of the hearing): MS. STONE: "I think the fee schedule is very confusing because it's one of the first times we're pulling it out. And we're pulling it out, as I read in the notice, because when codes changed nationally, you know, it's just really hard to keep those manuals up-to-date, so we're going to keep the fee schedule up-to-date. But it's going to go into great detail. I'm going to try to get my hands on the fee schedule and see if we can get that posted."

Comment: Yeah, that'd be great. I just know that, you know, for new coders and things knowing what units of service, it says that each unit -- how many units will be allowed, but it doesn't tell what a unit is necessarily for each individual service. So for something more robust, like the OBH, kind of, definition of that -- you know what I mean -- like they do, then that would be great.

Response: Thank you for your comment.

Justin T. Allen, ATTORNEY, Wright, Lindsey & Jennings LLP

Comment: 212.200 Prescription

B. Please clarify that it will be acceptable to obtain a faxed or scanned/emailed copy of the prescription for services.

212.400 (A) and (B) Comprehensive Developmental Evaluation for Beneficiaries yet to Reach School Age

A and B both say the “most current edition”. We are requesting a 6-month grace period for purchase, training, and implementation from the new edition launch / distribution date.

Response: Thank you for your comment. Section 212.200(B) does not require an original signature, so a scanned/emailed and faxed prescription would comply so long as it meets the other requirements of the section.

Section 212.400(A) and (B) will be changed to say “...one of the two latest editions of...”

Comment: 214.110 EIDT Evaluation and Treatment Planning Services

All these required elements cannot be accomplished within the one hour of reimbursement. We ask 2-3 hours of reimbursement be considered

Response: Thank you for your comment. This was not changed during this promulgation.

Comment: 214.200 Day Habilitative Services

Subsection(a) subparagraphs 1 and 2 repeat eligibility requirements and seem misplaced in this section.

C. If the goal is not to be duplicative with Licensing, it would seem that the ECDS criteria does not need to be in both documents (Definitions of Licensing) We think having it in Licensing – Certification is appropriate rather than Medicaid program.

Response: Thank you for your comment. While duplication across the proposed EIDT Medicaid Manual and proposed rules was attempted to be avoided, this is one area where duplication was required. Since an ECDS is required to approve a behavior management plan in Section 603(b)(1), it required the definition of ECDS to be included in the proposed rules. The ECDS’s required involvement in the development of the ITP requires the definition of an ECDS to be in the proposed Medicaid Manual.

Comment: Comments regarding EIDT Licensure Manual
103 Definitions

(m) “Employees” – Employees and independent contractors are different legally and ideally should not encompassed in the same definition. While we understand it is easier to include independent contractors in the definition, and some provisions should apply to contractors, other provisions, such as background checks should not apply to ALL contractors, such as vendors and professionals who do not have contact with beneficiaries. You have explained in the text when certain sections apply to independent contractors, so it doesn’t seem necessary to blur the distinction.

Response: Thank you for your comment. Section 103(m) will be broken into subsection (1) and (2). Section 103(m)(1) will remain as currently written. Section 103(m)(2) will be added stating:

- (2) “Employee” does not mean an independent contractor if:
 - (i) the independent contractor does not assist in the day-to-day operations of the EIDT; and
 - (ii) the independent contractor has no beneficiary contact.”

Comment: 302 Employees and Staffing Requirements

In (a)(2), recommend the rules refer readers to the ratios, e.g., “Minimum staffing ratios are set forth in (e).”

Response: Thank you for your comment.

Comment: In (d)(2)(A) please define “directly” supervised. Does this mean cannot count in ratio and cannot be left alone with a beneficiary?

Response: Thank you for your comment. Section 302(d)(2)(A) will be changed to “Directly and visually supervised by an adult employee when in direct contact beneficiaries;”.

Comment: In (e)(2), request the “naptime” age for staff reductions to be 18 months, not 2 ½ years old.

Also, Child Care Licensing refers to it as “rest time” as you cannot force a child to nap. Consistency.

Response: Thank you for your comment. In Section 301(12) of the Minimum Licensing Requirements for Child Care Centers the word “naptime” is used when describing the time period for relaxed minimum staff ratios.

Comment: In (e) 2 – Add, “Additional staff must be provided for children with significant medical or behavior needs that require more individual attention.” The reason would be if you had medically fragile or behavioral kids, you would be required more staff during rest time.

Response: Thank you for your comment. This is a determination that must be made by clinicians and professionals working for the EIDT. While DPSQA can objectively regulate and monitor set minimum ratios, it is not able to objectively regulate and monitor case-by-case professional judgments with regard to appropriate staffing above and beyond set minimum ratios.

Comment: 304 Employee Records

(5) Drug screen results. Those should be in medical files not personnel files as required by DOL. We have no opposition to providing a copy to DPSQA, but they should be segregated.

Response: Thank you for your comment. The current Section 304(b) will become Section 304(c) and a new Section 304(b) will be added that states:

- (b) (1) An EIDT must ensure that each personnel record is kept confidential and available only to:
 - (A) Employees who need to know the information contained in the personnel record;
 - (B) Persons or entities who need to know the information contained in the personnel record;
 - (C) DPSQA and any governmental entity with jurisdiction or other authority to access the personnel record;
 - (D) The employee; and
 - (E) Any other individual authorized in writing by the employee.
- (2) (A) An EIDT must keep personnel records in a file cabinet or room that is always locked.
 - (B) (i) An EIDT may use electronic records in addition to or in place of physical records to comply with these standards.
 - (ii) An EIDT provider that uses electronic records must take reasonable steps to backup all electronic records and reconstruct a personnel record in the event of a breakdown in the EIDT's electronic records system.

Comment: Facility Requirements

401 General Requirements

Please grandfather in those providers whose centers do not meet new physical plant requirements. It would not be fair to impose new standards on them.

Paragraph (5) requires centers to have “an emergency alarm system throughout the building to alert employees and beneficiaries when there is an emergency.” Does this have to be a system wide alert or can this be foghorn or other system? Can you change “alarm” to “alert”?

Response: Thank you for your comment. DDS believes the limited number of new physical plant requirements are important for beneficiary safety and welfare and should not be subject to grandfathering.

As written, any system would comply that is able to alert employees and beneficiaries throughout the facility when there is an emergency.

Comment: Paragraph (6) requires that each site have “at least one (1) toilet and one (1) sink for every ten (10) beneficiaries with running hot and cold water, toilet tissue, liquid soap, and paper towels or air dryers.” Was 15 not 10 in the last version. The current standards just require adequacy to meet client needs. It is unfair to impose structural changes on centers already licensed.

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Response: Thank you for your comment. Section 502 (d) will be removed. As written, an EIDT may exit a beneficiary from its program for any lawful reason.

Comment: 505 Appropriate Referrals for Beneficiaries Failing to Qualify

This section requires providers to provide families with referrals to “other available services” if they do not meet the EIDT medical necessity requirements. There is no mention of the EPSDT process for children who do not meet the one-therapy/nursing rule. Please explain this process, including the timeline.

Response: Thank you for your comment. The Child Health Services (EPSDT) program is a standalone Medicaid program that is not tied to EIDT in any way. EPSDT covers any medically necessary service that would lead to the maximum reduction of medical and physical disabilities and restore the child to his or her best possible functional level. EPSDT has its own forms, eligibility, prescription, timelines, and review process requirements. For example, day habilitation is a standalone service that is potentially available through the EPSDT program. Day habilitation under EPSDT may be delivered by a provider that is a licensed EIDT facility, but the applicable eligibility, prescription, timelines, and review process requirements would be those for the EPSDT program, not EIDT.

It would be confusing and against standard practice to reference another Medicaid program such as EPSDT in the proposed EIDT Medicaid Manual or proposed rules. Additionally, any medically necessary Medicaid service is available to an EPSDT eligible beneficiary, not just day habilitation or the other covered EIDT services.

There are numerous options available to alleviate any public awareness concerns that would not involve a potentially confusing intermingling of another Medicaid program’s requirements in the proposed EIDT Medicaid Manual or proposed rules.

Comment: 601 Arrivals, Departures, and Transportation

Is the EIDT required to ensure CCL compliance with a NET provider? In most cases, there is no contractual relationship between the NET provider and the EIDT. NET is a service offered by the State of Arkansas directly to the Medicaid recipient, so how would an EIDT provider ensure compliance? This is impossible to do and enforce. Please clarify.

601(a)(2) requires: “(B) Documentation of arrivals to and departures from an EIDT must include without limitation the beneficiary’s name, age, and date of birth, date and time of arrival and departure, name of the person or entity that provided transportation, and method of transportation” We may not know the name of the person that provided transportation when it is a transportation broker/subcontractor or family dropping off individuals. It would be more appropriate in those situations to notate the transportation company or family?

Response: Thank you for your comment. If transportation is being provided through a NET broker, then the EIDT program is not providing transportation services. Section 601(a) sets out the requirements related to transportation if an EIDT program is not providing transportation services.

The age requirement will be removed from Section 601(a)(2)(B).

Comment: 805 Transfer of Beneficiaries

(b) says “An EIDT must continue providing services until the beneficiary is transferred to his or her new service provider of choice.” It is not within the EIDT’s control as to when another provider the beneficiary has chosen will accept the individual. If the individual chooses to remain, and is complying with health and safety requirements, it is not an issue, but it should not be mandated.

Response: Thank you for your comment. Section 805(b) will be revised to insert “If directed by DPSQA,…” at the beginning.