

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

As Engrossed: S3/17/05

# A Bill

SENATE BILL 1088

5 By: Senators Horn, Critcher, J. Bookout, Womack, Faris, B. Johnson, Wooldridge  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING ASSISTANCE FOR  
10 INDIGENT PERSONS; TO ENSURE THAT PROVIDERS ARE  
11 TREATED FAIRLY AND IMPARTIALLY; AND FOR OTHER  
12 PURPOSES.  
13

## Subtitle

15 AN ACT TO AMEND THE LAW REGARDING  
16 ASSISTANCE FOR INDIGENT PERSONS; TO  
17 ENSURE THAT PROVIDERS ARE TREATED FAIRLY  
18 AND IMPARTIALLY.  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to add an  
24 additional subchapter to read as follows:

25 20-77-1601. Definitions.

26 As used in this subchapter:

27 (1) "Child" means any person under eighteen (18) years of age;

28 (2)(A) "Medical necessity" for the purpose of determining  
29 authorization for admission in a psychiatric residential treatment facility  
30 means when a child experiences significant impairment in psychological,  
31 emotional, or behavioral functioning which causes distress or disruption for  
32 the individual, family, educational personnel or immediate others, that has  
33 not been ameliorated with less restrictive interventions.

34 (B) The impairment must be significant enough to warrant  
35 an Axis I diagnosis from the Diagnostic and Statistical Manual of Mental  
36 Illness (DSM-IV-TR).



1                   (C) The child should have engaged in one (1) month of  
2 outpatient counseling with the admitting facility receiving, from the  
3 therapist, written or verbal assurance of the client's need for residential  
4 treatment and a recommendation for residential treatment;

5                   (3) "Medical necessity" for the purpose of continuing care means  
6 that the admission standard has been met and the patient's current level of  
7 functioning will continue to disrupt normal activities of daily living for  
8 the individual, family, educational personnel, or immediate others or that  
9 the patient will regress in a less restrictive setting;

10                   (4) "Provider" means any of the following that serve Medicaid  
11 recipients:

12                   (A) An inpatient psychiatric hospital;

13                   (B) A psychiatric residential treatment facility for  
14 children; or

15                   (C) An outpatient mental health service; and

16                   (5) "Survey" means any process by which compliance with  
17 applicable federal or state laws and regulations applicable to a provider is  
18 determined.

19  
20                   20-77-1602. Prior authorizations.

21                   (a) For an in-state provider only, prior authorizations and continuing  
22 care authorizations in psychiatric residential treatment facilities for  
23 children shall be given based upon medical necessity.

24                   (b) Prior authorization and continuing authorizations for care shall  
25 constitute a finding that medical necessity criteria have been met.

26                   (c) A provider that provides services in reliance on a prior  
27 authorization or continuing care authorization shall be entitled to payment  
28 for those services.

29                   (d) Participants in the Medicaid program shall be entitled to receive  
30 services from any willing in-state provider that is approved to participate  
31 in the program.

32                   (e) No child shall be denied psychiatric residential treatment by the  
33 indigent medical program because there is:

34                   (1) Drug or alcohol use or abuse by the child which is secondary  
35 to a psychological or emotional impairment or that is a form of self-  
36 medication used to alleviate psychological distress;

1           (2) Legal involvement which appears to be symptomatic of an Axis  
2 I psychiatric condition;

3           (3) Lack of parenting skills or functional abilities of the  
4 child's parents that interferes with lesser restrictive therapeutic  
5 improvements; and

6           (4) Lack of current outpatient counseling when barriers exist  
7 that prevents the child from attending or progressing at an outpatient level  
8 of care.

9           (f)(1) For in-state providers only, if a child is court-ordered to  
10 receive psychiatric residential treatment, requests for prior authorization  
11 and continuing care authorization for treatment shall be reviewed within five  
12 (5) days and shall be granted when criteria for medical necessity are met,  
13 pending a determination of eligibility.

14           (2)(A) If the applicant is found to be eligible for the indigent  
15 care program, payment for services shall be authorized from the date of  
16 preauthorization.

17           (B) No payment for services shall be made if the resident  
18 is found not to be eligible for participation in the indigent care program.

19  
20           20-77-1603. Surveys – Right of Action.

21           (a) A provider shall have a right of action for damages, declaratory  
22 judgment, or injunctive relief against any entity conducting any survey or  
23 employee of any entity conducting any survey as follows:

24           (1) As a remedy for damages caused to a provider from any entity  
25 with whom the department contracts to conduct a survey who does so in a  
26 manner that exceeds the permissible scope of enforcement under § 20-77-1604;

27           (2) For determination of the applicability or interpretation of  
28 the meaning of a statute or rule; and

29           (3) For injunctive relief from arbitrary or capricious action or  
30 from abuse of discretion by any party conducting a survey.

31           (b) The right of action for damages and injunctive relief provided by  
32 this section shall be immediately available to a provider at any time after  
33 the conduct giving rise to the basis for the action occurs.

34           (c) The State of Arkansas shall not be permitted or required to  
35 reimburse any entity or person conducting a survey in a manner that violates  
36 this subchapter for any losses the entity or person incurs.

1       (d) The state agency operating the indigent medical care program shall  
2 notify all providers of any proposed regulatory changes in advance of the  
3 public comment period for the promulgation of rules. The notification shall  
4 be by certified mail.

5       (e) This subchapter does not limit the department or any entity with  
6 which it contracts in the exercise and application of professional medical  
7 judgment in determining when and under what circumstances care is a medically  
8 necessity.

9  
10       20-77-1604. Review of providers.

11       (a)(1) Nothing in this subchapter shall be construed to permit any  
12 state agency or any entity with which it contracts to enforce, attempt to  
13 enforce, or promulgate any rules, regulations, or standards of practice  
14 governing inpatient psychiatric hospitals, psychiatric residential treatment  
15 facilities, or outpatient mental health services funded by an indigent  
16 medical care program that are not mandated pursuant to lawfully promulgated  
17 federal law or regulation, or state law.

18       (2) However, the Department of Human Services and any entity  
19 with which it contracts may rely on official publications of the United  
20 States Department of Health and Human Services for the administration of the  
21 indigent medical care program and other rules, regulations, standards,  
22 guidance, or information that applies to the indigent medical care program by  
23 reference in federal statutes, federal promulgated regulations, rules, or  
24 official federal publications.

25       (3) For matters for which statutes or regulations are silent or  
26 ambiguous, discretion shall be left to the treating physician and treatment  
27 team.

28       (b)(1) The Director of the Department of Human Services or his or her  
29 designee shall ensure that all surveys of providers comply with § 20-77-107,  
30 including providing a process for providers to appeal any adverse decision or  
31 citation of a surveyor pursuant to the Arkansas Administrative Procedure Act,  
32 § 25-15-201 et seq.

33       (2) The Arkansas Rules of Civil Procedure and the Arkansas Rules  
34 of Evidence shall apply to appeals under this subsection (b).

35  
36       20-77-1605. Per diems.

1       (a) If a license to operate an inpatient psychiatric hospital or  
2 psychiatric residential treatment facility is sold or transferred, the entity  
3 to which the license is transferred shall:

4               (1) Be subject to the same per diem rate as the seller until the  
5 next annual budget is due; and

6               (2) Have the same provider number as the selling or transferring  
7 entity.

8       (b) The service unit rate for outpatient mental health care services  
9 shall be no less than that provided to participating programs as of January  
10 1, 2005.

11       (c)(1) Rate methodology for psychiatric residential treatment  
12 facilities shall be the same as January 1, 2005, except the cap shall be  
13 three hundred seventy-five (\$375) dollars per day.

14               (2) The rate shall be calculated as budgeted cost plus sixty-  
15 nine dollars (\$69.00) per day for a professional component. A provider may  
16 include all costs except costs for education. The rate is prospective and no  
17 cost settlement shall be allowed.

18       (d) The Department of Human Services may increase rates annually due  
19 to inflation.

20       (e)(1) All psychiatric residential treatment facilities and any entity  
21 or individual who provides outpatient mental health services shall be  
22 accredited by one (1) of the following:

23               (A) The Joint Commission on Health Care Accreditation;

24               (B) The Commission on Accreditation of Rehabilitation

25 Facilities;

26               (C) The Council on Accreditation; or

27               (D) A similar behavioral health accrediting entity.

28       (2) Physicians or psychologists shall not be subject to the  
29 accreditation requirement of this subdivision (e)(1).

30  
31       SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
32 General Assembly of the State of Arkansas that the regulatory process  
33 applicable to providers in its present form is not sufficiently delineated  
34 and that this uncertainty creates a condition in which a delay in the  
35 effective date of this act could work irreparable harm upon the proper  
36 administration and provision of essential government programs. Therefore, an

1 emergency is declared to exist and this act being immediately necessary for  
2 the preservation of the public peace, health, and safety shall become  
3 effective on:

4 (1) The date of its approval by the Governor;

5 (2) If the bill is neither approved nor vetoed by the Governor,  
6 the expiration of the period of time during which the Governor may veto the  
7 bill; or

8 (3) If the bill is vetoed by the Governor and the veto is  
9 overridden, the date the last house overrides the veto.

10  
11 */s/ Horn*  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36