

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4
5 By: Senator J. Dismang

A Bill

SENATE BILL 609

For An Act To Be Entitled

8 AN ACT TO AVOID UNNECESSARY DUPLICATION OF COSTS AND
9 SERVICES IN THE EXPANSION OF MEDICAID DAY
10 HABILITATION SERVICES FOR CHILDREN; TO CLARIFY THAT
11 ARKANSAS CODE § 20-48-101 AND § 20-48-105 APPLY TO
12 PROGRAMS FOR ADULTS WITH DEVELOPMENTAL DISABILITIES;
13 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

17 TO AVOID UNNECESSARY DUPLICATION OF COSTS
18 AND SERVICES IN THE EXPANSION OF MEDICAID
19 DAY HABILITATION SERVICES FOR CHILDREN;
20 AND TO DECLARE AN EMERGENCY.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25 SECTION 1. Arkansas Code Title 20, Chapter 48, is amended to add an
26 additional subchapter to read as follows:

Subchapter 11 – Unnecessary Duplication of Costs and Services

20-48-1101. Legislative intent.

30 The intent of this subchapter is to avoid unnecessary duplication of
31 costs and services in the expansion of child health management services and
32 developmental day treatment clinic services for children or any successor
33 program providing Medicaid day habilitation services to children.

20-48-1102. Definitions.

36 As used in this subchapter:



1 (1) "Accredited entity" means a corporate entity that:

2 (A) Has successfully completed an accreditation process
3 that is offered by a national accrediting organization and is:

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

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

8 (iii) A successor program.

9 (B) One or more of the following:

10 (i) Satisfies the appropriate certification criteria
11 established by the Arkansas Foundation for Medical Care for child health
12 management services;

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

17 (iii) Satisfies the appropriate certification or
18 licensure criteria established by a regulatory entity governing a successor
19 program;

20 (2) "Child health management services" means Medicaid day
21 habilitation services provided to children by a for-profit or nonprofit
22 corporate entity certified by the Arkansas Foundation for Medical Care;

23 (3) "Day habilitation" means a pediatric day treatment program
24 and related services for children with developmental disabilities,
25 developmental delays, or a medical condition that puts them at risk for
26 developmental delays;

27 (4) "Developmental day treatment clinic services for children"
28 means Medicaid day habilitation services provided to children by a nonprofit
29 community program that:

30 (A) Is licensed to provide center-based community services
31 by the division; and

32 (B) Serves as a quasi-governmental instrumentality of the
33 state by providing support and services to persons who have a developmental
34 disability or delay and who would otherwise require support and services
35 through state-operated programs and facilities;

36 (5) "Early intervention day treatment program" means child

1 health management services and developmental day treatment clinic services
 2 for children or a successor program providing Medicaid day habilitation
 3 services to children;

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

11 (7) "National accrediting organization" includes without
 12 limitation:

13 (A) The Commission on Accreditation of Rehabilitation
 14 Facilities; or

15 (B) Another similar national accrediting organization
 16 recognized by the division;

17 (8) "Related services" means services offered in conjunction
 18 with day habilitation, including without limitation diagnostic and evaluation
 19 services and speech, occupational, and physical therapies; and

20 (9) "Successor program" means a Medicaid program:

21 (A) That provides day habilitation and related services to
 22 children;

23 (B) That is a replacement for, a combination of, or
 24 derived from the child health management services program or both, the
 25 developmental day treatment clinic services program for children, or both;
 26 and

27 (C) In which the nonprofit and for-profit providers from
 28 both the developmental day treatment clinic services and the child health
 29 management services programs are eligible to participate.

30
 31 20-48-1103. Prerequisites for certification and licensure.

32 (a)(1)(A)(i) Certification from Arkansas Foundation for Medical Care
 33 is required for operation as a child health management services provider.

34 (ii) The Arkansas Foundation for Medical Care shall
 35 grant certification under this section on a county-wide basis.

36 (B) Before obtaining certification, a child health

1 management services program shall not apply for certification under
2 subdivision (a)(1)(A)(i) of this section before obtaining the approval of the
3 Division of Developmental Disabilities Services of the Department of Human
4 Services to implement new child health management services under the criteria
5 established under this subchapter.

6 (C) A certified child health management services program
7 with existing operations on the effective date of this act shall not be
8 required to obtain the approval of the Division of Developmental Disabilities
9 Services of the Department of Human Services to continue operating.

10 (2)(A)(i) Licensure from the division is required for operation
11 of a developmental day treatment clinic for children.

12 (ii) The division shall grant licensure under this
13 section on a county-wide basis.

14 (B) A nonprofit community program seeking to operate a
15 developmental day treatment clinic for children shall not apply for licensure
16 before obtaining the approval of the division to implement new developmental
17 day treatment clinic services for children based on the criteria established
18 under this subchapter.

19 (C) A licensed nonprofit community program providing
20 developmental day treatment services for children with existing operations on
21 the effective date of this act shall not be required to obtain the approval
22 of the division to continue operating.

23 (3)(A)(i) Licensure or certification from the regulatory
24 authority governing a successor program is required for operation as a
25 successor program.

26 (ii) Licensure or certification shall be granted on
27 a county-wide basis.

28 (B) A successor program shall not apply for licensure or
29 certification before obtaining the approval of the division to implement new
30 successor program under the criteria established in this subchapter.

31 (C) A successor program that is a certified child health
32 management services program with existing operations on the effective date of
33 this act or that is a licensed nonprofit community program providing
34 developmental day treatment services for children with existing operations on
35 the effective date of this act shall not be required to obtain the approval
36 of the division to continue operations as they existed on the effective date

1 of this act, but shall be subject to certification or licensure surveys and
2 rules applicable to the successor program.

3 (b) Child health management services and developmental day treatment
4 clinic services or a successor program shall constitute the state's early
5 intervention day treatment program.

6 (c)(1) Upon a determination by the division regarding the approval or
7 rejection of a program's proposal to implement new services, the division
8 shall notify the appropriate licensing or certification authority and include
9 specific information about the criteria that the applicant met or did not
10 meet.

11 (2) If the division rejects a program's proposed implementation
12 it shall send written notice of the denial to the applicant and the
13 appropriate licensing or certification authority that sets forth the criteria
14 that the proposed expansion of child health management services,
15 developmental day treatment clinic services for children, or any successor
16 program failed to meet.

17
18 20-48-1104. Determination of underserved status for expansion of
19 services.

20 (a) A determination by the Division of Developmental Disabilities
21 Services of the Department of Human Services that a county is underserved
22 with regard to child health management services, developmental day treatment
23 clinic services for children, or a successor program establishes that an
24 expansion of these programs or services in the underserved county is
25 necessary.

26 (b) The Arkansas Foundation for Medical Care shall not issue a
27 certification for operation of a child health management services program,
28 the division shall not issue a license for the operation of a developmental
29 day treatment clinic services program for children, and the regulatory
30 authority for a successor program shall not issue a certification or license
31 to operate the successor program, unless the division has determined that a
32 county is underserved in accordance with subsection (a) of this section and
33 additional child health management services, developmental day treatment
34 clinic services for children, or a successor program services should be made
35 available.

36

1 20-48-1105. Order of priority for granting approval.

2 When considering an application for approval under this subchapter for
3 expansion of child health management services, developmental day treatment
4 clinic services for children, or successor program, the Division of
5 Developmental Disabilities Services of the Department of Human Services shall
6 give approval in the following order of preference:

7 (1) A certified child health management services program, a
8 licensed developmental day treatment clinic services program for children, or
9 a successor program with existing operations in the county identified by the
10 division as underserved;

11 (2) A certified child health management services program, a
12 licensed developmental day treatment clinic services program for children, or
13 a successor program from another county;

14 (3) An accredited entity in the underserved county;

15 (4) An accredited entity from another county ; and

16 (5) An corporate entity from outside the state.

17
18 20-48-1106. Notice of underserved area.

19 (a) The Division of Developmental Disabilities Services of the
20 Department of Human Services shall provide written notice by certified mail
21 of its designation under § 20-48-1104 to all child health management services
22 programs, developmental day treatment clinic services programs for children,
23 and successor programs with existing operations in the county designated by
24 the division as underserved.

25 (b) If all child health management services programs, developmental
26 day treatment clinic services programs for children, and successor programs
27 with existing operations in the county designated by the division as
28 underserved determine not to extend or expand child health management
29 services, developmental day treatment clinic services for children, or
30 successor program services in the underserved county, the division shall
31 provide written notice by certified mail of its designation under § 20-48-
32 1104 to all providers of child health management services, developmental day
33 treatment clinic services for children, and successor program services in the
34 remainder of the state.

35 (c) If all child health management services programs, developmental
36 day treatment clinic services programs for children, and successor programs

1 in the remainder of the state determine not to extend or expand child health
 2 management services, developmental day treatment clinic services for
 3 children, or successor program services in the underserved county, the
 4 division shall provide notice in a newspaper of statewide general
 5 circulation.

6
 7 20-77-1107. Rules.

8 (a) The Division of Developmental Disabilities Services of the
 9 Department of Human Services may promulgate rules to implement this
 10 subchapter.

11 (b) The division shall work with stakeholders, including without
 12 limitation representatives of the Child Health Management Services
 13 Association and the Developmental Disabilities Provider Association, in the
 14 development of rules under this subchapter.

15
 16 20-48-1108. Successor program.

17 On or before the effective date of this act, the Division of
 18 Developmental Disabilities of the Department of Human Services shall convene
 19 stakeholders, including without limitation representatives of the Child
 20 Health Management Services Association and the Developmental Disabilities
 21 Provider Association, to assist the division with determining the feasibility
 22 of combining the child health management services program and the
 23 developmental day treatment clinic services program for children into a
 24 successor program.

25
 26 SECTION 2. Arkansas Code § 20-48-101(1)(A), concerning definitions for
 27 the treatment of the developmentally disabled, is amended to read as follows:

28 (1)(A) "Accredited nonprofit entity" means a nonprofit entity
 29 that:

30 (i) Has successfully completed an ongoing
 31 accreditation process that is related to the delivery of services to ~~persons~~
 32 adults with developmental disabilities and is offered by a national
 33 accrediting organization;

34 (ii) Satisfies the appropriate licensure criteria
 35 established by the Division of Developmental Disabilities Services of the
 36 Department of Human Services; and

1 (iii) Is positioned to provide nonresidential
2 services to ~~persons~~ adults with developmental disabilities upon licensure by
3 the division ~~because~~ when no existing nonprofit community provider is
4 interested in providing the specific category of nonresidential services to
5 ~~persons~~ adults with developmental disabilities that have been identified by
6 the division as underserved.

7
8 SECTION 3. Arkansas Code § 20-48-105 is amended to read as follows:

9 20-48-105. Nonprofit community programs – ~~Extension or expansion~~
10 Expansion of services.

11 (a)(1) The intent of this section is to avoid unnecessary duplication
12 of costs and services in the ~~extension or~~ expansion of nonresidential
13 services to ~~persons~~ adults with developmental disabilities.

14 (2) A designation by the Division of Developmental Disabilities
15 Services of the Department of Human Services that a county is underserved
16 with regard to a specific category of nonresidential services to ~~persons~~
17 adults with developmental disabilities establishes that an ~~extension or~~
18 expansion of nonresidential services to ~~persons~~ adults with developmental
19 disabilities in the underserved county is necessary.

20 (b)(1) The division shall not issue a new license for operation of a
21 nonprofit community program or approve an application from a nonprofit
22 community program to implement additional nonresidential services to ~~persons~~
23 benefit adults with developmental disabilities that are not currently offered
24 by the nonprofit community program unless the division has determined that:

25 (A) A The county of the state in which the program seeks
26 to operate is underserved with regard to a specific category of
27 nonresidential services currently offered to ~~persons~~ adults with
28 developmental disabilities and currently funded from available state or
29 federal funds; or

30 (B)(i) A The county of the state in which the program
31 seeks to operate is underserved with regard to new services not currently
32 available to ~~persons~~ adults with developmental disabilities and the new
33 services should be made available to ~~persons~~ benefit adults with
34 developmental disabilities; and

35 (ii) State or federal funds are available in amounts
36 necessary to support the delivery of new services not currently available to

1 ~~persons~~ adults with developmental disabilities.

2 (2)(A) The division shall provide written notice by certified
3 mail of its designation under subdivision (b)(1) of this section to all
4 nonprofit community programs with existing operations in the county
5 designated by the division as underserved.

6 (B) If nonprofit community programs with existing
7 operations in the county that do not currently offer the specific category of
8 nonresidential services identified by the division as underserved determine
9 not to extend or expand the identified nonresidential service to ~~persons~~
10 adults with developmental disabilities in the underserved county, the
11 division shall provide written notice by certified mail of its designation
12 under subdivision (b)(1) of this section to all nonprofit community programs
13 in the remainder of the state.

14 (C) If all nonprofit community programs in the remainder
15 of the state determine not to extend or expand the identified nonresidential
16 service to ~~persons~~ adults with developmental disabilities in the underserved
17 county, the division shall provide notice to the general public in a
18 newspaper of statewide general circulation.

19 (c) In granting an approval under this section, the division shall
20 give approval in the following order of preference:

21 (1) A qualified nonprofit community program with existing
22 operations in the county that does not currently offer the specific category
23 of nonresidential services to ~~persons~~ adults with developmental disabilities
24 identified by the division as underserved;

25 (2) A qualified nonprofit community program from another county
26 in the state;

27 (3) An accredited nonprofit entity in the underserved county;

28 (4) An accredited nonprofit entity from another county in the
29 state; and

30 (5) An accredited nonprofit entity from outside the state.

31 (d)(1)(A) A license from the division is required for operation of a
32 nonprofit community program.

33 (B) A qualified nonprofit community program is required to
34 apply to and obtain the approval of the division to implement additional
35 nonresidential services to ~~persons~~ adults with developmental disabilities
36 that are not currently offered by the qualified nonprofit community program.

1 (2)(A) If an application is approved, the division shall approve
2 the application and issue a new license or service expansion approval if it
3 finds that the proposed nonresidential service expansion meets the criteria
4 for approval established by the division.

5 (B) If the application is denied, the division shall send
6 written notice of the denial to the applicant that sets forth the criteria
7 that the proposed nonresidential service expansion failed to meet.

8
9 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
10 General Assembly of the State of Arkansas that there is considerable overlap
11 and inconsistencies between the child health management services program and
12 the developmental day treatment clinic services program that create confusion
13 and inefficiencies for children served and for providers; and that the
14 Department of Human Services should develop a plan to combine the programs.
15 It is further found and determined that managed expansion of both programs is
16 in the best interest of children served and critical to economic efficiencies
17 necessary to sustain the Medicaid program; that managed expansion is also
18 necessary to ensure adequate geographic coverage in rural areas; and that the
19 managed expansion rules in place for developmental day treatment clinic
20 services have worked well and should serve as the model for child health
21 management services or a successor program. Therefore, an emergency is
22 declared to exist, and this act being immediately necessary for the
23 preservation of the public peace, health, and safety shall become effective
24 on:

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

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

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

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