

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

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Little Rock, Arkansas 72201-1094
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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Developmental Disabilities Services

Contact Elizabeth Pitman E-mail Elizabeth.Pitman@dhs.arkansas.gov Phone 501-682-4936

Statutory Authority for Promulgating Rules Arkansas Code Annotated 25-15-201 et seq.; Medicaid Fairness Act, A.C.A. 20-77-1701 et seq.

Rule Title: DDS Policy 1076 - Appeals

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☒ Other Oct 1, 2017
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

07/13/2017

08/11/2017

//

10/01/2017

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Becky Murphy becky.murphy@dhs.arkansas.gov

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Dawn Stehle
Signature

(501) 683-4997

Phone Number

dawn.stehle@dhs.arkansas.gov

E-mail Address

Director

Title

Date

7/14/17

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Human Services

DIVISION Division of Developmental Disabilities Services

PERSON COMPLETING THIS STATEMENT Elizabeth Pitman

TELEPHONE 501-682-4936 **FAX** 501-682-8380 **EMAIL:** Elizabeth.pitman@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE DDS Policy 1076—Appeals

- | | | |
|---|---|--|
| 1. Does this proposed, amended, or repealed rule have a financial impact? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DDS DIRECTOR'S OFFICE POLICY MANUAL

<u>Policy Type</u>	<u>Subject of Policy</u>	<u>Policy No.</u>
<u>Administrative</u>	<u>Appeals</u>	<u>1076</u>

References: DDS Board Policy #1003; Ark. Code Ann. § 25-15-201 et seq.; Ark. Code Ann. § 20-77-1701 et seq.; Medicaid Provider Manual §§ 160.000, 190.000, 191.000

Administrative Rules & Regulations Sub Committee of the Arkansas Legislative Council:
_____.

PROPOSED

Mark Up
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Administrative	Appeals	1076

1. Purpose. This policy is provided to allow for appealing decisions made by Developmental Disabilities Services (DDS) regarding the following programs:

- A. Human Development Centers (HDCs)
- B. Community Programs and Services
- C. Medicaid Home and Community Based Waiver Services
- D. Licensure of Community Programs/Services and Certification of Providers of Waiver Services, Providers of Early Intervention Voucher Services and Independent (Self-Employed) ~~Certified Case Managers (CCMs)~~ Care Coordinators
- E. Nursing Facility, PASSAR determinations. These determinations are made, as required, by the 1987 Omnibus Budget Reconciliation Act (OBRA) for persons with a MRID/DD diagnosis who seek admission or for whose-whom admission is sought to a Nursing Facility. It includes annual reviews for continued stay.

PROPOSED

2. Scope. This policy applies to recipients of services, their parents/guardians, Community Programs, Service Providers, and Care Coordinators ~~Case Managers~~, other interested parties and all DDS employees.

The Board of Developmental Disabilities Services, according to DDS Board Policy 1003, has delegated its authority to hear appeals to the DDS Director. The DDS Director hereby adopts this Appeal Policy to apply to all appeals of DDS services.

3. General Provisions:

~~A. Who May File An Appeal. Only persons identified in Section 2. Scope may file an appeal relative to decisions made.~~

~~An appeal filed by anyone other than those listed in Section 2. Scope above is not a valid appeal and will be rejected and denied by DDS.~~

~~B. Conditions for Appeal. Each person who may file an appeal has specific conditions which must be addressed for an appeal to be considered.~~

A. All reconsiderations and appeals of DDS decisions shall be made in accordance with the Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq.; the

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~~D. Contents of the Appeal.~~ All appeals filed must be in writing and contain, at a minimum:

- ~~1) The name, address and telephone number of the person filing the appeal.~~
- ~~2) The relationship of the person who is filing the appeal to the individual requesting or receiving services or the relationship to the program that is affected.~~

~~3) The decision that is being appealed.~~

~~4) The reason(s) the decision is being appealed.~~

~~5) The desired outcome of the appeal; what the person is seeking through the appeals process.~~

~~6) The law and/or facts that are being relied upon in the filing of the appeal.~~

~~7) The person who will present the appeal.~~

~~8) Whether the person will be represented and if so, the name, address and telephone number of the representative. This is not limited to legal representation.~~

~~NOTE: Appeals that do not contain this information will be rejected and denied.~~

~~E. Appropriate Person with Whom to File an Appeal.~~ Appeals must be filed with the specific person identified in the following procedures. Failure to do so can result in the rejection/denial of the appeal.

~~F. Review Process.~~ The review process is outlined for each party who may file an appeal.

~~G. Final Agency Action.~~ The final agency decision is outlined for the program/providers identified.

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~~telephone. An extension of time frames may be allowed when either party has a valid reason for postponement and both parties agree to the delay. The meeting shall be recorded. Only the issues relevant to the appeal shall be discussed and considered. Within five (5) working days of the meeting, a written decision shall be rendered and submitted to all parties.~~

~~8) The decision of the DDS Director is the final agency action.~~

~~B. Community Programs and Services.~~

~~1) The individual applying for or receiving services or the parents, guardians or surrogate parents of the individual, and DDS Community Program Administrator or Board Chair may file an appeal.~~

~~2) Appeals may be filed on decisions regarding individual service eligibility, funding of services, program funding and service provision.~~

~~3) Appeals must be submitted within ten (10) working days of the receipt of notification of a decision.~~

~~4) Contents of an appeal is outlined in 3.D.~~

~~5) Appeals must be filed as follows:~~

- ~~• Eligibility Assistant Director, Client Services, DDS~~
- ~~• Funding Assistant Director, Program Management, DDS~~
- ~~• Early Intervention Office of Chief Counsel, Appeals and Hearings.~~

~~The appeal for a fair hearing shall be mailed to:~~

~~OCC Office of Appeals and Hearings
Donaghey Plaza South
P.O. Box 1437 Slot 1004
Little Rock, AR 72203-1437~~

~~Request for fair hearing shall include the information required in 3.D. above
Contents of Appeal. Persons appealing under fair hearings will receive a copy of the procedures to be following during the hearing.~~

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- ~~PROPOSED~~
- ~~3) Appeals of service denied must be in writing within thirty (30) days of date of the notice of service denied. Appeals of changes in services must be received within thirty (30) days of the effective date of change.~~
 - ~~4) Contents of an appeal is outlined in 3.D. above.~~
 - ~~5) Appeal will be filed with the Assistant Director, Program Management, DDS.~~
 - ~~6) Within ten (10) working days of receipt of an appeal the Assistant Director shall conduct an administrative review of the case file, the appeal filed and any additional information presented. Within five (5) working days of this review, a written decision shall be rendered and submitted to the parties.~~
 - ~~7) If a party is not satisfied by the result of the administrative review, a fair hearing may be requested. Within (10) working days of receiving the results of the administrative review, an appeal may be filed with the Office of Chief Counsel, Appeals and Hearings. Request for fair hearings shall include the information required in 3.D. above Contents of Appeal. The appeal shall be mail to:~~

~~OCC—Office of Appeals and Hearings
Donaghey Plaza South
P.O. Box 1437
Little Rock, AR 72203-1437~~
 - ~~8) The conclusion of the fair hearing is the final agency action.~~

D. Licensure of Community Programs/Services, Certification of Providers of Waiver Services, Providers of Early Interdention Voucher Services, and Independent (Self-Employed) Certified Case Managers (CCMs):

- ~~1) The President or Chair of the Community Program Board or Director of licensed Community Program/Services and for Certified Providers, the person certified may file an appeal.~~
- ~~2) Appeals may be filed on decisions regarding the granting of a license/certification or the taking of adverse action against a~~