

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

Policy Type	Subject of Policy	Policy No.
Administrative	Agency Definition of Disability/Eligibility for Services	1035

1. Purpose. This policy has been prepared to set minimum parameters for determining eligibility to receive services from Developmental Disabilities Services (DDS).
2. Scope. All individuals and their families applying for services offered by DDS.
3. Definitions. For purposes of this policy, Primary Disability/Condition, Primary Diagnosis, and Other Disabilities are defined as follows:
 - A. Primary Disability - That condition which renders the most serious impairment and/or condition which has the greatest impact on an individual's ability to function, as outlined in Arkansas Statute Ann. 20-48-101 (Act 513 of 1981).
 - B. Primary Diagnosis - A medical designation, determined by a physician, usually denoting etiology of disabling condition.
 - C. Other Disabilities - Any condition(s) which accompanies the primary disability, and further hinders the development of an individual.
4. Eligibility Criteria.
 - A. Diagnosis of developmental disability under definition cited in Arkansas Code Ann. § 20-48-101.
 - 1) Is attributable to intellectual disability, cerebral palsy, spina bifida, Down syndrome, epilepsy or autism spectrum disorder.
 - a. Intellectual Disability - As established by scores of intelligence which fall two or more standard deviations below the mean of a standardized test of intelligence administered by a legally qualified professional; Infants/Preschool, 0-5 years - developmental scales, administered by qualified personnel authorized in the manual accompanying the instrument used, which indicate impairment of general functioning similar to that of developmentally disabled persons;
 - b. Cerebral Palsy - As established by the results of a medical examination provided by a licensed physician;
 - c. Spina bifida – As established by the results of a medical examination provided by a licensed physician.
 - d. Down syndrome – As established by the diagnosis of a licensed physician.

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- e. Epilepsy - As established by the results of a neurological and/or licensed physician;
- f. Autism Spectrum Disorder - As established by the results of a team evaluation including at least a licensed physician and a licensed psychologist and a licensed Speech Pathologist;

NOTE: Each of these six conditions is sufficient for determination of eligibility independent of each other. This means that a person who is intellectually disabled does not have to have a diagnosis of autism spectrum disorder, epilepsy, spina bifida, down syndrome, or cerebral palsy. Conversely, a person who has autism spectrum disorder, cerebral palsy, epilepsy, spina bifida, or Down syndrome does not have to have an intellectual disability to receive services.

- 2) Is attributable to any other condition of a person found to be closely related to intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to those of persons with intellectual disability or requires treatment and services similar to those required for such persons. This determination must be based on the results of a team evaluation including at least a licensed Physician and a licensed Psychologist.
 - a) In the case of individuals being evaluated for service, eligibility determination shall be based upon establishment of intelligence scores which fall two or more standard deviations below the mean of a standardized test of intelligence OR, is attributable to any other condition found to be closely related to an intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to those of persons with an intellectual disability, or requires treatment and services similar to those required for such persons.
 - b) Persons age 5 and over will be eligible for services if their I.Q. scores fall two or more standard deviations below the mean of a standardized test.
 - c) For persons ages 3 to 5, eligibility is based on an assessment that reflects functioning on a level two or more standard deviations from the mean in two or more areas as determined by a standardized test.

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d.) For infants and toddlers 0-36 months, eligibility for DDS Services will be indicated by a 25% delay in two or more areas based on an assessment instrument which yields scores in months. The areas to be assessed include: cognition; communication; social/emotion; motor; and adaptive.

- 3) Is attributable to dyslexia resulting from intellectual disability, cerebral palsy, epilepsy spina bifida, Down syndrome or autism spectrum disorder as established by the results of a team evaluation including at least a licensed Physician and a licensed Psychologist.

NOTE: In the case of individuals being evaluated for service, eligibility shall be based upon their condition closely related to an intellectual disability by virtue of their adaptive behavior functioning.

- B. The disability must originate prior to the date the person attains the age of twenty - two (22).

NOTE: When age becomes a factor in eligibility determination under the Arkansas Law, such a case will be evaluated on its own merit as to whether the condition resulting from the disability was present before age twenty-two (22). In such cases, the determining authority will be the Assistant Director of Client Services and/or the Director for Developmental Disabilities Services.

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- C. The disability has continued or can be expected to continue indefinitely.
- D. The disability constitutes a substantial handicap to the person's ability to function without appropriate support services including, but not limited to, daily living and social activities, medical services, physical therapy, speech therapy, occupational therapy, job training and employment.
5. Services. Given the availability of funds and subject to budget restrictions, DDS will provide services to eligible persons.
6. Appeal. Should the individual and parent/guardian disagree with the decision made, they retain the right of appeal following DDS Policy #1076.

Replacement Notation: This policy replaces DDS Commissioner's Office Policy 1035, Eligibility for Services, effective June 29, 1981; May 10, 1982; and October 7, 1983 and DDS Deputy Director's Policy #1035, January 8, 1987; December 1, 1993.

Effective Date:

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References: Arkansas Code Ann. 20-48-101, DDS Policy #1075, and DDS Policy #1020

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

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ATTACHMENT 1

DDS Administrative Policy No. 1035 – Agency Definition of Disability
Eligibility for Services

1. Referral is to include a memorandum by DDS Counselor with reason(s) for referral, why DDS eligibility is not clear, what are the reasons for dispute, and the referring person's own recommendation.
2. Adaptive Behavior Scale (within the last year).
3. Current Medical status (within the last year).
4. Psychological evaluation (within the last year) if eligibility request is based on psychological reasons.
5. Results of special evaluations relevant to eligibility determination.
6. Documentation by Service Coordinator of client observation within the last three (3) months.
7. Social History completed within the last 90 days by DDS Counselor.
8. The most recent Individual Education Plan if person is school age.
9. For individuals who are not school age, program plan of current or past services providers, if any.

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3. Definitions. For purposes of agency-wide activity; Primary Disability/Condition, Primary Diagnosis, and Other Disabilities are defined as follows:
 - A. Primary Disability - That condition which renders the most serious impairment and/or condition which has the greatest impact on an individual's ability to function, as outlined in Arkansas Statute Ann. 20-48-101 (Act 513 of 1981).
 - B. Primary Diagnosis - A medical designation, determined by a physician, usually denoting etiology of disabling condition.
 - C. Other Disabilities - Any condition(s) which accompanies the primary disability, and further hinders the development of an individual.
4. Eligibility Criteria.
 - A. Diagnosis of developmental disability under definition cited in Arkansas ~~Statute Code~~ Ann. 20-48-101 ~~and Act 729 of 1993.~~
 - 1) Is attributable to ~~mental retardation~~intellectual disability, cerebral palsy, spina bifida, Down syndrome, epilepsy or autism spectrum disorder.
 - a. ~~Mental Retardation~~Intellectual Disability - As established by scores of intelligence which fall two or more standard deviations below the mean of a standardized test of intelligence administered by a legally qualified professional; Infants/Preschool, 0-5 years - developmental scales, administered by qualified personnel authorized in the manual accompanying the instrument used, which indicate impairment of general functioning similar to that of developmentally disabled persons;
 - b. Cerebral Palsy - As established by the results of a medical examination provided by a licensed physician;
 - c. Spina bifida – As established by the results of a medical examination provided by a licensed physician.
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~~ee.~~ Epilepsy - As established by the results of a neurological and/or licensed physician;

~~df.~~ Autism Spectrum Disorder - As established by the results of a team evaluation including at least a licensed physician and a licensed psychologist and a licensed Speech Pathologist;

NOTE: Each of these ~~four~~six conditions is sufficient for determination of eligibility independent of each other. This means that a person who is ~~mentally retarded~~intellectually disabled does not ~~to~~ have to have a diagnosis of autism spectrum disorder, or have epilepsy, spina bifida, down syndrome, or have cerebral palsy. Conversely, a person who has autism spectrum disorder, or has cerebral palsy, ~~or has~~ epilepsy, spina bifida, or Down syndrome does not have to have ~~mental retardation~~an intellectual disability to receive services.

- 2) Is attributable to any other condition of a person found to be closely related to ~~mental retardation~~intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to those of persons with ~~mental retardation~~intellectual disability or requires treatment and services similar to those required for such persons. This determination must be based on the results of a team evaluation including at least a licensed Physician and a licensed Psychologist.

a) NOTE: In the case of individuals being evaluated for service, eligibility determination shall be based upon establishment of intelligence scores which fall two or more standard deviations below the mean of a standardized test of intelligence OR, is attributable to any other condition found to be closely related to ~~mental retardation~~an intellectual disability because it results in impairment of general intellectual functioning or adaptive behavior similar to those of persons with an intellectual disability, or requires treatment and services similar to those required for such persons.

b.) Persons age 5 and over will be eligible for services if their I.Q. scores fall two or more standard deviations below the mean of a standardized test.

~~adaptive behavior similar to those of persons with mental retardation, or requires treatment and services similar to those required for such~~

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~~persons. In other words, persons age 5 and over will be eligible for services if their I.Q. scores fall two or more standard deviations below the mean of a standardized test.~~

c.) For persons ages 3 to 5, eligibility is based on an assessment that reflects functioning on a level two or more standard deviations from the mean in two or more areas as determined by a standardized test.

d.) For infants and toddlers 0-36 months, eligibility for DDS Services will be indicated by a 25% delay in two or more areas based on an assessment instrument which yields scores in months. The areas to be assessed include: cognition; communication; social/emotion; motor; and adaptive.

- 3) Is attributable to dyslexia resulting from ~~mental retardation~~intellectual disability, cerebral palsy, epilepsy, spina bifida, Down syndrome or autism spectrum disorder as established by the results of a team evaluation including at least a licensed Physician and a licensed Psychologist.

NOTE: In the case of individuals being evaluated for service, eligibility shall be based upon their condition closely related to ~~mental retardation~~an intellectual disability by virtue of their adaptive behavior functioning.

- B. The disability must originate prior to the date the person attains the age of twenty two (22).

NOTE: When age becomes a factor in eligibility determination under the Arkansas Law, such a case will be evaluated on its own merit as to whether the condition resulting from the disability was present before age twenty two (22). In such cases, the determining authority will be the Assistant Director of Client Services and/or the Director for Developmental Disabilities Services.

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- C. The disability has continued -or can be expected to continue indefinitely.
- D. The disability constitutes a substantial handicap to the person's -ability -to -function without appropriate support services including, but not limited to, daily living and social activities, medical services, physical therapy, speech therapy, occupational therapy, -job training and employment.
5. Services. Given the availability of funds and subject to budget restrictions, – DDS will provide services to eligible persons.
6. Appeal. Should the individual and parent/guardian disagree with the decision made, they retain the right of appeal following DDS Policy #1076.

Replacement Notation: This policy replaces DDS Commissioner's Office Policy 1035, Eligibility for Services, effective June 29, 1981; May 10, 1982; and October 7, 1983 and DDS Deputy Director's Policy #1035, January 8, 1987; December 1, 1993.

Effective Date:

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References: Arkansas Code Ann. 20-48-101, , DDS Policy #1075
and DDS Policy #1020

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ATTACHMENT 1
DDS Administrative Policy No. 1035 – Agency Definition of Disability/
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2. Adaptive Behavior Scale- (within the last year).
3. Current Medical status -(within the last year).
4. Psychological evaluation -(within the last year) if eligibility request is based on psychological reasons.
5. Results of special evaluations relevant to eligibility determination.
6. Documentation by Service Coordinator of client observation within the last three (3) months.
7. Social History completed within the last 90 days by DDS Counselor.
8. The most recent Individual Education Plan if person is school age.
9. For individuals who are not school age, program plan of current or past services providers, if any.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Developmental Disabilities Services
DIVISION DIRECTOR Melissa Stone
CONTACT PERSON Elizabeth Pitman
ADDRESS P.O. Box 1437, Slot N501
PHONE NO. (501) 682-4936 FAX NO. (501) 682-8380 E-MAIL elizabeth.pitman@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Melissa Stone
PRESENTER E-MAIL melissa.stone@dhs.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Agency Definition of Disability/Eligibility for Services (DDS Policy 1035)
2. What is the subject of the proposed rule? Updating the definition of developmental disability to match the language of A.C.A. 20-48-101.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? _____
- When does the emergency rule expire? _____
- Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?
Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No ☒
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes ☐ No ☒
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes ☒ No ☐
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Statute 20-48-101 et seq.

7. What is the purpose of this proposed rule? Why is it necessary? This rule change updates the definition of developmental disability used by DDS so that it matches the language of A.C.A. 20-48-101, which sets out categorical eligibility

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).
<https://www.medicaid.state.ar.us/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐
If yes, please complete the following:

Date: December 4, 2017
Time: 2:00 PM
Department of Human Services
Conference Room A
700 Main Street
Place: Little Rock, AR

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
December 8, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
February 1, 2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Attached.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Attached.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT 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 Agency Definition of Disability/Eligibility for Services (DDS Policy 1035)

- | | | |
|---|---|--|
| 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	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____

Next Fiscal Year

General Revenue	_____
Federal Funds	_____
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____

Total 0 _____

Total 0 _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0 _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0 _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0 _____

Next Fiscal Year

\$ 0 _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0 _____

Next Fiscal Year

\$ 0 _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

SUMMARY OF CHANGES

DDS POLICY 1035

The Department of Human Services Division of Developmental Disability Services (DDS) is proposing changes to DDS Policy #1035, which sets forth the definition of developmental disability for all DDS services and programs.

The language of Policy #1035 is derived from Ark. Code Ann. § 20-48-101, which defines “developmental disability.” That statute has been modified several times, but the Policy has not been amended to track the statutory language. This amendment brings the language of Policy #0135 in line with the language of Ark. Code Ann. § 20-48-101.