

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

DDS POLICY 1091

CERTIFICATION, INVESTIGATION, AND MONITORING POLICY FOR THE  
COMMUNITY EMPLOYMENT SUPPORTS ("CES") WAIVER  
~~CERTIFICATION POLICY FOR NON-CENTERBASED SERVICES~~

1. **Purpose.** ~~This policy has been prepared to implement Ark. Code Ann. 20-48-201 et. seq.~~

The Arkansas Department of Human Services, Division of Developmental Disabilities Services ("DDS") is the lead agency for Arkansas' Community Employment Supports waiver, a Medicaid Home and Community Based Services waiver under Section 1915 (c) of the Social Security Act ("CES Waiver"). The CES Waiver program offers certain home and community based services to Medicaid beneficiaries as an alternative to institutionalization. DDS is responsible for the implementation, general administration, and oversight of the CES Waiver. DDS carries out its oversight responsibility through a DHS run certification, investigation and monitoring program.

The purpose of this DDS policy #1091 is to establish the policies and procedures applicable to the CES Waiver certification, investigation and monitoring program. An appeal of any decision made pursuant to this policy may be filed according to procedures outlined in DDS Policy #1076.

**2. Scope.**

This policy is applicable to:

- Individuals and organizations that provide or seek to provide CES Waiver Services (as defined in section 3 below)
- All DHS staff responsible for certifying, investigating, and monitoring individuals and organizations providing CES Waiver Services.

- ~~2. This policy is applicable to all Division of Developmental Disabilities Services (DDS) staff charged with implementation of certification standards and to individuals and organizations that are required to be certified by DDS in order to provide services designated in this policy to individuals with developmental disabilities.~~

~~A. An individual or organization that provides any of the following Early Intervention Services is required to be certified by DDS:~~

- ~~1) Service Coordination;~~

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- ~~2) Developmental Therapy/Therapy Assistant Services,~~
- ~~3) Speech Therapy Services,~~
- ~~4) Physical Therapy Services,~~
- ~~5) Occupational Therapy Services,~~
- ~~6) Consultation Services, and~~
- ~~7) Assistive Technology/Adaptive Equipment.~~

~~B. An individual or organization that provides any of the following services under the Alternative Community Services (ACS) Waiver is required to be certified by DDS:~~

- ~~1) Case Management Services,~~
- ~~2) Supportive Living Services,~~
- ~~3) Community Experiences,~~
- ~~4) Respite Care,~~
- ~~5) Non-Medical Transportation,~~
- ~~6) Supported Employment Services,~~
- ~~7) Crisis Intervention Services,~~
- ~~8) Crisis Center Services,~~
- ~~9) Consultation,~~
- ~~10) Specialized Medical Services,~~
- ~~11) Adaptive Equipment, and~~
- ~~12) Environmental Modifications.~~

~~C. A certified provider that offers Supported Employment Services must maintain a current license as a vendor with the Arkansas Rehabilitation Services of the Department of Workforce Education and staff who are certified Job Coaches.~~

~~D. Any individual or organization certified to provide Supportive Living Services or Case Management Services under the ACS Waiver may request DDS for approval to serve as an Organized Health Care Delivery System (OHCDS).~~

### 3. Definitions.

A. “Annual Certification Review” means the required annual evaluation of a Provider by [DHS Staff](#) for the purpose of ensuring program quality and compliance with [Community Employment Supports Waiver Minimum Certification Standards \(“CES Waiver Certification Standards”\)](#), the [DDS Community Employment Supports Waiver Medicaid manual](#), and guidelines issued by CMS. Procedures relating to an Annual Certification Review are provided in Section seven (7) herein.

B. “CES Waiver Services” mean any of the following services performed by a Provider through the CES Waiver program:

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1. Supportive Living Services;
2. Care Coordination Services;
3. Adaptive Equipment;
4. Environmental Modifications;
5. Specialized Medical Supplies;
6. Organized Health Care Delivery Systems;
7. Consultation Services;
8. Respite Services;
9. Crisis Intervention Services;
10. Supported Employment Services;
11. Community Transition Services; and
12. Supplemental Support Services.

C. “CMS” means the Centers for Medicare & Medicaid Services.

D. “Periodic Monitoring Review” means any evaluation of a Provider that is not an Annual Certification Review or Service Concern Investigation to ensure program quality and compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS. Periodic Monitoring Reviews are discussed in more detail in Section eight (8) herein.

E. “Provider” means any organization or individual certified to provide or seeking certification to provide a CES Waiver Service.

F. “Service Concern” means any event or information brought to DHS’s attention by any means that requires further investigation in order to determine whether a Service Concern Investigation needs to be initiated, including, but not limited to, a formal service concern, an informal complaint, a referral from another state or federal agency, a beneficiary death, an incident report filing by a Provider, and a beneficiary arrest.

G. “Service Concern Investigation” means an investigation of the allegations and/or facts included in and/or surrounding a Service Concern. Service Concern Investigations will generally be specifically focused on the allegations and/or facts surrounding the Service Concern; however, findings during a Service Concern Investigation could result in the initiation of a more comprehensive Periodic Monitoring Review. Service Concern Investigations are described in more detail in Section nine (9) herein.

### 3. Certification.

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- ~~A. DDS shall certify each qualified individual or organization that applies to provide a service designated in this policy.~~
- ~~B. A certification is valid and effective only for the individual or organization to which the certification is issued.~~
- ~~C. A certification is not transferable to another entity.~~
- ~~D. A copy of the certification for each service offered must be readily accessible by the individual or organization to which the certification is issued.~~
- ~~E. The validity of a certification is contingent on continued substantial compliance with applicable certification standards. A certification is subject to corrective action or interim adverse action which may be imposed by DDS at any time upon a finding of substantial noncompliance.~~

#### **4. Certification, Investigation and Monitoring Program Generally.**

DDS has established the CES Waiver Certification Standards with which all Providers must be in substantial compliance in order to participate in the CES Waiver program. The purpose of the certification, investigation and monitoring program is to ensure that all Providers are in substantial compliance with the CES Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS at all times.

The certification status of a Provider as it pertains to a particular CES Waiver Service at any given time is dependent on the extent of the Provider's substantial compliance with the currently effective CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, as determined through the Annual Certification Reviews, Periodic Monitoring Reviews, and Service Concern Investigations conducted by DHS. Each CES Waiver Service offered by a Provider is individually certified, and certification may not be transferred to another organization/Provider.

As part of its oversight responsibility, DHS is responsible for receiving and investigating any Service Concern regarding the delivery of a CES Waiver Service to determine the veracity of the Service Concern, and decide what, if any, potential enforcement remedies and/or corrective actions may be required. Any DHS employee that receives verbal or written notice of any matter that could potentially be considered a Service Concern is required to immediately relay the information to appropriate DHS licensure and certification staff. Additionally, DHS employees will fulfill their responsibility as mandated reporters by reporting any covered incident to Adult Protective Services or the Child Abuse Hotline, as appropriate.

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~~4. **Certification Team Composition.** DDS is responsible for evaluating a certified provider's compliance with certification standards. A DDS Certification Team may include without limitation representatives of any relevant professional entities.~~

#### 5. Certification Status Levels.

Each CES Waiver Service that a Provider is certified to offer will always have one of the following certification status classifications:

- “Temporary Certification” is the preliminary certification status reserved for a new Provider, or an existing Provider offering a new CES Waiver Service. Temporary Certification status may be granted when a Provider demonstrates initial compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, which are applicable to the CES Waiver Service/s the Provider is seeking to offer. Temporary Certification may last for a term of up to one hundred and eighty (180) days from the date the Provider begins providing the CES Waiver Service to its first client. If a Provider offering a CES Waiver Service under Temporary Certification has not received its first client within one (1) year from the granting of Temporary Certification, then Provider must apply for an extension of Temporary Certification status. If an existing Provider is seeking to offer an additional CES Waiver Service, DHS may bypass Temporary Certification and immediately grant Regular Certification if DHS determines the circumstances warrant such. Temporary Certification is discussed in greater detail in Section six (6) herein.
- “Regular Certification” is the certification status granted when the Provider is found to be in substantial compliance with all applicable CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS.
- “Regular Certification with Requirements” is a downgrade from Regular Certification and is the certification status granted when DHS has found a CES Waiver Service offered by a Provider to be substantially out of compliance with applicable CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS. A downgrade to Regular Certification with Requirements does not affect a Provider's ability to offer that particular CES Waiver Service, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Provider can provide acceptable written documentation of its good-faith efforts towards correcting any non-compliance issues, DHS may grant up to a sixty (60) day extension to the preliminary

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corrective period. Under no circumstances may a corrective period be longer than ninety (90) days.

“Suspended Certification” is the certification status granted when DHS has found a CES Waiver Service offered by a Provider to be substantially out of compliance with applicable CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS. When a CES Waiver Service is under Suspended Certification status, the Provider is removed from the Provider choice form for that particular CES Waiver Service until the Suspended Certification status has been removed. Suspended Certification is discussed in more detail in Section ten (10) herein.

5. ~~Access.~~ DDS shall have access to the premises, staff, individuals served and their families, and all records of a certified provider at all times for the purpose of conducting Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys concerning compliance with applicable Certification Standards.

#### 6. **Procedural Guidelines: New Provider Certification Process.**

A. **Initial Application Process.** In order to offer any CES Waiver Service, an organization must first request an application packet from DHS. The completed application packet and required supporting documentation must be submitted to DHS.

B. **Temporary Certification.** If DHS determines that the application and supporting documentation satisfy CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, the applicant may be granted Temporary Certification status. Temporary Certification status permits the applicant to begin providing the applicable CES Waiver Service/s in the county or counties selected on the application. Once an applicant receives Temporary Certification, it will need to enroll with Medicaid as a certified home and community based service provider prior to initiating CES Waiver Services. If an existing Provider is only seeking to offer an additional CES Waiver Service, DHS may bypass Temporary Certification and immediately grant Regular Certification if DHS determines the circumstances warrant. After CES Waiver Service(s) are initiated by the applicant (i.e. after beginning to provide the CES Waiver Service(s) to its first beneficiary), DHS will conduct Periodic Monitoring Reviews as deemed necessary to monitor the applicant’s compliance with CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS. If a Provider offering a CES Waiver Service under Temporary Certification has not received its first client within one (1) year from the granting of Temporary Certification, then the Provider must apply for an extension of Temporary Certification status.

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**C. Regular Certification or Denial of Certification.** Once the Provider has begun providing the CES Waiver Service(s) to its first client, then at least thirty (30) days prior to the expiration of the applicant's one hundred eighty (180) day Temporary Certification period, DHS will conduct the equivalent of an Annual Certification Review. If DHS determines that the applicant is in substantial compliance with CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, the applicant will be granted Regular Certification status for those CES Waiver Services. If it is determined that the applicant is not in substantial compliance, DHS may impose appropriate enforcement remedies (see Section nine (9) for additional details). If the applicant is unable to achieve substantial compliance with applicable sections of the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, Regular Certification for those CES Waiver Services will be denied, and the applicant will be prohibited from providing those CES Waiver Services moving forward.

An applicant that is denied Regular Certification will have to wait at least twelve (12) months before it will be allowed to re-apply for certification to offer a CES Waiver Service(s).

#### **6. Certification Definitions.**

- ~~A. "Abbreviated Review" means a targeted onsite evaluation of a new provider or certified provider for the purpose of determining compliance with specific certification standards, providing technical assistance, or conducting brief unscheduled or unannounced visits to provide consultation and assistance in support of continued compliance with certification standards.~~
- ~~B. "Certification Review" means an onsite formal evaluation of a new provider or certified provider by DDS to ensure program quality and compliance with applicable certification standards.~~
- ~~C. "Death Investigation" means an onsite review of an unexpected death that occurs accidentally, or as a result of an undiagnosed condition while the client is receiving services in accordance with DHS Policy 1106.~~
- ~~D. "Focused Review" means an onsite targeted evaluation of a certified Early Intervention provider due to non-compliance with state and/or federal regulations based on data submitted to DDS.~~
- ~~E. "Direct Care Staff" means staff employed by the certified organization who are responsible for implementing an individual's plan of care and providing day to day direct services in accordance with the plan of care and state and federal regulations.~~

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- ~~F. "National Accrediting Organization" means a national accrediting organization with acknowledged expertise and experience in the field of developmental disabilities, such as the Commission for the Accreditation of Rehabilitation Facilities (CARF) or the Council on Accreditation (COA), recognized by DDS. In order to qualify a certified provider as accredited for purposes of renewing a Regular Certification based on deemed status, the specific program standards of a National Accrediting Organization shall be consistent with the configuration of services to persons with developmental disabilities in Arkansas.~~
- ~~G. "Provisional Certification" means the status of a Regular Certification when DDS finds that a certified provider has failed to complete appropriate corrective action under the Regular Certification with Requirements and continues to be substantially out of compliance with applicable certification standards or when warranted by the scope and severity level of noncompliance.~~
- ~~H. "Regular Certification" means a certification granted to a new provider or renewed annually for a certified provider when the new provider or certified provider demonstrates compliance with applicable certification standards.~~
- ~~I. "Regular Certification with Requirements" means the status of a Regular Certification when DDS finds that a certified provider has been substantially out of compliance with applicable Certification Standards for more than thirty (30) days.~~
- ~~J. "Service Concern Investigation" means a specific inspection of a certified provider by DDS with regard to a complaint or complaints.~~
- ~~K. "Survey" means an onsite formal evaluation of a new provider or certified provider by a national accrediting organization to ensure program quality and compliance with specific program standards.~~



L. “Temporary Certification” means a certification granted for a term of ninety (90) days with the possibility of one (1) ninety-day extension to allow time for the start-up of a new provider or a new service for an existing certified provider.

## 7. Annual Certification Reviews

DHS will conduct an Annual Certification Review of every Provider to ensure for each CES Waiver Service provided, continued substantial compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS. Annual Certification Reviews may be conducted through on-site visits to Provider facilities and beneficiary residences/homes, reviews of Provider files, books and other paperwork, interviews with staff, beneficiaries, and the parents/guardians of beneficiaries, and any other activity that DHS reasonably believes to be necessary to perform an Annual Certification Review.

### A. Off-site Information Review.

The objective of the off-site information review is to analyze various sources of available Provider information to identify any areas of concern, non-compliance or other issues, and focus the efforts of appropriate DHS staff during any on-site reviews and visits. Sources of off-site information may include, but are not limited to:

- Provider documentation requested in advance by DHS;
- The prior year’s Annual Certification Review report;
- Incident reports involving the Provider submitted during the prior year;
- The results of any Periodic Monitoring Reviews and/or Service Concern Investigations during the prior year; and
- Interviews with beneficiaries and/or parents or guardians of beneficiaries.

### B. On-site Information Reviews and Visits

DHS will identify where access is needed, whether that be a Provider office or facility or a beneficiary’s place of residence, and which staff need to be available. Each Provider will be responsible for providing appropriate DHS staff access to (i) the Provider’s offices/facilities, (ii) any premises where a beneficiary the Provider serves is residing, (iii) Provider staff, (iv) the beneficiaries, and (v) any other Provider controlled premises DHS reasonably believes necessary. If DHS has questions and/or needs

additional information, then the Provider is responsible for providing the requested information as soon as possible.

The extent and depth of the on-site reviews and/or visits necessary shall be determined on a case-by-case basis by DHS based upon the severity and/or urgency of the non-compliance or other issues and concerns discovered during any off-site review or other on-site reviews and visits.

An on-site information review or visit may consist of any one or more of the following:

- Review of Provider on-site paper or electronic records;
- Interviews with Provider administrators or other staff;
- Interviews with beneficiaries or parents/guardians of beneficiaries;
- Visits to the homes or other dwellings of beneficiaries served by the Provider;
- Tour of the Provider offices and facilities; and
- Any other reasonable information gathering activities requested by DHS

#### C. Annual Monitoring Review Report

DHS will deliver to the Provider an Annual Certification Review report within thirty (30) days following the completion of the Annual Certification Review. The report will set out the collective findings of DHS during the Annual Certification Review and identify specific CES Waiver Certification Standards with which the Provider is out of compliance. The Annual Monitoring Review report will also inform the Provider of any enforcement remedies (as explained in more detail in Section 10 herein) imposed on and the Certification status granted to each CES Waiver Service provided based upon DHS' findings.

### ~~7. Procedural Guidelines: Certification Application Process.~~

~~A. Temporary Certification. In order to deliver any of the services designated under this policy, an applicant first applies for Temporary Certification with DDS on forms provided for that purpose. DDS considers only completed applications. If an application is incomplete, DDS promptly notifies the provider that the application is incomplete and will not be considered and identifies the items missing from the application.~~

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~~1) Early Intervention Services.~~

~~a) *Applicant is an Organization.* If an applicant to provide Early Intervention Services is an organization, the application includes documentation of required qualifications, copies of written policies and procedures for implementation of the DDS Certification Standards concerning Board of Directors, Personnel Procedures and Records and Individual/Parent/Guardian Rights, a description of the applicant's plan to address applicable Service Provision Standards, and any other documentation requested by DDS to accompany the application.~~

~~b) *Applicant is an Individual.* If an applicant to provide Early Intervention Services is an individual, the application includes documentation of required qualification, documentation related to the DDS Certification Standard concerning Certification of Individuals, a description of the applicant's plan to address Service Provision Standards, and any other documentation requested by DDS to accompany the application.~~

~~e) *Temporary Certification for Early Intervention Services.* DDS evaluates the completed application and all supporting documentation for compliance with the DDS Certification Standards for Early Intervention Services. If DDS determines that the application and supporting documentation satisfy certification standards, DDS issues a Temporary Certification to the applicant in order to initiate services. After services are initiated, DDS will conduct an on-site review or in person interview to determine the provider's compliance with certification standards concerning Service Provision, Individual/Parent/Guardian Rights, and Record Keeping.~~

~~2) ACS Waiver Services.~~

~~a) *Applicant is an Organization.* If an applicant to provide an ACS Waiver Service is an organization, the application includes documentation of required qualifications, copies of written policies and procedures for implementation of the DDS Certification Standards concerning Board of Directors, Personnel Procedures and Records, Staff Training and Individual/Parent/Guardian Rights, a description of the applicant's plan intends to address the applicable Service Provision Standards, and any other documentation requested by DDS to accompany the application.~~

~~b) *Application is an Individual.* If provider applies to provide an ACS Waiver Service and the provider is an individual, the application shall include documentation of required qualifications, copies of written policies and procedures related to implementation of the DDS Certification Standards concerning Personnel Procedures and Records, Staff Training and~~

~~Individual/Parent/Guardian Rights, a description of the applicant's plan to address the applicable Service Provision Standards, and any other documentation requested by DDS to accompany the application.~~

~~e) Temporary Certification for ACS Waiver Services. DDS evaluates the completed application and all supporting documentation for compliance with the applicable DDS Certification Standards for ACS Waiver Services. If the Temporary Certification is for Respite Care, Supportive Living Services in a community or congregate setting, or Crisis Center Services, DDS also conducts an onsite Abbreviated Review of the premises for compliance with Certification Standards concerning Physical Plant, Accessibility, and Safety. If DDS determines that the application, supporting documentation, and if applicable, the Abbreviated Review of the premises satisfy certification standards, DDS issues a Temporary Certification to the applicant in order to initiate services. After services are initiated, DDS will conduct an on-site review or in person interview to determine the provider's compliance with certification standards concerning Service Provision, Individual/Parent/Guardian Rights, and Record Keeping.~~

~~3) Request for Approval as an Organized Health Care Delivery System. Any individual or organization certified to provide Supportive Living Services or Case Management Services under the ACS Waiver may request DDS for approval to serve as an Organized Health Care Delivery System (OHCDS).~~

~~B. Certification Review under Temporary Certification. During the term of the Temporary Certification, DDS conducts a Certification Review in accordance with Section 8 of this policy. If DDS determines that the provider is in substantial compliance with applicable Certification Standards, DDS issues a Regular Certification. If DDS determines that the provider is not in substantial compliance with applicable certification standards, DDS imposes corrective actions or sanctions or both in accordance with Section 9 of this policy.~~

~~If the provider is unable to achieve substantial compliance with applicable Certification Standards during the term of the Temporary Certification, DDS may extend the term of the Temporary Certification or deny the issuance of a Regular Certification.~~

~~C. Regular Certification.~~

~~1) Regular Certification Based on Certification Review.~~

~~DDS conducts periodic reviews of certified providers to ensure continued compliance with Certification Standards. A periodic review may be an~~

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~~Abbreviated Review or a Certification Review. If DDS determines after conducting a review that the certified provider is in substantial compliance with applicable Certification Standards, DDS renews the certified provider's Regular Certification. If DDS determines after conducting a review that the certified provider is not in substantial compliance with applicable Certification Standards, DDS imposes corrective actions or sanctions or both in accordance with Section 8 of this policy.~~

~~2) Regular Certification Based on Deemed Status:~~

~~a) Deemed Status: A certified provider may apply for renewal of a Regular Certification based on current accreditation from a National Accrediting Organization by providing DDS with a copy of the most recent complete report issued by the National Accrediting Organization concerning the provider and the official accreditation certificate.~~

~~(i) If already accredited prior to the provider's Certification Review month, the provider submits the report and certificate to DDS at least thirty (30) days prior to the beginning of the provider's Certification Review month.~~

~~(ii) If a provider is requesting Regular Certification Based on Deemed Status to begin with the prior year's certification and the provider receives national accreditation within eight (8) months of completion of the prior year's certification process, the provider submits the report and certificate to DDS within thirty (30) days of provider's receipt of the report and certificate.~~

~~If the current accreditation indicates that the provider is in substantial compliance with certification standards, DDS issues a Regular Certification to the provider without any further Certification Review.~~

~~If the current accreditation indicates that that the certified provider is in substantial compliance with licensure standards and a review of other pertinent information does not indicate a pattern of noncompliance or pervasive noncompliance at Level 2 or above, DDS renews the Regular Certification of the certified provider without any further Certification Review. Pertinent information may include consumer satisfaction surveys, incident reports and results of service concern investigations.~~

~~b) Required Communications:~~

~~(i) A certified provider notifies DDS immediately after receipt of notification of a change in accreditation status.~~

~~(ii) A certified provider notifies DDS within fourteen (14) calendar days of the provider's receipt of notice of a pending Survey by the National Accrediting Organization~~

~~(iii) A certified provider submits contemporaneously to DDS its quality improvement plan and any other document submitted to its National Accrediting Organization.~~

~~(iv) A certified provider authorizes its National Accrediting Organization to release information to DDS upon DDS's request.~~

~~e) *DDS Access.*~~

~~(i) Nothing in this section affects the right of DDS to have access to the premises, staff, individuals served and their families, and all records of a certified provider at all times for the purpose of conducting Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys concerning compliance with applicable Certification Standards.~~

~~(ii) DDS reports findings of Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys and actions taken to the National Accrediting Organization of the certified provider.~~

~~(iii) A DDS staff member may participate in the entrance conference and exit conference during any survey conducted by the National Accrediting Organization of the certified provider.~~

~~d) *Withdrawal of Regular Certification Based on Deemed Status.* DDS may withdraw a Regular Certification Based on Deemed Status under the following circumstances:~~

~~(i) When a complaint concerning substantial noncompliance, as designated in Levels 3 and 4 of the Sanctions Matrix, with a health or safety standard is founded;~~

~~(ii) When an Abbreviated Review, Certification Review, Service Concern Investigation, or Survey find instances of noncompliance with DDS Certification Standards, or~~

~~(iii) When the national accreditation status of the certified provider has expired, is downgraded, or withdrawn by the National Accrediting Organization.~~

~~e) *National Accreditation Not Required.* DDS does not require any provider to seek or submit to accreditation by a National Accrediting Organization.~~

~~When a certified provider is not accredited by a national accrediting organization, DDS conducts a review of the provider as specified in this section.~~

## 8. Periodic Monitoring Reviews

A Periodic Monitoring Review may be conducted by DHS, at any time and for any reason. Periodic Monitoring Reviews will generally be less comprehensive and more targeted than an Annual Certification Review and can consist of either or both on-site and off-site reviews. DHS is not required to give advance notice to a Provider of its intent to conduct a Periodic Monitoring Review. Examples of situations where Periodic Monitoring Reviews may be conducted include, but are not limited to:

- During the Temporary Certification stage for a new CES Waiver Service offering;
- As a follow-up to an Annual Certification Review report, to monitor whether all non-compliance issues set out in the report have been corrected;
- Conducting random, unscheduled monitoring throughout the year to ensure consistent compliance with CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS;
- At the end of a specified timeframe relating to an enforcement remedy or certification downgrade to determine if all non-compliance issues have been corrected;
- Any other situation where DHS determines that a Periodic Monitoring Review is warranted.

A Periodic Monitoring Review report will be prepared and sent to a Provider only:

- if non-compliance with the applicable CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS, was found during the Periodic Monitoring Review;
- if the Periodic Monitoring Review was a follow-up to a prior enforcement remedy or certification downgrade; or

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- if DHS feels the circumstances require a report.

If a Periodic Monitoring Review report is prepared, the report will set out the findings, any corrective action and/or enforcement remedies that are to be initiated, and, if applicable, a timeline for completion. A Periodic Monitoring Review report, if any, will be delivered to the Provider within twenty-one (21) days after the completion of the Periodic Monitoring Review.

## 8. Procedural Guidelines: Certification Review Process.

### A. Notice of Certification Review.

~~Within ninety (90) days before a Certification Review, DDS sends notice of the Certification Review to the Director and Board President, if applicable, of the certified provider and identifies any information that DDS requires certified provider to submit prior to the Certification Review. For example, DDS may request a letter of assurances signed by the Director of the certified provider or designee and the President of the Board of Directors of the certified provider or designee stating that the certified provider's written policies and procedures are in compliance with the applicable certification standards.~~

~~After receipt of notice of a Certification Review, the director of the certified provider shall distribute a notice announcing in advance the approximate date range during which DDS expects to perform a Certification Review of the certified provider. The notice should be made available to all individuals served and their families and should include DDS contact information.~~

### B. Offsite Preparation.

~~The objective of offsite preparation is to analyze various sources of information available about the certified provider to identify any potential areas of concern, to ascertain any special features of the provider, and to focus the efforts of the DDS Certification Review Team during the onsite tour and with regard to onsite information gathering.~~

~~The DDS Certification Review Team Leader or designee is responsible for obtaining all available sources of information about the certified provider for review by the Team including without limitation:~~

- ~~• Documentation from the provider requested in advance,~~
- ~~• The prior year's Certification Review report,~~
- ~~• Incident reports submitted during the prior year, and~~

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- ~~The results of any complaint investigations during the prior year.~~

~~The Team Leader is responsible for presenting the information obtained to the Team for review at an offsite team meeting prior to the Certification Review. At this meeting, the Team Leader should establish preliminary review assignments, and the Team should identify potential areas of concern and note any special features of the certified provider.~~

#### C. Entrance Conference.

~~The Team Leader or designee conducts the entrance conference with the director of the certified provider and any staff designated by the director. During the entrance conference, the Team Leader or designee:~~

- ~~Introduces team members,~~
- ~~Explains the Certification Review process,~~
- ~~Informs the director and any staff that the Team will be communicating with them through the Certification Review and will ask for assistance when needed,~~
- ~~Advises the director and any staff that they will have the opportunity to provide the Team with any information that would clarify an issue brought to their attention, and~~
- ~~Answers any questions from the director or any staff.~~

~~If services are provided on-site, it is recommended that after their introduction to director of the certified provider, the other team members proceed to the initial tour and make general observations of the certified provider.~~

#### D. Onsite Preparation.

~~The Team Leader asks director of the certified provider to provide access to information determined by the Team as necessary to complete the Certification Review.~~

~~If applicable, the Team Leader shall post a sign or arrange for the director of the certified provider to post a sign in areas easily observable by individuals served and their families announcing that DDS is performing a Certification Review and that DDS team members are available to meet in private with individuals served or their families or both.~~

~~Throughout the Certification Review process, the Team should discuss among themselves, on a daily basis, observations made and information obtained in order~~

~~to focus on the concerns of each team member, to facilitate information gathering and to facilitate decision making at the completion of the Certification Review.~~

~~E. Initial Tour.~~

~~The initial tour of the provider's administrative facility(ies) and agency owned/operated/controlled sites is designed to provide team members with an initial assessment of the certified provider, the individuals served and their families, and any staff. During the initial tour, team members should:~~

- ~~• Make an initial evaluation of the environment of the certified provider,~~
- ~~• Identify areas of concern to be investigated during the Certification Review,~~
- ~~• Confirm or invalidate pre-review information about potential areas of concern, and~~
- ~~• Document their findings.~~

~~F. Onsite Information Gathering.~~

~~The DDS Certification Review Team gathers information for the Certification Review from three (3) primary sources: review of records, interviews, and observations. Each team member should verify information and observations in terms of credibility and reliability. All findings must be documented. The Team should maintain an open and ongoing dialogue with the director and any staff throughout the Certification Review process.~~

~~The Team should meet on a daily basis to share information, such as findings to date, areas of concern, any changes needed in the focus of the Certification Review. These meetings include discussions of concerns observed, possible requirements to which those concerns relate, and strategies for gathering additional information to determine whether the certified provider is meeting certification standards.~~

~~*Immediate jeopardy:* Immediate jeopardy is defined as a situation in which the certified provider's failure to meet one or more certification standards has caused, or is likely to cause, serious injury, harm, impairment, or death of an individual served. The guiding principles for determining the scope and severity of noncompliance make it clear that immediate jeopardy can be related to mental or psychosocial well-being as well as physical well-being and that the situation in question need not be a widespread problem.~~

~~NOTE: See Section 8.I and the Certification Sanctions Matrix in Appendix A to this policy for more information on classifying the scope and severity of deficient practices.~~

~~At any time during the Certification Review, if one or more team members identify possible immediate jeopardy, the Team should meet immediately to confer. The team must determine whether there is immediate jeopardy during the information gathering task. If the team concurs that there is immediate jeopardy, the team leader immediately consults his or her supervisor. If the supervisor concurs, that the situation constitutes immediate jeopardy, the team lead informs the director of the certified provider or designee that DDS is invoking the immediate jeopardy certification revocation procedures. The team leader explains the nature of the immediate jeopardy to the director of the certified provider or designee who must submit a statement while the team is on-site asserting that the immediate jeopardy has been removed and including a plan of sufficient detail to demonstrate how and when the immediate jeopardy was removed.~~

~~The Team will provide the director of the certified provider with a written report concerning the nature of the immediate jeopardy within ten (10) days of the date of the exit conference.~~

~~*Substandard Quality of Care:* Substandard quality of care is defined as a deficient practice related to Certification Standards concerning Individual/Parent/Guardian Rights or Service Provision classified as an isolated incident at severity level 3 or as a pattern of deficient practices at severity level 2.~~

~~NOTE: See Section 8.1 and the Certification Sanctions Matrix in Appendix A to this policy for more information on classifying the scope and severity of deficient practices.~~

~~At any time during the Certification Review, if a team member identifies possible substandard quality of care, the team member should notify other members of the team as soon as possible. The team may make a finding of substandard quality of care during the information gathering task or the information analysis and decision-making task.~~

~~If there is a deficiency(ies) related to noncompliance with Certification Standards concerning Individual/Parent/Guardian Rights or Service Provision and the team member classifies the deficiency as an isolated incidence of severity level 3 or as a pattern of severity level 2, the team member determines if there is sufficient evidence to support a decision that there is substandard quality of care. If the evidence is not sufficient to confirm or refute a finding of substandard quality of care, the team member may expand the Certification Review to include additional evaluation of the certified provider's compliance with the licensure standard at issue. To determine whether or not there is substandard quality of care, the Team should assess additional information related to the Certification Standard at issue, such as written policies and procedures, staff qualifications and functional~~

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responsibilities, and specific agreements and contracts that may have contributed to the outcome. It may also be appropriate to conduct a more detailed review of related service delivery.

If the determination of substandard quality of care is made prior to the exit conference, the Team will provide the director of the certified provider with information concerning the nature of the substandard quality of care.

If the determination of substandard quality of care is made after the exit conference, the Team will provide the director of the certified provider with a written report concerning the nature of the substandard quality of care within fifteen (15) days of the date of the completion of the review.

#### G. Information Analysis for Deficiency Determination.

The objective of information analysis for deficiency determination is to review and analyze all information collected and to determine whether or not the certified provider has failed to meet one or more of the applicable certification standards. Information analysis and decision making builds on discussions of the DDS Certification Review Team during daily meetings, which should include discussions of observed problems, area of concern, and possible failure to meet certification standards. The team leader or designee collates all information and records the substance of the decision making discussions on the Certification Review report.

*Deficiency Criteria:* The Team bases all deficiency determinations on documented observations, statements by individuals served, statement by the families of individual serviced, statements by the director and staff, and available written documents.

*Evidence Evaluation:* The Team evaluates the evidence documented during the Certification Review to determine if a deficiency exists due to a failure to meet a certification standard and if there are any negative outcomes for individuals served due to the failure. The Team should evaluate all evidence in terms of credibility and reliability.

#### H. Exit Conference.

The DDS Certification Review Team will conduct an exit conference with the certified provider immediately following the completion of the Certification Review. The general objective of the exit conference is to inform the certified provider of the Team's observations and preliminary findings.

~~During the exit conference, the Team describes the deficiencies that have been identified and the findings that substantiate these deficiencies. The Team provides the director and any staff with an opportunity to discuss and supply additional information that he or she believes is pertinent to the identified findings.~~

### I. Writing the Report.

~~The report of the Certification Review should be written in terms specific enough to allow a reasonably knowledgeable person to understand the aspect(s) of the certification standard(s) that is (are) not met. The report should identify the specific certification standards not met and reflect the content of each certification standard identified. The report should include a summary of the evidence and supporting observations for each deficiency. The report shall identify the sources of evidence (e.g., interview, observation, or records review) and identify the impact or potential impact of the noncompliance on the individual served, and how it prevents the individual served from reaching his or her highest practicable physical, mental or psychosocial well-being. The levels of severity and scope of deficiencies should be clearly identifiable.~~

~~*Guidance on Severity Levels*—There are four (4) severity levels:~~

- ~~● Level 1—No actual harm with potential for minimal harm is a deficiency that has the potential for causing no more than a minor negative impact of the individual served.~~
- ~~● Level 2—No actual harm with potential for more than minimal harm that is not immediate jeopardy is a noncompliance that results in minimal physical, mental or psychosocial discomfort to the individual served or has the potential to compromise the individual served's ability to maintain or reach his or her highest practicable physical, mental or psychosocial well-being as defined by a plan of care and provision of services.~~
- ~~● Level 3—Actual harm that is not immediate jeopardy is noncompliance that results in a negative outcome that has compromised the individual served's ability to maintain or reach his or her highest practicable physical, mental or psychosocial well-being as defined by an accurate and comprehensive assessment, plan of care, and provision of services. This *does not include* a deficient practice that only has limited consequence for the individual served and would be included in Level 2 or Level 1.~~
- ~~● Level 4—Immediate jeopardy to the health or safety of an individual served is a situation in which immediate corrective action is necessary because the certified provider's noncompliance with one or more certification standards has caused, or is likely to cause, serious injury, harm, impairment, or death to an individual served.~~

~~Guidance on Scope Levels—There are three (3) scope levels:~~

- ~~● Isolated—When one or a very limited number of individuals served are affected, when one or a very limited number of staff are involved, or when the situation has occurred only occasionally or in a very limited number of locations.~~
- ~~● Pattern—When more than a very limited number of individuals served are affected, when more than a very limited number of staff are involved, when the situation has occurred in several locations, or when the same individual served has been affected by reported occurrences of the same deficient practice. A pattern of deficient practices is not found to be pervasive throughout the operations of the certified provider. If the certified provider has a system or policy in place but the system or policy is being inadequately implemented in certain instances or if there is inadequate system with the potential to impact only a subset of individuals served, then the deficient practice is likely a pattern.~~
- ~~● Pervasive—When the problems causing the deficiencies are pervasive in the operations of the certified provider or represent systemic failure that affected or has the potential to affect a large portion or all of the individuals served by the certified provider. If the certified provider lacks a system or policy or has an inadequate system or policy to meet the certification standard and this failure has the potential to affect a large number of individuals served, then the deficient practice is likely widespread.~~

~~J. Issuing the Report.~~

~~DDS provides the certified provider with a written report documenting the findings made during the Certification Review within thirty (30) calendar days of the date of the exit conference.~~

~~If the Certification Review Report contains a deficiency that is classified as substandard quality of care, DDS provides the certified provider with a written report concerning the nature of the substandard quality of care within fifteen (15) days of the date of the exit conference.~~

~~If the Certification Review Report contains a deficiency that is classified as immediate jeopardy, DDS provides the certified provider with a written report concerning the nature of the immediate jeopardy within ten (10) days of the date of the exit conference.~~

~~K. Plan of Correction.~~

~~*In General.* A plan of correction (POC) is a written statement developed by a certified provider to guide its efforts in achieving substantial compliance with certification standards after a finding of substantial noncompliance. Substantial noncompliance refers to a deficiency(ies) that is (are) categorized as no actual harm with potential for more than minimal harm that is (are) not immediate jeopardy and is (are) not substandard quality of care.~~

~~In order for a plan of correction to be acceptable, it must:~~

- ~~• Contain elements detailing how the certified provider will correct the deficiency as it relates to the individual served;~~
- ~~• Indicate how the certified provider will act to protect individual service in similar situations;~~
- ~~• Include the measures the certified provider will take or the systems it will alter to ensure that the problem does not recur;~~
- ~~• Indicate how the certified provider plans to monitor its performance to make sure that solutions are sustained; and~~
- ~~• Provide dates when corrective action will be completed. Completion dates will be determined in conjunction with DDS.~~

~~DDS approves the plan of correction if it satisfies the elements described above. If DDS does not approve the plan of correction, DDS shall provide the certified provider with a written explanation stating the reasons the plan of correction does not satisfy the elements described above. The certified provider shall revise the plan of correction until it is approved by DDS. All revisions must be completed within the time frame designated below for submission of the plan of correction.~~

~~*POC when there is substantial compliance:* Substantial compliance means a level of compliance with Certification Standards such that any identified deficiencies pose no greater risk to the health or safety of individuals served than the potential for causing minimal harm. Substantial compliance constitutes compliance with Certification Standards.~~

~~When DDS finds that a certified provider is in substantial compliance but has deficiencies that are isolated with no actual harm and potential for only minimal harm, a plan of correction is not required but the certified provider is expected to correct all deficiencies.~~

~~When DDS finds that a certified provider is in substantial compliance but has deficiencies that constitute a pattern or widespread with no actual harm and potential for only minimal harm, a plan of correction is required. While a certified provider is expected to correct deficiencies at this level, these deficiencies are within the substantial compliance range and do not need to be reviewed for~~

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~~correction during subsequent follow-up reviews within the same Certification Review cycle.~~

~~*POC when there is not substantial compliance:* Within fifteen (15) days of receipt of a certification report with deficiencies that are categorized as no actual harm with potential for more than minimal harm that is not immediate jeopardy and are not substandard quality of care, the certified provider develops and submits to DDS a written plan of correction.~~

~~*POC when there is not substantial compliance and there is also substandard quality of care or actual harm that is not immediate jeopardy:* Within ten (10) days of receipt of a certification report with deficiencies that are categorized as substandard quality of care or actual harm that is not immediate jeopardy, the certified provider develops and submits to DDS a written plan of correction.~~

~~*POC when there is not substantial compliance and there is also with immediate jeopardy:* Within two (2) days of receipt of a certification report with deficiencies that categorized as immediate jeopardy, the certified provider develops and submits to DDS a written plan of correction.~~

#### L. Post Certification Review Revisits.

~~DDS conducts a follow-up Abbreviated Review to confirm that the certified provider is in compliance with certification standards and has the ability to remain in compliance with certification standards. The purpose of the follow-up Abbreviated Review is to re-evaluate the specific care and services that were cited as noncompliant during the Certification Review, Service Concern Investigation, or other onsite Survey.~~

~~If DDS accepts the certified provider's plan of correction, DDS conducts a follow-up Abbreviated Review within thirty (30) calendar days of acceptance of the plan of correction but not before the latest date of corrective action proposed by the certified provider. At the follow-up Abbreviated Review, the Team should focus on the actions taken by the certified provider since the correction dates listed on the plan of correction.~~

~~Within fifteen (15) calendar days of the follow-up Abbreviated Review, DDS sends a written report documenting the findings made during the follow-up Abbreviated Review.~~

## 9. Procedural Guidelines: Service Concern Investigation Process

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DDS will accept a Service Concern from any person. Upon receipt of a Service Concern, DHS will attempt to contact the individual that filed the Service Concern within three (3) working days of receipt. If able to make contact, DHS will at a minimum obtain from the individual:

- 1.) The name and contact information of the individual that filed the Service Concern;
- 2.) The name and contact information of the beneficiary who is the subject of the Service Concern;
- 3.) The Provider that is providing services to the beneficiary; and
- 4.) A complete accounting of the Service Concern, including the names of all individuals involved, locations, dates and any other pertinent information.

DHS will, at a minimum, attempt to contact the individual that filed the Service Concern on at least three (3) separate days within the week following the date the service concern is received. If DHS is unable to make contact with the individual that filed the Service Concern, it will continue with the initial fact finding procedures described below to the extent possible.

#### Initial Fact Finding

DHS shall conduct an initial fact-finding process for each Service Concern to determine if there is sufficient evidence to initiate a Service Concern Investigation:

- Within twenty-four (24) hours of DHS' receipt of the Service Concern, if the Service Concern indicates that the health and safety of the beneficiary or others is at risk; or
- Upon completion of the initial interview with the person that filed the Service Concern; however, under no circumstances will an initial fact finding be initiated later than one (1) week following the date the Service Concern was received by DHS.

If the Service Concern indicates that the health and safety of the beneficiary or others is at risk, then the DHS staff person assigned will make a referral to Adult Protective Service, Child Protective Services, local law enforcement or any other appropriate agency.

The initial fact-finding will at a minimum include telephone, face-to-face, email or other method of interviews with those parties deemed appropriate by DHS, which may include,

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but is not limited to, the beneficiary, the beneficiary's case manager, direct care supervisor and assigned DDS Waiver Specialist. The initial fact finding would also include a review of any pertinent documents. An initial fact finding conducted by DHS may last up to ten (10) days after its receipt of the Service Concern. Providers are expected to make all staff, records and any other sources of information readily available to the assigned DHS staff for purposes of conducting initial fact findings related to Service Concerns.

#### Initial Fact Finding Determination

Upon completion of the initial fact finding, DHS will determine whether to initiate a Service Concern Investigation. If the determination is made not to proceed with a Service Concern Investigation, DHS will:

- Complete a written summary of the initial fact finding activities and results, and a summary of why it was determined that a Service Concern Investigation was not necessary;
- If required or determined appropriate based upon the initial fact findings, make a referral to the Division of Children & Family Services, Division of Aging and Adult Service, or other appropriate state or federal agency.

If DHS determines that the results of the initial fact finding warrant it, a Service Concern Investigation will be initiated.

#### Service Concern Investigation

Should DHS decide to initiate a Service Concern Investigation, then its details, extent, and scope would be determined by DHS on a case-by-case basis depending on the particular circumstances surrounding the Service Concern, as determined in the initial fact finding. Factors DHS would take into consideration include, but are not limited to, the severity of the allegation, the immediacy of the danger to the beneficiary or others, the number and severity of similar Service Concerns received regarding the Provider, the alleged perpetrator, and/or the beneficiary.

DHS will complete the Service Concern Investigation within thirty (30) calendar days of its receipt of the Service Concern. DHS may, but is not required to, conduct any one or more of the following activities during a Service Concern Investigation:

- 1.) Interviews with involved parties;
- 2.) Conduct unannounced visits to beneficiary homes, Provider facilities, or any other location deemed necessary by DHS during regular business hours, after-hours, or on weekends;
- 3.) Photograph physical evidence;

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- 4.) Review plans of care, behavior plans, case notes, time sheets or medication plans;
- 5.) Review staff training documentation;
- 6.) Review agency policies and personnel files; and
- 7.) Review any other pertinent information, or perform any other additional tasks that DHS reasonably believes necessary to conduct a proper Service Concern Investigation.

#### Service Concern Investigation Report

Upon completion of a Service Concern Investigation, DHS will determine if the facts support a finding that the provider did not adhere to CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS.

If the Service Concern Investigation results in DHS finding that the Provider is out of compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS, then within fifteen (15) calendar days of the conclusion of the Service Concern Investigation, DHS will send to the Provider a Service Concern Investigation report that contains at least the following information:

- 1.) A summary of the issue;
- 2.) When and how the concern was submitted;
- 3.) A brief summary of the investigation methods, interviews and facts;
- 4.) The facts and circumstances justifying the finding of non-compliance, including a citation of the applicable standard, rule, or guideline;
- 5.) The enforcement remedy applied, if any, and a timeframe for correcting the non-compliance issue;
- 6.) Whether the Service Concern Investigation findings has triggered a more comprehensive Periodic Monitoring Review of the Provider; and
- 7.) A notice that the decision to apply an enforcement remedy is subject to appeal under the provisions of DDS Policy #1076.

DHS will deliver a copy of the Service Concern Investigation report to the Provider by certified mail and/or email. If a parent/guardian was the individual that filed the Service Concern, then the parent/guardian will also receive a copy of the Service Concern Investigation report by certified mail and/or email. If a parent/guardian was not the individual that filed the Service Concern, then the parent/guardian will only receive a copy of the Service Concern Investigation report if the Service Concerns related to the health and safety of the beneficiary.

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## 9. Enforcement Remedies.

DDS may impose any of the Enforcement Remedies described below alone or in combination with any other Enforcement Remedy or Remedies to encourage quick compliance with certification standards.

### A. Certification downgrade.

*1) Regular Certification with Requirements.* If a certified provider is not in substantial compliance with applicable certification standards within thirty (30) calendar days after receiving notice of noncompliance in a Certification Review Report, the status of the certified provider's Regular Certification will be downgraded to a Regular Certification with Requirements. In order to achieve restoration of its Regular Certification, the certified provider corrects all identified deficiencies and demonstrates substantial compliance with certification standards within sixty (60) calendar days of being downgraded to a Regular Certification with Requirements. DDS may pass over Regular Certification with Requirements and immediately impose Provisional Certification when warranted by the scope and severity level of the noncompliance.

*2) Provisional Certification.* When a certified provider continues to be out of compliance with applicable certification standards at the end of the period allowed for a Regular Certification with Requirements or when warranted by the scope and severity level of the noncompliance, the certified provider's certification is downgraded to a Provisional Certification for a maximum term of one hundred and eighty calendar days (180) and Moratorium on New Admissions is imposed. During the term of a Provisional Certification, the certified provider submits weekly progress reports regarding compliance efforts until all deficiencies have been corrected. The failure of a certified provider to substantially comply with certification standards after sixty (60) calendar days of Provisional Certification results in the imposition of a Moratorium on Expansion.

### B. Directed Plan of Correction.

A directed plan of correction is an Enforcement Remedy in which DDS develops a plan to require a certified provider to take action within a specified timeframe. Achieving substantial compliance is the responsibility of the certified provider whether or not a directed plan of correction is followed. If a certified provider fails to achieve substantial compliance after complying with a directed plan of correction, DDS may impose another Enforcement Remedy until the certified provider achieves substantial compliance or loses its certification.

~~DDS may impose a directed plan of correction fifteen (15) calendar days after the certified provider receives notice in non-immediate jeopardy situations and two (2) calendar days after the certified provider receives notice in immediate jeopardy situations.~~

~~The date a directed plan of correction is imposed does not mean that all corrections must be completed by that date.~~

~~C. Directed In-Service Training.~~

~~Directed in-service training is an Enforcement Remedy that DDS imposes when it believes that education is likely to correct the deficiencies and help the certified provider achieve substantial compliance. This remedy requires provider staff to attend an in-service training program.~~

~~DDS may provide special consultative services for obtaining this type of training. At a minimum, DDS should compile a list of resources that can provide directed in-service training and make this list available to certified providers and other interested parties.~~

~~The certified provider bears the expense of directed in-service training.~~

~~If a certified provider fails to achieve substantial compliance after completing directed in-service training, DDS may impose another Enforcement Remedy until the certified provider achieves substantial compliance or loses its certification.~~

~~D. Referral to Medicaid Audit for Investigation.~~

~~Referral to Medicaid Audit for Investigation is an Enforcement Remedy that DDS imposes in response to identifying specific information that a certified provider has received inappropriate payment for services.~~

~~If an audit reveals that a certified provider has not complied with billing requirements in a reckless or intentional manner, DDS may impose additional Enforcement Remedies, including without limitation, certification revocation, exclusion and debarment.~~

~~E. State Monitoring.~~

~~State Monitoring is an Enforcement Remedy that DDS impose when DDS determines that oversight of the certified provider's efforts to correct cited deficiencies is necessary as a safeguard against further harm to individuals served when harm or a situation with the potential for harm has occurred.~~

~~A State Monitor is an appropriate professional who:~~

- ~~• Is an employee or contractor of DDS,~~
- ~~• Is not an employee or contractor of the monitored provider,~~
- ~~• Does not have an immediate family member who is served by the monitored provider, and~~
- ~~• Does not have any other conflict of interest with the monitored provider.~~

~~When State Monitoring is imposed, DDS selects the State Monitor. Monitoring may occur anytime in a program or program component. State Monitors have complete access to the premises, staff, individuals served and their families, and all records of the certified provider at all times and in all instances for performance of the monitoring task.~~

~~Some situations in which State Monitoring may be appropriate include without limitation:~~

- ~~• Poor compliance history, i.e. a pattern of poor quality of care, many complaints,~~
- ~~• DDS concern that the situation has the potential to significantly worsen, or~~
- ~~• Substandard quality of care or immediate jeopardy exists and the certified provider seems unable or unwilling to take corrective action.~~

~~The Enforcement Remedy of State Monitoring is discontinued when the certified provider demonstrates that it is in substantial compliance with certification standards and that it will remain in substantial compliance. A certified provider can demonstrate continued compliance by adherence to a plan of correction that delineates what systemic changes will be made to ensure that the deficient practice will not recur and how the certified provider will monitor its corrective actions to ensure it does not recur.~~

#### ~~F. Moratorium on New Admissions:~~

~~Moratorium on New Admissions is an Enforcement Remedy that DDS may impose any time DDS finds a certified provider to be out of substantial compliance as long as the program or program component is given written notice at least two (2) calendar days before the effective date in immediate jeopardy cases and at least fifteen (15) calendar days before the effective date in non-immediate jeopardy cases.~~

~~DDS imposes a Moratorium New Admissions when DDS finds that a certified provider is not in substantial compliance ninety (90) calendar days after the last day of the Certification Review identifying the deficiency, or when a program or~~

~~program component has been found to have furnished substandard quality of care during its last three (3) consecutive Certification Reviews.~~

~~An individual admitted to a certified provider's service on or after the effective date of the remedy is considered a new admission. An individual admitted to a certified provider's service on or after the effective date of the remedy who is discharged from the service component or takes a temporary leave from the service is still considered new admission upon readmission or return.~~

~~An individual admitted to a certified provider's service before and discharged on or after the effective date of the remedy is not considered a new admission if the individual is subsequently readmitted to the service. An individual admitted to a certified provider's service before the effective date of the remedy who takes temporary leave before or after the effective date is not consider a new admission upon return.~~

~~Generally, if the certified provider achieves substantial compliance and it is verified through a follow up Abbreviated Review or credible written evidence, DDS lifts the Moratorium on New Admissions. However, when a Moratorium on New Admissions is imposed for repeated instances of substandard quality of care, DDS may impose the remedy until the certified provider is in substantial compliance and DDS believes the certified provider will remain in substantial compliance.~~

#### G. ~~Moratorium on Expansion.~~

~~Moratorium on Expansion is an Enforcement Remedy that DDS may impose when DDS finds a certified provider to be out of substantial compliance with certification standards after sixty (60) calendar days of Provisional Certification. A Moratorium on Expansion may include expanding capacity for current service delivery in existing service areas and expanding to offer current or new services in new service areas.~~

~~The failure of a certified provider to substantially comply with certification standards after sixty (60) calendar days of Provisional Certification indicates that the certified provider is unable or unwilling to take necessary corrective action and that individuals with developmental disabilities are in danger of losing services. A Moratorium on Expansion continues until the certified provider is in substantial compliance with applicable standards, and DDS believes the certified provider is willing and able to remain in substantial compliance.~~

~~If the certified provider has made considerable progress toward substantial compliance with applicable certification standards during the period of Provisional~~

~~Certification, the DDS Director or designee may grant an extension before a Moratorium on Expansion is imposed.~~

#### ~~H. Specific Service Prohibition.~~

~~A Specific Service Prohibition is an Enforcement Remedy that DDS may impose when DDS finds that a certified provider harmed a consumer. DDS may impose the prohibition against serving a specific individual or individuals or against a specific class of individuals. The prohibition may be permanent or for a specific term depending on the circumstances of the case.~~

#### ~~I. Certification Revocation.~~

~~When considering whether to revoke the certification of a certified provider, DDS considers many factors, particularly the provider's noncompliance history (e.g., it is consistently in and out of noncompliance), the effectiveness of alternative Enforcement Remedies when previously imposed, and whether the certified provider has failed to follow through on an alternative Enforcement Remedy (e.g. directed plan of correction or directed in-service training). These considerations are not all inclusive but factors to consider when determining whether Certification Revocation is appropriate in a given case.~~

~~*Immediate Jeopardy.* When there is immediate jeopardy to the health or safety of an individual served, DDS revokes the certification of a certified provider to be effective within thirty (30) calendar days of the last day of the Certification Review that found the immediate jeopardy if the immediate jeopardy is not removed before then. If the certified provider provides a written and timely credible allegation that the immediate jeopardy has been removed, DDS will conduct a follow up Abbreviated Survey prior to revocation if possible. In order for a Certification Revocation to be reversed, the immediate jeopardy must be removed even if the underlying deficiencies have not been fully corrected.~~

~~*No Immediate Jeopardy.* Certification Revocation is always an option that may be imposed for the noncompliance of any certified provider regardless of whether or not immediate jeopardy is present. When there is not immediate jeopardy, DDS revokes the Regular Certification of a certified provider if the certified provider fails to achieve substantial compliance after one hundred and eighty (180) calendar days of Provisional Certification.~~

#### ~~J. Voluntary Surrender of License.~~

~~If a certified provider intends to voluntarily surrender its certification, the director of the certified provider notifies DDS immediately. As a condition of certification,~~



~~the program or program component agrees to assist DDS with transitioning consumers.~~

~~K. Transitioning Consumers.~~

~~DDS has the ultimate responsibility for transitioning consumers when a certification is revoked. In some instances, the certified provider may assume responsibility for the safe and orderly transition of consumers when the certification of the provider is revoked. However, this does not relieve DDS of its ultimate responsibility to transition consumers. The goal of transitioning consumers is to minimize the period of time during which consumers receive less than adequate care.~~

~~L. Exclusion.~~

~~Exclusion from contracting with all DHHS divisions and enrolling in the Arkansas Medicaid Program for a specific term is an Enforcement Remedy that may be imposed upon recommendation of DDS and approval by the DHHS Director.~~

~~M. Debarment.~~

~~Recommendation to appropriate federal regulatory agency for Permanent Debarment is an Enforcement Remedy that may be imposed upon recommendation of DDS and approval by the DHHS Director.~~

**10. Enforcement Remedies**

DHS may impose various enforcement remedies upon a Provider when non-compliance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS is found. This section lists in detail the various enforcement remedies, in approximately increasing order of severity, which DHS may impose upon a Provider when non-compliance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS is found. These enforcement remedies are not mutually exclusive, and any one or more may be applied to a Provider simultaneously. Additionally, enforcement remedies may be applied to only one or more CES Waiver Services offered by a Provider (and not affect the other CES Waiver Services offered by the Provider), or may be applied to a Provider's entire organization.

The number and severity of enforcement remedies applied to a Provider will be determined on a case-by-case basis by DHS. The enforcement remedies applied will be based in part upon:

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- Frequency of Non-compliance: Providers which are habitually found to be in non-compliance will face increasingly severe enforcement remedies.
- Responsiveness in Correcting Non-compliance: The less responsive a Provider is in correcting previous and/or current issues of non-compliance within timelines the more severe the enforcement remedy.
- Re-lapse Non-compliance: Providers found to be out of compliance in areas previously addressed will face increasingly severe enforcement remedies when later found out of compliance for the same issue.
- Non-compliance Constituting Intentional Fraud: Providers found to be engaging in acts of any type that would constitute intentional fraud (monetary fraud, document falsification, attempts to cover up an issue of non-compliance, etc.) will result in more severe enforcement remedies.

Provider action or inaction jeopardizing the health or safety of a beneficiary will be reported to the appropriate agencies for investigation. DHS is required to initiate a referral to the Medicaid Audit division if, in the course of any review, they identify instances of non-compliance with Medicaid billing. The results of a Medicaid Audit alone may result in DHS imposing enforcement remedies on a Provider. An appeal of any enforcement remedy imposed pursuant to this Policy may be filed in accordance with the procedures outlined in DDS Policy #1076.

#### A. Plan of Correction.

A Plan of Correction is a plan of action that sets out the steps the Provider will take to correct the various areas of Provider non-compliance. A Plan of Correction is developed by the Provider and must be approved by DHS. Achieving substantial compliance through completion of the Plan of Correction is the responsibility of the Provider. A time frame for each specific action will be specified in the plan.

#### B. Directed In-Service Training.

Directed In-Service Training is targeted training and/or technical assistance to assist Providers and their staff in correcting compliance deficiencies. The Directed In-Service Training plan must be approved by DHS and include:

- the topics covered and materials used during training;
- the length of training/technical assistance; and
- the Provider staff that are required to be in attendance.

#### C. Downgrade Certification to “Regular Certification with Requirements.”

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If a Provider has not returned to substantial compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS within the timeframe established in an Annual Monitoring Review report, Periodic Monitoring Review report, or Service Investigation Concern report, the certification status of the applicable CES Waiver Services will be downgraded to Regular Certification with Requirements.

A downgrade to Regular Certification with Requirements does not effect a Provider's ability to offer the particular CES Waiver Service(s) cited, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Provider can provide acceptable written documentation of its good-faith efforts towards correcting any non-compliance issues, DHS may grant up to a sixty (60) day extension to the preliminary corrective period. Under no circumstances may a corrective period be longer than ninety (90) days.

During the corrective period, the Provider may be required to submit progress reports regarding compliance efforts to DHS. In order to achieve restoration of its Regular Certification, the Provider must correct all identified deficiencies and demonstrate substantial compliance with all CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS. Failure to correct all deficiencies and move into substantial compliance may result in suspended certification status for those CES Waiver Services.

#### D. Withhold Payment for Services.

Withholding payments to a Provider relating to invoices for CES Waiver Services rendered will be reserved for specific circumstances, including, but not limited to, the following:

- A suspended, de-certified, or non-certified Provider (i.e. a Provider that is not certified to perform a CES Waiver Service) submitting an invoice for the performance of a CES Waiver Service;
- Reasonable evidence that a Provider has engaged in fraudulent activities;
- Withholding of funds until the Provider follows through with agreed to provisions of a Plan of Correction or other enforcement remedy; and

- Any other circumstance where there is reasonable and documented justification for withholding the payment of funds.

#### E. Repayment of Funds.

If justified by the circumstances, DHS reserves the right to require the repayment of funds previously paid to a Provider relating to a CES Waiver Service. Such circumstances include, but are not limited, to the following:

- Payments attributable to CES Waiver Service/s that were not performed;
- Payments attributable to CES Waiver Service/s that were not performed in accordance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS;
- An overpayment to a Provider;
- Repayment is required by court order, federal agency, or other applicable state or federal law; and
- Any other circumstance where DHS has reasonable, documented justification for requiring repayment of funds previously paid to a Provider.

#### F. Moratorium on Admissions

A moratorium on admissions is an enforcement remedy that prohibits a Provider from accepting new beneficiaries as clients for the particular CES Waiver Service/s cited, offering new CES Waiver Service/s, and offering current CES Waiver Service/s in new service areas. The Provider may continue to offer CES Waiver Service/s to existing clients while under a moratorium on admissions. A moratorium on admissions shall remain in place until the Provider is in substantial compliance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS, and demonstrates to DHS that it is willing and able to remain in substantial compliance.

#### G. Prohibition on Providing Services to a Particular Beneficiary/ies

A prohibition on providing CES Waiver Services to a particular beneficiary or group of beneficiaries is an enforcement remedy that DHS may impose when it finds that a Provider cannot adequately provide a CES Waiver Service(s) to a particular beneficiary or group of beneficiaries. DHS may impose the prohibition against a specific beneficiary or beneficiaries, or against a specific class of beneficiaries. The prohibition

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may be permanent or for a specific term depending on the circumstances of the case. The Provider must continue to provide applicable CES Waiver Services to the beneficiaries subject to the prohibition until such time as DDS is able to successfully transition the beneficiary/ies to their new Provider of choice.

#### H. Downgrade Certification to “Suspended Certification”

A downgrade in certification to Suspended Certification prohibits a Provider from providing the particular CES Waiver Service(s) cited. While under Suspended Certification a Provider cannot be chosen as a provider of that CES Waiver Service by beneficiaries. Additionally, beneficiaries already receiving the applicable CES Waiver Service from the Provider will immediately be contacted and informed of the Suspended Certification, and will be given the opportunity to choose another area Provider of that CES Waiver Service that is in good standing. The Provider must continue to provide applicable CES Waiver Services to all beneficiaries until such time as DDS is able to successfully transition the beneficiaries to their new Provider of choice (for those beneficiaries choosing to do so). During the term of a Suspended Certification, the Provider may be required to submit weekly progress reports regarding its compliance efforts until all non-compliance deficiencies have been corrected. Suspended Certification status will not be removed until DHS has determined the Provider has returned to substantial compliance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS. The failure of a Provider to substantially comply within sixty (60) calendar days of its downgrade to Suspended Certification will result in de-certification of the applicable CES Waiver Service.

#### I. Revocation of Certification

De-certification of a Provider prohibits the Provider from performing that CES Waiver Service as of the date of de-certification. All individuals actively receiving the CES Waiver Service(s) that have been de-certified will be required to choose other certified Providers of those CES Waiver Service(s) in the area. DDS may withhold any payments to a Provider relating to a decertified CES Waiver Service(s) for a reasonable amount of time to determine the appropriateness of the requested payment, even if the CES Waiver Services submitted for payment were performed prior to de-certification. A Provider that is de-certified from providing a CES Waiver Service will have to wait a minimum of three (3) years before they will be allowed to apply for certification for that CES Waiver Service again. The Provider will continue to be responsible for providing CES Waiver Service(s) to its beneficiaries until such time as DDS is able to successfully transfer each beneficiary to their new Provider of choice.

#### ~~10. Solicitation.~~

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~~A. "Solicitation" means the use of a method described in Section 10.B of this policy to attempt to unduly influence an individual served by a certified provider or his or her family or guardian to transfer from one provider to another provider. Solicitation is prohibited by the all of the following:~~

~~1) A certified provider or any individual acting on behalf of the certified provider;~~

~~2) Any staff member of a certified provider or any individual acting on behalf of the staff member; and~~

~~3) Any individual who provides or has provided professional or direct care services for a certified provider or any individual acting on his or her behalf.~~

~~B. The following methods of solicitation are prohibited:~~

~~1) With the intent of soliciting consumers, hiring an individual who has been previously employed by or contracted with another certified provider who subsequently contacts consumers on the individual's caseload with the previous provider with the intent of inducing the consumer to transfer to the certified provider with which the individual is currently employed or contracted.~~

~~Protected Health Information, such as consumer addresses and telephone numbers, are considered confidential and the property of the certified provider with which the individual was or is employed or contracted. An individual formerly employed or contracted with a certified provider may not disclose Protected Health Information without a signed release from the consumer according to HIPAA. If DDS finds that an individual has released Protected Health Information in a manner contrary to HIPAA, DDS will notify the appropriate licensing or certification entity and the Office of Inspector General of the U.S. Department of Health and Human Services.~~

~~When a consumer transitions between two (2) certified providers, the receiving provider shall indicate on the transition plan if the receiving provider has hired or contracted or intends to hire or contract an individual who previously served the transferring individual through the sending provider. If five (5) or more individuals transfer under the circumstances described in this paragraph, DDS contacts the individuals or their family members or guardians to determine if solicitation occurred.~~

~~2) Offering cash or gift incentives to an individual served or his or family or guardian to induce the individual served or his or her family or guardian to change providers;~~

~~3) Offering an individual served or his or her family or guardian free goods or services that are not available to other similarly stationed consumers to induce the individual served or his or her family or guardian to change providers;~~

~~4) Refusing to provide an individual served access to entitlement services for which the individual is eligible if the individual served or his or her family or guardian selects another certified provider to provide waiver services to the individual;~~

~~5) Making negative comments to a potential individual served, his or her family or guardian, or an advocate regarding the quality of services provided by another certified provider other than for the purpose of monitoring or official advocacy;~~

~~6) Promising to provide services in excess of those necessary to induce an individual served or his or her family or guardian to change programs;~~

~~7) Directly or indirectly giving an individual served or his or her family or guardian the false impression that the certified provider is the only agency that can provide the services desired by the individual served or his or her family or guardian; and~~

~~8) Engaging in any activity that DDS determines was intended to be solicitation as defined in Section 10.A of this policy.~~

~~C. Only an authorized DDS representative may offer an individual or his or her family or guardian provider choice.~~

~~D. DDS investigates claims of solicitation that appear to be consistent with the definition of solicitation in Section 10.A of this policy. If DDS makes a finding of prohibited solicitation, DDS imposes enforcement remedies under Section 9 consistent with the scope and severity of the solicitation. If a pattern of solicitation occurs, DDS may impose Licensure Revocation.~~

~~E. Marketing is distinguishable from solicitation and is considered an allowable practice. Examples of acceptable marketing practices include without limitation:~~

~~1) General advertisement using traditional media;~~

~~2) Distribution of brochures and other informational materials regarding the services provided by a certified provider if the brochures and materials are factual and honestly presented;~~

~~3) Providing tours of a certified provider to interested individuals;~~

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~~4) Mentioning other services provided by the certified provider in which a consumer might have an interest, and~~

~~5) Hosting informational gatherings during which the services provided by a certified provider are honestly described.~~

~~11. **Procedural Guidelines: Change in Director.**~~

~~A. A certified provider shall provide DDS with written notification of a change in the director of the certified provider immediately upon resignation, discharge, or death of the director.~~

~~B. Within sixty (60) calendar days after the effective date of a change in the director of a certified provider, DDS staff will conduct an Abbreviated Review of the certified provider to provide onsite technical assistance.~~

~~12. **Codes:** A certified provider is responsible for compliance with all applicable building codes, ordinances, rules, statutes and similar regulations that are required by city, county, state, or federal jurisdictions. Where such codes are not in effect, it is the responsibility of the certified provider to consult one of the national building codes generally used in the area for all components of the building type being used or constructed. Nothing in this policy relieves a certified provider these responsibilities.~~

~~13. **Appeals.** An appeal of any decision made under this policy may be filed according to procedures outlined in DDS Director's Office Policy #1076.~~

**DDS Certification Sanctions Matrix**

**Appendix A**

Scope of Noncompliance

Severity of Noncompliance	<b>Isolated</b>	<b>Pattern</b>	<b>Pervasive</b>
	<b>“J”</b>	<b>“K”</b>	<b>“L”</b>
<b>Level 4</b>	<i><u>*Substandard Quality of Care</u></i> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Specific Service Prohibition Transition Consumers Exclusion	<i><u>*Substandard Quality of Care</u></i> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition	<i><u>*Substandard Quality of Care</u></i> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition

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	Debarment	Transition-Consumers Certification Revocation Exclusion Debarment	Transition-Consumers Certification Revocation Exclusion Debarment
Level 3	<p style="text-align: center;"><b>“G”</b></p> <p><u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Specific Service Prohibition</p>	<p style="text-align: center;"><b>“H”</b></p> <p><u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition Transition-Consumers Certification Revocation Exclusion</p>	<p style="text-align: center;"><b>“I”</b></p> <p><u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition Transition-Consumers Certification Revocation Exclusion Debarment</p>
Level 2	<p style="text-align: center;"><b>“D”</b></p> <p>Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation</p>	<p style="text-align: center;"><b>“E”</b></p> <p>Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation</p>	<p style="text-align: center;"><b>“F”</b></p> <p><u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion</p>
Level 1	<p style="text-align: center;"><b>“A”</b></p> <p>No Plan of Correction No Remedies Commitment to Correct</p>	<p style="text-align: center;"><b>“B”</b></p> <p>Plan of Correction</p>	<p style="text-align: center;"><b>“C”</b></p> <p>Plan of Correction</p>

The DDS Certification Sanctions Matrix is used to promote consistent practices in imposing Enforcement Remedies. Deviations based on particular circumstances are appropriate and expected.

\*Substandard Quality of Care:

Substandard Quality of Care is any noncompliance with Individual/Parent/Guardian Rights and Service Provision Standards that constitutes immediate jeopardy to the health or safety of an individual served, or a pattern of or widespread actual harm that is not immediate jeopardy, or a widespread potential for more than minimal harm that is not immediate jeopardy with no actual harm.

State Monitoring is imposed when DDS has found a certified provider to have provided substandard quality of care on three (3) consecutive Certification Reviews.

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~~Factors Considered When Selecting Enforcement Remedies: In order to select the appropriate Enforcement Remedy(ies) for noncompliance, the seriousness of the deficiency(ies) is first assessed because specific levels of seriousness correlate with specific remedies. These factors are listed below. They relate to whether the deficiencies constitute:~~

- ~~• No actual harm with a potential for minimal harm;~~
- ~~• No actual harm with a potential for more than minimal harm but not immediate jeopardy;~~
- ~~• Actual Harm that is not immediate jeopardy, or~~
- ~~• Immediate jeopardy to the health or safety of an individual served;~~

~~AND whether deficiencies~~

- ~~• Are Isolated~~
- ~~• Constitute a pattern, or~~
- ~~• Are Widespread.~~

~~Additional Factors that may be considered in selecting Enforcement Remedy(ies) include without limitation:~~

- ~~• The relationship of one deficiency to other deficiencies,~~
- ~~• The prior history of noncompliance in general, and specifically with reference to the cited deficiency(ies), and~~
- ~~• The likelihood that the selected remedy(ies) will achieve correction and continued compliance.~~

ARKANSAS DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS POLICY 1091  
**CERTIFICATION, INVESTIGATION, AND MONITORING POLICY FOR THE  
COMMUNITY EMPLOYMENT SUPPORTS (“CES”) WAIVER**

1. **Purpose.**

The Arkansas Department of Human Services, Division of Developmental Disabilities Services (“DDS”) is the lead agency for Arkansas’ Community Employment Supports waiver, a Medicaid Home and Community Based Services waiver under Section 1915 (c) of the Social Security Act (“CES Waiver”). The CES Waiver program offers certain home and community based services to Medicaid beneficiaries as an alternative to institutionalization. DDS is responsible for the implementation, general administration, and oversight of the CES Waiver. DDS carries out its oversight responsibility through a DHS run certification, investigation and monitoring program.

The purpose of this DDS policy #1091 is to establish the policies and procedures applicable to the CES Waiver certification, investigation and monitoring program. An appeal of any decision made pursuant to this policy may be filed according to procedures outlined in DDS Policy #1076.

2. **Scope.**

This policy is applicable to:

- Individuals and organizations that provide or seek to provide CES Waiver Services (as defined in section 3 below)
- All DHS staff responsible for certifying, investigating, and monitoring individuals and organizations providing CES Waiver Services.

3. **Definitions.**

A. “*Annual Certification Review*” means the required annual evaluation of a Provider by DHS Staff for the purpose of ensuring program quality and compliance with Community Employment Supports Waiver Minimum Certification Standards (“**CES Waiver Certification Standards**”), the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS. Procedures relating to an Annual Certification Review are provided in Section seven (7) herein.

B. “*CES Waiver Services*” mean any of the following services performed by a Provider through the CES Waiver program:

1. Supportive Living Services;
2. Care Coordination Services;

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3. Adaptive Equipment;
4. Environmental Modifications;
5. Specialized Medical Supplies;
6. Organized Health Care Delivery Systems;
7. Consultation Services;
8. Respite Services;
9. Crisis Intervention Services;
10. Supported Employment Services;
11. Community Transition Services; and
12. Supplemental Support Services.

- C. “CMS” means the Centers for Medicare & Medicaid Services.
- D. “Periodic Monitoring Review” means any evaluation of a Provider that is not an Annual Certification Review or Service Concern Investigation to ensure program quality and compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS. Periodic Monitoring Reviews are discussed in more detail in Section eight (8) herein.
- E. “Provider” means any organization or individual certified to provide or seeking certification to provide a CES Waiver Service.
- F. “Service Concern” means any event or information brought to DHS’s attention by any means that requires further investigation in order to determine whether a Service Concern Investigation needs to be initiated, including, but not limited to, a formal service concern, an informal complaint, a referral from another state or federal agency, a beneficiary death, an incident report filing by a Provider, and a beneficiary arrest.
- G. “Service Concern Investigation” means an investigation of the allegations and/or facts included in and/or surrounding a Service Concern. Service Concern Investigations will generally be specifically focused on the allegations and/or facts surrounding the Service Concern; however, findings during a Service Concern Investigation could result in the initiation of a more comprehensive Periodic Monitoring Review. Service Concern Investigations are described in more detail in Section nine (9) herein.

#### 4. **Certification, Investigation and Monitoring Program Generally.**

DDS has established the CES Waiver Certification Standards with which all Providers must be in substantial compliance in order to participate in the CES Waiver program. The purpose of the certification, investigation and monitoring program is to ensure that all Providers are in substantial compliance with the CES Certification Standards, the

DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS at all times.

The certification status of a Provider as it pertains to a particular CES Waiver Service at any given time is dependent on the extent of the Provider's substantial compliance with the currently effective CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, as determined through the Annual Certification Reviews, Periodic Monitoring Reviews, and Service Concern Investigations conducted by DHS. Each CES Waiver Service offered by a Provider is individually certified, and certification may not be transferred to another organization/Provider.

As part of its oversight responsibility, DHS is responsible for receiving and investigating any Service Concern regarding the delivery of a CES Waiver Service to determine the veracity of the Service Concern, and decide what, if any, potential enforcement remedies and/or corrective actions may be required. Any DHS employee that receives verbal or written notice of any matter that could potentially be considered a Service Concern is required to immediately relay the information to appropriate DHS licensure and certification staff. Additionally, DHS employees will fulfill their responsibility as mandated reporters by reporting any covered incident to Adult Protective Services or the Child Abuse Hotline, as appropriate.

#### 5. **Certification Status Levels.**

Each CES Waiver Service that a Provider is certified to offer will always have one of the following certification status classifications:

- *“Temporary Certification”* is the preliminary certification status reserved for a new Provider, or an existing Provider offering a new CES Waiver Service. Temporary Certification status may be granted when a Provider demonstrates initial compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, which are applicable to the CES Waiver Service/s the Provider is seeking to offer. Temporary Certification may last for a term of up to one hundred and eighty (180) days from the date the Provider begins providing the CES Waiver Service to its first client. If a Provider offering a CES Waiver Service under Temporary Certification has not received its first client within one (1) year from the granting of Temporary Certification, then Provider must apply for an extension of Temporary Certification status. If an existing Provider is seeking to offer an additional CES Waiver Service, DHS may bypass Temporary Certification and immediately grant Regular Certification if DHS determines the circumstances warrant such. Temporary Certification is discussed in greater detail in Section six (6) herein.

- “*Regular Certification*” is the certification status granted when the Provider is found to be in substantial compliance with all applicable CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS.
- “*Regular Certification with Requirements*” is a downgrade from Regular Certification and is the certification status granted when DHS has found a CES Waiver Service offered by a Provider to be substantially out of compliance with applicable CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS. A downgrade to Regular Certification with Requirements does not affect a Provider’s ability to offer that particular CES Waiver Service, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Provider can provide acceptable written documentation of its good-faith efforts towards correcting any non-compliance issues, DHS may grant up to a sixty (60) day extension to the preliminary corrective period. Under no circumstances may a corrective period be longer than ninety (90) days.

“*Suspended Certification*” is the certification status granted when DHS has found a CES Waiver Service offered by a Provider to be substantially out of compliance with applicable CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS. When a CES Waiver Service is under Suspended Certification status, the Provider is removed from the Provider choice form for that particular CES Waiver Service until the Suspended Certification status has been removed. Suspended Certification is discussed in more detail in Section ten (10) herein.

## 6. **Procedural Guidelines: New Provider Certification Process.**

- Initial Application Process.** In order to offer any CES Waiver Service, an organization must first request an application packet from DHS. The completed application packet and required supporting documentation must be submitted to DHS.
- Temporary Certification.** If DHS determines that the application and supporting documentation satisfy CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, the applicant may be granted Temporary Certification status. Temporary Certification status permits the applicant to begin providing the applicable CES Waiver Service/s in the county or counties selected on the application. Once an applicant receives Temporary Certification, it will need to enroll with Medicaid as a certified home and community based service provider prior to initiating CES Waiver Services. If an existing Provider is only seeking to offer an additional CES Waiver Service, DHS may bypass Temporary Certification and immediately grant Regular Certification if DHS determines the circumstances warrant. After CES

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Waiver Service(s) are initiated by the applicant (i.e. after beginning to provide the CES Waiver Service(s) to its first beneficiary), DHS will conduct Periodic Monitoring Reviews as deemed necessary to monitor the applicant's compliance with CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS. If a Provider offering a CES Waiver Service under Temporary Certification has not received its first client within one (1) year from the granting of Temporary Certification, then the Provider must apply for an extension of Temporary Certification status.

- C. **Regular Certification or Denial of Certification.** Once the Provider has begun providing the CES Waiver Service(s) to its first client, then at least thirty (30) days prior to the expiration of the applicant's one hundred eighty (180) day Temporary Certification period, DHS will conduct the equivalent of an Annual Certification Review. If DHS determines that the applicant is in substantial compliance with CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, the applicant will be granted Regular Certification status for those CES Waiver Services. If it is determined that the applicant is not in substantial compliance, DHS may impose appropriate enforcement remedies (see Section nine (9) for additional details). If the applicant is unable to achieve substantial compliance with applicable sections of the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS, Regular Certification for those CES Waiver Services will be denied, and the applicant will be prohibited from providing those CES Waiver Services moving forward.

An applicant that is denied Regular Certification will have to wait at least twelve (12) months before it will be allowed to re-apply for certification to offer a CES Waiver Service(s).

## 7. Annual Certification Reviews

DHS will conduct an Annual Certification Review of every Provider to ensure for each CES Waiver Service provided, continued substantial compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS. Annual Certification Reviews may be conducted through on-site visits to Provider facilities and beneficiary residences/homes, reviews of Provider files, books and other paperwork, interviews with staff, beneficiaries, and the parents/guardians of beneficiaries, and any other activity that DHS reasonably believes to be necessary to perform an Annual Certification Review.

### A. Off-site Information Review

The objective of the off-site information review is to analyze various sources of available Provider information to identify any areas of concern, non-compliance or

other issues, and focus the efforts of appropriate DHS staff during any on-site reviews and visits. Sources of off-site information may include, but are not limited to:

- Provider documentation requested in advance by DHS;
- The prior year's Annual Certification Review report;
- Incident reports involving the Provider submitted during the prior year;
- The results of any Periodic Monitoring Reviews and/or Service Concern Investigations during the prior year; and
- Interviews with beneficiaries and/or parents or guardians of beneficiaries.

#### B. On-site Information Reviews and Visits

DHS will identify where access is needed, whether that be a Provider office or facility or a beneficiary's place of residence, and which staff need to be available. Each Provider will be responsible for providing appropriate DHS staff access to (i) the Provider's offices/facilities, (ii) any premises where a beneficiary the Provider serves is residing, (iii) Provider staff, (iv) the beneficiaries, and (v) any other Provider controlled premises DHS reasonably believes necessary. If DHS has questions and/or needs additional information, then the Provider is responsible for providing the requested information as soon as possible.

The extent and depth of the on-site reviews and/or visits necessary shall be determined on a case-by-case basis by DHS based upon the severity and/or urgency of the non-compliance or other issues and concerns discovered during any off-site review or other on-site reviews and visits.

An on-site information review or visit may consist of any one or more of the following:

- Review of Provider on-site paper or electronic records;
- Interviews with Provider administrators or other staff;
- Interviews with beneficiaries or parents/guardians of beneficiaries;
- Visits to the homes or other dwellings of beneficiaries served by the Provider;
- Tour of the Provider offices and facilities; and
- Any other reasonable information gathering activities requested by DHS



### C. Annual Monitoring Review Report

DHS will deliver to the Provider an Annual Certification Review report within thirty (30) days following the completion of the Annual Certification Review. The report will set out the collective findings of DHS during the Annual Certification Review and identify specific CES Waiver Certification Standards with which the Provider is out of compliance. The Annual Monitoring Review report will also inform the Provider of any enforcement remedies (as explained in more detail in Section 10 herein) imposed on and the Certification status granted to each CES Waiver Service provided based upon DHS' findings.

### 8. Periodic Monitoring Reviews

A Periodic Monitoring Review may be conducted by DHS, at any time and for any reason. Periodic Monitoring Reviews will generally be less comprehensive and more targeted than an Annual Certification Review and can consist of either or both on-site and off-site reviews. DHS is not required to give advance notice to a Provider of its intent to conduct a Periodic Monitoring Review. Examples of situations where Periodic Monitoring Reviews may be conducted include, but are not limited to:

- During the Temporary Certification stage for a new CES Waiver Service offering;
- As a follow-up to an Annual Certification Review report, to monitor whether all non-compliance issues set out in the report have been corrected;
- Conducting random, unscheduled monitoring throughout the year to ensure consistent compliance with CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and guidelines issued by CMS;
- At the end of a specified timeframe relating to an enforcement remedy or certification downgrade to determine if all non-compliance issues have been corrected;
- Any other situation where DHS determines that a Periodic Monitoring Review is warranted.

A Periodic Monitoring Review report will be prepared and sent to a Provider only:

- if non-compliance with the applicable CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS, was found during the Periodic Monitoring Review;

- if the Periodic Monitoring Review was a follow-up to a prior enforcement remedy or certification downgrade; or
- if DHS feels the circumstances require a report.

If a Periodic Monitoring Review report is prepared, the report will set out the findings, any corrective action and/or enforcement remedies that are to be initiated, and, if applicable, a timeline for completion. A Periodic Monitoring Review report, if any, will be delivered to the Provider within twenty-one (21) days after the completion of the Periodic Monitoring Review.

9. **Procedural Guidelines: Service Concern Investigation Process**

DDS will accept a Service Concern from any person. Upon receipt of a Service Concern, DHS will attempt to contact the individual that filed the Service Concern within three (3) working days of receipt. If able to make contact, DHS will at a minimum obtain from the individual:

- 1.) The name and contact information of the individual that filed the Service Concern;
- 2.) The name and contact information of the beneficiary who is the subject of the Service Concern;
- 3.) The Provider that is providing services to the beneficiary; and
- 4.) A complete accounting of the Service Concern, including the names of all individuals involved, locations, dates and any other pertinent information.

DHS will, at a minimum, attempt to contact the individual that filed the Service Concern on at least three (3) separate days within the week following the date the service concern is received. If DHS is unable to make contact with the individual that filed the Service Concern, it will continue with the initial fact finding procedures described below to the extent possible.

**Initial Fact Finding**

DHS shall conduct an initial fact-finding process for each Service Concern to determine if there is sufficient evidence to initiate a Service Concern Investigation:

- Within twenty-four (24) hours of DHS' receipt of the Service Concern, if the Service Concern indicates that the health and safety of the beneficiary or others is at risk; or

- Upon completion of the initial interview with the person that filed the Service Concern; however, under no circumstances will an initial fact finding be initiated later than one (1) week following the date the Service Concern was received by DHS.

If the Service Concern indicates that the health and safety of the beneficiary or others is at risk, then the DHS staff person assigned will make a referral to Adult Protective Service, Child Protective Services, local law enforcement or any other appropriate agency.

The initial fact-finding will at a minimum include telephone, face-to-face, email or other method of interviews with those parties deemed appropriate by DHS, which may include, but is not limited to, the beneficiary, the beneficiary's case manager, direct care supervisor and assigned DDS Waiver Specialist. The initial fact finding would also include a review of any pertinent documents. An initial fact finding conducted by DHS may last up to ten (10) days after its receipt of the Service Concern. Providers are expected to make all staff, records and any other sources of information readily available to the assigned DHS staff for purposes of conducting initial fact findings related to Service Concerns.

#### Initial Fact Finding Determination

Upon completion of the initial fact finding, DHS will determine whether to initiate a Service Concern Investigation. If the determination is made not to proceed with a Service Concern Investigation, DHS will:

- Complete a written summary of the initial fact finding activities and results, and a summary of why it was determined that a Service Concern Investigation was not necessary;
- If required or determined appropriate based upon the initial fact findings, make a referral to the Division of Children & Family Services, Division of Aging and Adult Service, or other appropriate state or federal agency.

If DHS determines that the results of the initial fact finding warrant it, a Service Concern Investigation will be initiated.

#### Service Concern Investigation

Should DHS decide to initiate a Service Concern Investigation, then its details, extent, and scope would be determined by DHS on a case-by-case basis depending on the particular circumstances surrounding the Service Concern, as determined in the initial fact finding. Factors DHS would take into consideration include, but are not limited to, the severity of the allegation, the immediacy of the danger to the beneficiary or others, the number and severity of similar Service Concerns received regarding the Provider, the alleged perpetrator, and/or the beneficiary.

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DHS will complete the Service Concern Investigation within thirty (30) calendar days of its receipt of the Service Concern. DHS may, but is not required to, conduct any one or more of the following activities during a Service Concern Investigation:

- 1.) Interviews with involved parties;
- 2.) Conduct unannounced visits to beneficiary homes, Provider facilities, or any other location deemed necessary by DHS during regular business hours, after-hours, or on weekends;
- 3.) Photograph physical evidence;
- 4.) Review plans of care, behavior plans, case notes, time sheets or medication plans;
- 5.) Review staff training documentation;
- 6.) Review agency policies and personnel files; and
- 7.) Review any other pertinent information, or perform any other additional tasks that DHS reasonably believes necessary to conduct a proper Service Concern Investigation.

#### Service Concern Investigation Report

Upon completion of a Service Concern Investigation, DHS will determine if the facts support a finding that the provider did not adhere to CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS.

If the Service Concern Investigation results in DHS finding that the Provider is out of compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS, then within fifteen (15) calendar days of the conclusion of the Service Concern Investigation, DHS will send to the Provider a Service Concern Investigation report that contains at least the following information:

- 1.) A summary of the issue;
- 2.) When and how the concern was submitted;
- 3.) A brief summary of the investigation methods, interviews and facts;
- 4.) The facts and circumstances justifying the finding of non-compliance, including a citation of the applicable standard, rule, or guideline;
- 5.) The enforcement remedy applied, if any, and a timeframe for correcting the non-compliance issue;
- 6.) Whether the Service Concern Investigation findings has triggered a more comprehensive Periodic Monitoring Review of the Provider; and
- 7.) A notice that the decision to apply an enforcement remedy is subject to appeal under the provisions of DDS Policy #1076.

DHS will deliver a copy of the Service Concern Investigation report to the Provider by certified mail and/or email. If a parent/guardian was the individual that filed the Service Concern, then the parent/guardian will also receive a copy of the Service Concern Investigation report by certified mail and/or email. If a parent/guardian was not the individual that filed the Service Concern, then the parent/guardian will only receive a copy of the Service Concern Investigation report if the Service Concerns related to the health and safety of the beneficiary.

#### 10. **Enforcement Remedies**

DHS may impose various enforcement remedies upon a Provider when non-compliance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS is found. This section lists in detail the various enforcement remedies, in approximately increasing order of severity, which DHS may impose upon a Provider when non-compliance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS is found. These enforcement remedies are not mutually exclusive, and any one or more may be applied to a Provider simultaneously. Additionally, enforcement remedies may be applied to only one or more CES Waiver Services offered by a Provider (and not affect the other CES Waiver Services offered by the Provider), or may be applied to a Provider's entire organization.

The number and severity of enforcement remedies applied to a Provider will be determined on a case-by-case basis by DHS. The enforcement remedies applied will be based in part upon:

- **Frequency of Non-compliance**: Providers which are habitually found to be in non-compliance will face increasingly severe enforcement remedies.
- **Responsiveness in Correcting Non-compliance**: The less responsive a Provider is in correcting previous and/or current issues of non-compliance within timelines the more severe the enforcement remedy.
- **Re-lapse Non-compliance**: Providers found to be out of compliance in areas previously addressed will face increasingly severe enforcement remedies when later found out of compliance for the same issue.
- **Non-compliance Constituting Intentional Fraud**: Providers found to be engaging in acts of any type that would constitute intentional fraud (monetary fraud, document falsification, attempts to cover up an issue of non-compliance, etc.) will result in more severe enforcement remedies.

Provider action or inaction jeopardizing the health or safety of a beneficiary will be reported to the appropriate agencies for investigation. DHS is required to initiate a referral to the Medicaid Audit division if, in the course of any review, they identify instances of

non-compliance with Medicaid billing. The results of a Medicaid Audit alone may result in DHS imposing enforcement remedies on a Provider. An appeal of any enforcement remedy imposed pursuant to this Policy may be filed in accordance with the procedures outlined in DDS Policy #1076.

A. Plan of Correction.

A Plan of Correction is a plan of action that sets out the steps the Provider will take to correct the various areas of Provider non-compliance. A Plan of Correction is developed by the Provider and must be approved by DHS. Achieving substantial compliance through completion of the Plan of Correction is the responsibility of the Provider. A time frame for each specific action will be specified in the plan.

B. Directed In-Service Training.

Directed In-Service Training is targeted training and/or technical assistance to assist Providers and their staff in correcting compliance deficiencies. The Directed In-Service Training plan must be approved by DHS and include:

- the topics covered and materials used during training;
- the length of training/technical assistance; and
- the Provider staff that are required to be in attendance.

C. Downgrade Certification to “Regular Certification with Requirements.”

If a Provider has not returned to substantial compliance with the CES Waiver Certification Standards, the DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS within the timeframe established in an Annual Monitoring Review report, Periodic Monitoring Review report, or Service Investigation Concern report, the certification status of the applicable CES Waiver Services will be downgraded to Regular Certification with Requirements.

A downgrade to Regular Certification with Requirements does not effect a Provider’s ability to offer the particular CES Waiver Service(s) cited, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Provider can provide acceptable written documentation of its good-faith efforts towards correcting any non-compliance issues, DHS may grant up to a sixty (60) day extension to the preliminary corrective period. Under no circumstances may a corrective period be longer than ninety (90) days.

During the corrective period, the Provider may be required to submit progress reports regarding compliance efforts to DHS. In order to achieve restoration of its Regular Certification, the Provider must correct all identified deficiencies and

demonstrate substantial compliance with all CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS. Failure to correct all deficiencies and move into substantial compliance may result in suspended certification status for those CES Waiver Services.

D. Withhold Payment for Services.

Withholding payments to a Provider relating to invoices for CES Waiver Services rendered will be reserved for specific circumstances, including, but not limited to, the following:

- A suspended, de-certified, or non-certified Provider (i.e. a Provider that is not certified to perform a CES Waiver Service) submitting an invoice for the performance of a CES Waiver Service;
- Reasonable evidence that a Provider has engaged in fraudulent activities;
- Withholding of funds until the Provider follows through with agreed to provisions of a Plan of Correction or other enforcement remedy; and
- Any other circumstance where there is reasonable and documented justification for withholding the payment of funds.

E. Repayment of Funds.

If justified by the circumstances, DHS reserves the right to require the repayment of funds previously paid to a Provider relating to a CES Waiver Service. Such circumstances include, but are not limited, to the following:

- Payments attributable to CES Waiver Service/s that were not performed;
- Payments attributable to CES Waiver Service/s that were not performed in accordance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS;
- An overpayment to a Provider;
- Repayment is required by court order, federal agency, or other applicable state or federal law; and
- Any other circumstance where DHS has reasonable, documented justification for requiring repayment of funds previously paid to a Provider.

F. Moratorium on Admissions

A moratorium on admissions is an enforcement remedy that prohibits a Provider from accepting new beneficiaries as clients for the particular CES Waiver Service/s cited, offering new CES Waiver Service/s, and offering current CES Waiver Service/s in new service areas. The Provider may continue to offer CES Waiver Service/s to existing clients while under a moratorium on admissions. A moratorium on admissions shall remain in place until the Provider is in substantial compliance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS, and demonstrates to DHS that it is willing and able to remain in substantial compliance.

G. Prohibition on Providing Services to a Particular Beneficiary/ies

A prohibition on providing CES Waiver Services to a particular beneficiary or group of beneficiaries is an enforcement remedy that DHS may impose when it finds that a Provider cannot adequately provide a CES Waiver Service(s) to a particular beneficiary or group of beneficiaries. DHS may impose the prohibition against a specific beneficiary or beneficiaries, or against a specific class of beneficiaries. The prohibition may be permanent or for a specific term depending on the circumstances of the case. The Provider must continue to provide applicable CES Waiver Services to the beneficiaries subject to the prohibition until such time as DDS is able to successfully transition the beneficiary/ies to their new Provider of choice.

H. Downgrade Certification to “Suspended Certification”

A downgrade in certification to Suspended Certification prohibits a Provider from providing the particular CES Waiver Service(s) cited. While under Suspended Certification a Provider cannot be chosen as a provider of that CES Waiver Service by beneficiaries. Additionally, beneficiaries already receiving the applicable CES Waiver Service from the Provider will immediately be contacted and informed of the Suspended Certification, and will be given the opportunity to choose another area Provider of that CES Waiver Service that is in good standing. The Provider must continue to provide applicable CES Waiver Services to all beneficiaries until such time as DDS is able to successfully transition the beneficiaries to their new Provider of choice (for those beneficiaries choosing to do so). During the term of a Suspended Certification, the Provider may be required to submit weekly progress reports regarding its compliance efforts until all non-compliance deficiencies have been corrected. Suspended Certification status will not be removed until DHS has determined the Provider has returned to substantial compliance with the CES Waiver Certification Standards, DDS Community Employment Supports Waiver Medicaid manual, and/or guidelines issued by CMS. The failure of a Provider to substantially comply within sixty (60) calendar days of its downgrade to Suspended Certification will result in de-certification of the applicable CES Waiver Service.



I. Revocation of Certification

De-certification of a Provider prohibits the Provider from performing that CES Waiver Service as of the date of de-certification. All individuals actively receiving the CES Waiver Service(s) that have been de-certified will be required to choose other certified Providers of those CES Waiver Service(s) in the area. DHS may withhold any payments to a Provider relating to a decertified CES Waiver Service(s) for a reasonable amount of time to determine the appropriateness of the requested payment, even if the CES Waiver Services submitted for payment were performed prior to de-certification. A Provider that is de-certified from providing a CES Waiver Service will have to wait a minimum of three (3) years before they will be allowed to apply for certification for that CES Waiver Service again. The Provider will continue to be responsible for providing CES Waiver Service(s) to its beneficiaries until such time as DDS is able to successfully transfer each beneficiary to their new Provider of choice.

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

DDS POLICY 109~~2~~<sup>4</sup>

CERTIFICATION AND MONITORING POLICY FOR **FIRST CONNECTIONS**  
CERTIFICATION POLICY FOR NON-CENTERBASED SERVICES

1. **Purpose.** ~~This policy has been prepared to implement Ark. Code Ann. 20-48-201 et. seq.~~

The Arkansas Department of Human Services, Division of Developmental Disabilities Services ("DDS") is the lead agency for the federal early intervention program in the State of Arkansas for infants and toddlers with disabilities and their families, under Part C of the Individuals with Disabilities Education Act ("First Connections"). DDS, as the lead agency, is responsible for the implementation, general administration and oversight of the First Connections program. As part of its oversight responsibility, DDS must ensure that the activities of participants in the First Connections program align with Part C of the Individuals with Disabilities Education Act ("IDEA") and the guidelines issued by the Office of Special Education Programs ("OSEP"). DDS carries out this oversight responsibility through a certification and monitoring program.

This purpose of this policy is to establish the policies and procedures applicable to the First Connections certification and monitoring program. An appeal of any decision made pursuant to this policy may be filed according to procedures outlined in DDS Policy #1076, or any replacement or successor appeals policy.

- ~~1. **Scope.** This policy is applicable to all Division of Developmental Disabilities Services (DDS) staff charged with implementation of certification standards and to individuals and organizations that are required to be certified by DDS in order to provide services designated in this policy to individuals with developmental disabilities.~~

~~A. An individual or organization that provides any of the following Early Intervention Services is required to be certified by DDS:~~

- ~~1) Service Coordination,~~
- ~~2) Developmental Therapy/Therapy Assistant Services,~~
- ~~3) Speech Therapy Services,~~
- ~~4) Physical Therapy Services,~~
- ~~5) Occupational Therapy Services,~~
- ~~6) Consultation Services, and~~
- ~~7) Assistive Technology/Adaptive Equipment.~~

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~~B. An individual or organization that provides any of the following services under the Alternative Community Services (ACS) Waiver is required to be certified by DDS:~~

- ~~1) Case Management Services,~~
- ~~2) Supportive Living Services,~~
- ~~3) Community Experiences,~~
- ~~4) Respite Care,~~
- ~~5) Non-Medical Transportation,~~
- ~~6) Supported Employment Services,~~
- ~~7) Crisis Intervention Services,~~
- ~~8) Crisis Center Services,~~
- ~~9) Consultation,~~
- ~~10) Specialized Medical Services,~~
- ~~11) Adaptive Equipment, and~~
- ~~12) Environmental Modifications.~~

~~C. A certified provider that offers Supported Employment Services must maintain a current license as a vendor with the Arkansas Rehabilitation Services of the Department of Workforce Education and staff who are certified Job Coaches.~~

~~D. Any individual or organization certified to provide Supportive Living Services or Case Management Services under the ACS Waiver may request DDS for approval to serve as an Organized Health Care Delivery System (OHCDS).~~

## 2. Scope.

This policy applies to: (i) individuals and organizations that provide or seek to provide Early Intervention Services (as defined in Section 3 below) through the First Connections program; and (ii) all staff responsible for the certification and monitoring of individuals and organizations participating in the First Connections program.

## 3. Certification.

~~A. DDS shall certify each qualified individual or organization that applies to provide a service designated in this policy.~~

~~B. A certification is valid and effective only for the individual or organization to which the certification is issued.~~

~~C. A certification is not transferable to another entity.~~

~~D. A copy of the certification for each service offered must be readily accessible by the individual or organization to which the certification is issued.~~

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~~E. The validity of a certification is contingent on continued substantial compliance with applicable certification standards. A certification is subject to corrective action or interim adverse action which may be imposed by DDS at any time upon a finding of substantial noncompliance.~~

### 3. Definitions.

A. “Annual Monitoring Review” means the annual evaluation of a Provider by its Monitoring Specialist to ensure program quality and compliance with Part C of IDEA, guidelines issued by OSEP, First Connections Policies and Procedures and First Connections Certification Standards. Procedures relating to the Annual Monitoring Review are provided in Section 7 herein.

B. “CDS” means the First Connections Comprehensive Database System.

C. “Certification Review” means the review of an individual’s or organization’s licenses and/or certifications, along with any required application, to ensure that the individual or organization possesses all of the qualifications required by the First Connections Certification Standards to be a Provider. A Certification Review may be conducted at any time, but shall at a minimum be conducted once every three (3) years. A Certification Review shall also always be conducted upon initial application to become a new Provider and upon application to provide a new Early Intervention Service.

D. “First Connections Certification Standards” means the minimum licensing, certification and other requirements a Provider must obtain and maintain in order to offer a particular Early Intervention Service as outlined in the certification standards established at any given time by DDS for the First Connections program.

E. “DDS” means the Arkansas Department of Human Services, Division of Developmental Disabilities Services, the lead agency for First Connections.

F. “Early Intervention Services” means any of the following services performed by a Provider through the First Connections program:

1. Service Coordination;
2. Developmental Therapy/Therapy Assistant Services;
3. Speech Therapy Services;
4. Physical Therapy Services;
5. Occupational Therapy Services;
6. Assistive Technology/Adaptive Equipment;
7. Health Services;

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8. Social Work Services;
9. Nutritional Services;
10. Transportation;
11. Vision Services;
12. Multi-Disciplinary Evaluation;
13. Medical Diagnostic Services;
14. Psychological Services;
15. Audiological;
16. Family Training, Counseling and Home Visits; and
17. Signed and Cued language.

G. “First Connections” means the program in the State of Arkansas administered by DDS in accordance with Part C of the IDEA.

H. “Monitoring Specialist” means the member of the First Connections certification and monitoring unit responsible for overseeing and conducting all certification and monitoring activities related to a Provider, including, but not limited to, all Certification Reviews, Annual Monitoring Reviews, and Periodic Monitoring Reviews.

I. “Periodic Monitoring Review” means any evaluation of a Provider that is not an Annual Monitoring Review to ensure program quality and compliance with Part C of IDEA, guidelines issued by OSEP, First Connections Policies and Procedures and First Connections Certification Standards. Procedures relating to a Periodic Monitoring Review are provided in Section 8 herein.

J. “First Connections Policies and Procedures” means the rules, regulations, policies and procedures established at any given time by DDS (and approved by OSEP) for the First Connections program that prospective or current Providers must remain in substantial compliance with to participate in First Connections program.

K. “Provider” means an individual or organization certified to perform one or more Early Intervention Services.

~~4. **Certification Team Composition.** DDS is responsible for evaluating a certified provider’s compliance with certification standards. A DDS Certification Team may include without limitation representatives of any relevant professional entities.~~

**4. DDS Certification and Monitoring Program Generally.**

Federal regulations require DDS to ensure that only qualified personnel are providing Early Intervention Services, and that all Providers are performing Early Intervention Services in a manner that complies with the applicable federal and state regulations and

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guidelines. As a result, DDS has established the First Connections Certification Standards and First Connections Policies and Procedures with which all Providers must be in substantial compliance in order to participate in the First Connections program. The purpose of the certification and monitoring program is to ensure that all participants in the First Connections program are in substantial compliance with these First Connections Policies and Procedures and First Connections Certification Standards at all times.

The certification status of a Provider is dependent on the extent of the Provider's substantial compliance at any given time with the currently effective First Connections Policies and Procedures and First Connections Certification Standards, as determined through Annual or Periodic Monitoring Reviews. DDS shall separately certify an individual or organization for each Early Intervention Service that the individual or organization seeks to provide. A certification is valid and effective only for the individual or organization to which the certification is issued, and a certification may not be transferred to another individual or organization. Once certified to provide an Early Intervention Service, the Provider must be able to produce a copy of the certification upon request and also appropriately upload the certification into CDS.

It is the responsibility of each Provider to ensure all required information is uploaded into CDS. If Monitoring Specialists are not able to locate required information in CDS when performing their certification and/or monitoring duties, then such information is presumed not to exist for First Connections compliance purposes.

~~5. Access. DDS shall have access to the premises, staff, individuals served and their families, and all records of a certified provider at all times for the purpose of conducting Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys concerning compliance with applicable Certification Standards.~~

#### 5. Certification Status Levels.

Each Provider will always be certified under one of the following classifications:

- “Temporary Certification” is the preliminary certification status granted to a new Provider, or an existing Provider offering a new Early Intervention Service, upon the Provider demonstrating compliance with the First Connections Certification Standards relating to the Early Intervention Service/s seeking to be offered. Temporary Certification will be provided for a term of up to one hundred eighty (180) days, and is discussed in more detail in Section 6 herein.
- “Regular Certification” is the certification status granted to a Provider when the Provider is found to be in substantial compliance with all First Connections Certification Standards and First Connections Policies and Procedures.

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- “Regular Certification with Requirements” is a downgrade from Regular Certification given to a Provider when they are found to be substantially out of compliance with applicable First Connections Certification Standards and/or First Connections Policies and Procedures by a Monitoring Specialist during an Annual or Periodic Monitoring Review. A downgrade to Regular Certification with Requirements does not affect a Provider’s ability to offer Early Intervention Services, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Monitoring Specialist can provide written documentation of a Provider’s efforts towards correcting any non-compliance issues, the Monitoring Specialist may grant up to a sixty (60) day extension to the preliminary corrective period. Under no circumstances may a corrective period be longer than ninety (90) days.
- “Suspended Certification” means that a Provider is removed from the CDS database as a Provider and is prohibited from providing Early Intervention Services.

#### 6. Certification Definitions.

- ~~A. “Abbreviated Review” means a targeted onsite evaluation of a new provider or certified provider for the purpose of determining compliance with specific certification standards, providing technical assistance, or conducting brief unscheduled or unannounced visits to provide consultation and assistance in support of continued compliance with certification standards.~~
- ~~B. “Certification Review” means an onsite formal evaluation of a new provider or certified provider by DDS to ensure program quality and compliance with applicable certification standards.~~
- ~~C. “Death Investigation” means an onsite review of an unexpected death that occurs accidentally, or as a result of an undiagnosed condition while the client is receiving services in accordance with DHS Policy 1106.~~
- ~~D. “Focused Review” means an onsite targeted evaluation of a certified Early Intervention provider due to non-compliance with state and/or federal regulations based on data submitted to DDS.~~
- ~~E. “Direct Care Staff” means staff employed by the certified organization who are responsible for implementing an individual’s plan of care and providing day to day direct services in accordance with the plan of care and state and federal regulations.~~
- ~~F. “National Accrediting Organization” means a national accrediting organization with acknowledged expertise and experience in the field of developmental~~

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~~disabilities, such as the Commission for the Accreditation of Rehabilitation Facilities (CARF) or the Council on Accreditation (COA), recognized by DDS. — In order to qualify a certified provider as accredited for purposes of renewing a Regular Certification based on deemed status, the specific program standards of a National Accrediting Organization shall be consistent with the configuration of services to persons with developmental disabilities in Arkansas.~~

~~G. “Provisional Certification” means the status of a Regular Certification when DDS finds that a certified provider has failed to complete appropriate corrective action under the Regular Certification with Requirements and continues to be substantially out of compliance with applicable certification standards or when warranted by the scope and severity level of noncompliance.~~

~~H. “Regular Certification” means a certification granted to a new provider or renewed annually for a certified provider when the new provider or certified provider demonstrates compliance with applicable certification standards.~~

~~I. “Regular Certification with Requirements” means the status of a Regular Certification when DDS finds that a certified provider has been substantially out of compliance with applicable Certification Standards for more than thirty (30) days.~~

~~J. “Service Concern Investigation” means a specific inspection of a certified provider by DDS with regard to a complaint or complaints.~~

~~K. “Survey” means an onsite formal evaluation of a new provider or certified provider by a national accrediting organization to ensure program quality and compliance with specific program standards.~~



L. “Temporary Certification” means a certification granted for a term of ninety (90) days with the possibility of one (1) ninety-day extension to allow time for the start-up of a new provider or a new service for an existing certified provider.

## **6. Procedural Guidelines: New Provider Certification Process**

**A. Initial Application Process.** In order to deliver any Early Intervention Service through the First Connections program, an individual or organization must first request, complete and submit an application packet. Potential applicants can contact the First Connections’ central office to obtain the contact information of a Monitoring Specialist that will provide the applicant with an application packet. Completed applications are to be returned to the Monitoring Specialist who issued it. Only completed applications will be considered.

**B. Temporary Certification.** If the Monitoring Specialist determines that the application and supporting documentation satisfy First Connections Certification Standards, the applicant is notified in writing that Temporary Certification status has been granted. Temporary Certification status permits the applicant to begin providing the applicable Early Intervention Services in the county or counties selected in the application. After services are initiated, the Monitoring Specialist will conduct Periodic Monitoring Reviews, as deemed necessary, to monitor the applicant’s compliance with First Connections Certification Standards and First Connections Policies and Procedures.

**C. Regular Certification or Denial of Certification.** At least thirty (30) days prior to the expiration of the applicant’s Temporary Certification, the Monitoring Specialist will conduct the equivalent of an Annual Monitoring Review. If the Monitoring Specialist determines that the Provider is in substantial compliance with the First Connections Certification Standards and First Connections Policies and Procedures, the Provider is granted Regular Certification status. If the Monitoring Specialist determines that the Provider is not in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures, the Monitoring Specialist may impose corrective actions and/or enforcement remedies (see Section 9 for additional details). If the Provider is unable to achieve substantial compliance with applicable First Connections Certification Standards and First Connections Policies and Procedures prior to the expiration of the Temporary Certification, Regular Certification will be denied, and the applicant will no longer be permitted to provide the applicable Early Intervention Services.

An applicant that is denied Regular Certification will have to wait until the next new Provider enrollment period before they will be allowed to apply for certification under the First Connections program again.

## 7. Procedural Guidelines: Certification Application Process.

~~A. Temporary Certification. In order to deliver any of the services designated under this policy, an applicant first applies for Temporary Certification with DDS on forms provided for that purpose. DDS considers only completed applications. If an application is incomplete, DDS promptly notifies the provider that the application is incomplete and will not be considered and identifies the items missing from the application.~~

### ~~1) Early Intervention Services.~~

~~a) Applicant is an Organization. If an applicant to provide Early Intervention Services is an organization, the application includes documentation of required qualifications, copies of written policies and procedures for implementation of the DDS Certification Standards concerning Board of Directors, Personnel Procedures and Records and Individual/Parent/Guardian Rights, a description of the applicant's plan to address applicable Service Provision Standards, and any other documentation requested by DDS to accompany the application.~~

~~b) Applicant is an Individual. If an applicant to provide Early Intervention Services is an individual, the application includes documentation of required qualification, documentation related to the DDS Certification Standard concerning Certification of Individuals, a description of the applicant's plan to address Service Provision Standards, and any other documentation requested by DDS to accompany the application.~~

~~c) Temporary Certification for Early Intervention Services. DDS evaluates the completed application and all supporting documentation for compliance with the DDS Certification Standards for Early Intervention Services. If DDS determines that the application and supporting documentation satisfy certification standards, DDS issues a Temporary Certification to the applicant in order to initiate services. After services are initiated, DDS will conduct an on-site review or in person interview to determine the provider's compliance with certification standards concerning Service Provision, Individual/Parent/Guardian Rights, and Record Keeping.~~

### ~~2) ACS Waiver Services.~~

~~a) Applicant is an Organization. If an applicant to provide an ACS Waiver Service is an organization, the application includes documentation of required qualifications, copies of written policies and procedures for implementation of the DDS Certification Standards concerning Board of Directors, Personnel Procedures and Records, Staff Training and Individual/Parent/Guardian Rights, a description of the applicant's plan intends to address the applicable Service~~

Provision Standards, and any other documentation requested by DDS to accompany the application.

~~b) *Application is an Individual.* If provider applies to provide an ACS Waiver Service and the provider is an individual, the application shall include documentation of required qualifications, copies of written policies and procedures related to implementation of the DDS Certification Standards concerning Personnel Procedures and Records, Staff Training and Individual/Parent/Guardian Rights, a description of the applicant's plan to address the applicable Service Provision Standards, and any other documentation requested by DDS to accompany the application.~~

~~e) *Temporary Certification for ACS Waiver Services.* DDS evaluates the completed application and all supporting documentation for compliance with the applicable DDS Certification Standards for ACS Waiver Services. If the Temporary Certification is for Respite Care, Supportive Living Services in a community or congregate setting, or Crisis Center Services, DDS also conducts an onsite Abbreviated Review of the premises for compliance with Certification Standards concerning Physical Plant, Accessibility, and Safety. If DDS determines that the application, supporting documentation, and if applicable, the Abbreviated Review of the premises satisfy certification standards, DDS issues a Temporary Certification to the applicant in order to initiate services. After services are initiated, DDS will conduct an on-site review or in person interview to determine the provider's compliance with certification standards concerning Service Provision, Individual/Parent/Guardian Rights, and Record Keeping.~~

~~3) *Request for Approval as an Organized Health Care Delivery System.* Any individual or organization certified to provide Supportive Living Services or Case Management Services under the ACS Waiver may request DDS for approval to serve as an Organized Health Care Delivery System (OHCDS).~~

~~B. *Certification Review under Temporary Certification.* During the term of the Temporary Certification, DDS conducts a Certification Review in accordance with Section 8 of this policy. If DDS determines that the provider is in substantial compliance with applicable Certification Standards, DDS issues a Regular Certification. If DDS determines that the provider is not in substantial compliance with applicable certification standards, DDS imposes corrective actions or sanctions or both in accordance with Section 9 of this policy.~~

~~If the provider is unable to achieve substantial compliance with applicable Certification Standards during the term of the Temporary Certification, DDS may extend the term of the Temporary Certification or deny the issuance of a Regular Certification.~~

~~C. Regular Certification.~~

~~1) Regular Certification Based on Certification Review.~~

~~DDS conducts periodic reviews of certified providers to ensure continued compliance with Certification Standards. A periodic review may be an Abbreviated Review or a Certification Review. If DDS determines after conducting a review that the certified provider is in substantial compliance with applicable Certification Standards, DDS renews the certified provider's Regular Certification. If DDS determines after conducting a review that the certified provider is not in substantial compliance with applicable Certification Standards, DDS imposes corrective actions or sanctions or both in accordance with Section 8 of this policy.~~

~~2) Regular Certification Based on Deemed Status.~~

~~a) Deemed Status. A certified provider may apply for renewal of a Regular Certification based on current accreditation from a National Accrediting Organization by providing DDS with a copy of the most recent complete report issued by the National Accrediting Organization concerning the provider and the official accreditation certificate.~~

~~(i) If already accredited prior to the provider's Certification Review month, the provider submits the report and certificate to DDS at least thirty (30) days prior to the beginning of the provider's Certification Review month.~~

~~(ii) If a provider is requesting Regular Certification Based on Deemed Status to begin with the prior year's certification and the provider receives national accreditation within eight (8) months of completion of the prior year's certification process, the provider submits the report and certificate to DDS within thirty (30) days of provider's receipt of the report and certificate.~~

~~If the current accreditation indicates that the provider is in substantial compliance with certification standards, DDS issues a Regular Certification to the provider without any further Certification Review.~~

~~If the current accreditation indicates that that the certified provider is in substantial compliance with licensure standards and a review of other pertinent information does not indicate a pattern of noncompliance or pervasive noncompliance at Level 2 or above, DDS renews the Regular Certification of the certified provider without any further Certification Review. Pertinent~~

~~information may include consumer satisfaction surveys, incident reports and results of service concern investigations.~~

~~b) *Required Communications:*~~

~~(i) A certified provider notifies DDS immediately after receipt of notification of a change in accreditation status.~~

~~(ii) A certified provider notifies DDS within fourteen (14) calendar days of the provider's receipt of notice of a pending Survey by the National Accrediting Organization~~

~~(iii) A certified provider submits contemporaneously to DDS its quality improvement plan and any other document submitted to its National Accrediting Organization.~~

~~(iv) A certified provider authorizes its National Accrediting Organization to release information to DDS upon DDS's request.~~

~~e) *DDS Access:*~~

~~(i) Nothing in this section affects the right of DDS to have access to the premises, staff, individuals served and their families, and all records of a certified provider at all times for the purpose of conducting Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys concerning compliance with applicable Certification Standards.~~

~~(ii) DDS reports findings of Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys and actions taken to the National Accrediting Organization of the certified provider.~~

~~(iii) A DDS staff member may participate in the entrance conference and exit conference during any survey conducted by the National Accrediting Organization of the certified provider.~~

~~d) *Withdrawal of Regular Certification Based on Deemed Status.* DDS may withdraw a Regular Certification Based on Deemed Status under the following circumstances:~~

~~(i) When a complaint concerning substantial noncompliance, as designated in Levels 3 and 4 of the Sanctions Matrix, with a health or safety standard is founded;~~

~~(ii) When an Abbreviated Review, Certification Review, Service Concern Investigation, or Survey find instances of noncompliance with DDS Certification Standards, or~~

~~(iii) When the national accreditation status of the certified provider has expired, is downgraded, or withdrawn by the National Accrediting Organization.~~

~~e) National Accreditation Not Required. DDS does not require any provider to seek or submit to accreditation by a National Accrediting Organization.~~

~~When a certified provider is not accredited by a national accrediting organization, DDS conducts a review of the provider as specified in this section.~~

## 7. Procedural Guidelines: Annual Monitoring Review Process:

A Monitoring Specialist will at least once a year conduct an Annual Monitoring Review of every assigned Provider to ensure continued substantial compliance by the Provider with the First Connections Certification Standards and First Connections Policies and Procedures. Annual Monitoring Reviews may be conducted through on-site visits, electronic off-site information review, or a combination of both. Monitoring Specialists, as part of an Annual Monitoring Review, may conduct fiscal monitoring, may interview staff and may interview parents of children currently or formerly served.

### A. Off-site Information Review.

The objective of off-site information review is to analyze various sources of Provider information available, primarily through CDS and contact with the parent/s of individuals served by the Provider, to identify any areas of concern, non-compliance or other issues, and to focus the efforts of the Monitoring Specialist during any on-site review, if deemed necessary. The Monitoring Specialist may collect and analyze information from all available sources, including without limitation:

- Documentation from the Provider requested in advance;
- The prior year's Annual Monitoring Review report;
- The prior year's Determination Letter;
- Contact with the parents of individuals served by the Provider;
- Service concerns or formal complaints submitted to DDS during the prior year; and
- The results of any Periodic Monitoring Reviews during the prior year.

A Certification Review may be conducted at any time, but one must be conducted at least once every three (3) years at a minimum to confirm all the necessary certification material has been uploaded into CDS. Each Provider organization is responsible for ensuring that every one of its employee Providers has all necessary certification material uploaded into CDS at all times.

If the Monitoring Specialist determines that potential instances of non-compliance with First Connections Certification Standards and/or First Connections Policies and Procedures or other concerns and issues found during the off-site information review warrant additional investigation and review, the Monitoring Specialist may set up dates for conducting on-site information collection and review from the Provider.

#### B. On-site Information Review

The Monitoring Specialist will contact the individual listed as the Executive Director of the Provider within CDS to arrange a date and time for the on-site information review and identify which staff need to be present/involved. Each Provider will be responsible for providing the Monitoring Specialist access to its premises, records, staff, and individuals and families served to facilitate the on-site information review. The Monitoring Specialist will request any additional information that the Provider must submit prior to the on-site review. If the Monitoring Specialist has questions and needs additional information during the on-site review, he/she will request it from the Provider at the visit or request that it be sent following the on-site visit.

The extent and depth of the on-site information review necessary shall be determined on a case-by-case basis by the Monitoring Specialist based upon the severity and/or urgency of the non-compliance or other issues and concerns discovered by the Monitoring Specialist during the off-site information review.

An on-site information review may consist of any one or more of the following:

- Review of Provider on-site paper or electronic records
- Interviews with Provider administrators or other staff
- Interviews with parent/s of individuals served by the Provider
- Tour of any Provider facilities
- Any other reasonable information gathering activities requested by the Monitoring Specialist

To the extent feasible, the Monitoring Specialist will attempt to maintain open and ongoing dialogue with the Executive Director of the Provider throughout the on-

site information review and shall take reasonable steps to minimize the disruption to the Provider's day-to-day operations during any on-site information review.

### C. Annual Monitoring Review Report

The Monitoring Specialist will provide the Executive Director of the Provider with an Annual Monitoring Review report following the Annual Monitoring Review. The Annual Monitoring Review report will set out the collective findings of the Monitoring Specialist during the Annual Monitoring Review and identify the specific First Connections Certification Standards and/or First Connections Policies and Procedures with which the Provider is out of compliance. The Annual Monitoring Review report will also inform the Provider of any enforcement remedies (as explained in more detail in Section 9 herein) and corrective actions imposed on and the Certification status granted to the Provider based upon the Monitoring Specialist's findings.

## 8. Procedural Guidelines: Certification Review Process.

### A. Notice of Certification Review.

Within ninety (90) days before a Certification Review, DDS sends notice of the Certification Review to the Director and Board President, if applicable, of the certified provider and identifies any information that DDS requires certified provider to submit prior to the Certification Review. For example, DDS may request a letter of assurances signed by the Director of the certified provider or designee and the President of the Board of Directors of the certified provider or designee stating that the certified provider's written policies and procedures are in compliance with the applicable certification standards.

After receipt of notice of a Certification Review, the director of the certified provider shall distribute a notice announcing in advance the approximate date range during which DDS expects to perform a Certification Review of the certified provider. The notice should be made available to all individuals served and their families and should include DDS contact information.

### B. Offsite Preparation.

The objective of offsite preparation is to analyze various sources of information available about the certified provider to identify any potential areas of concern, to ascertain any special features of the provider, and to focus the efforts of the DDS Certification Review Team during the onsite tour and with regard to onsite information gathering.



~~The DDS Certification Review Team Leader or designee is responsible for obtaining all available sources of information about the certified provider for review by the Team including without limitation:~~

- ~~• Documentation from the provider requested in advance,~~
- ~~• The prior year's Certification Review report,~~
- ~~• Incident reports submitted during the prior year, and~~
- ~~• The results of any complaint investigations during the prior year.~~

~~The Team Leader is responsible for presenting the information obtained to the Team for review at an offsite team meeting prior to the Certification Review. At this meeting, the Team Leader should establish preliminary review assignments, and the Team should identify potential areas of concern and note any special features of the certified provider.~~

#### C. Entrance Conference.

~~The Team Leader or designee conducts the entrance conference with the director of the certified provider and any staff designated by the director. During the entrance conference, the Team Leader or designee:~~

- ~~• Introduces team members,~~
- ~~• Explains the Certification Review process,~~
- ~~• Informs the director and any staff that the Team will be communicating with them through the Certification Review and will ask for assistance when needed,~~
- ~~• Advises the director and any staff that they will have the opportunity to provide the Team with any information that would clarify an issue brought to their attention, and~~
- ~~• Answers any questions from the director or any staff.~~

~~If services are provided on-site, it is recommended that after their introduction to director of the certified provider, the other team members proceed to the initial tour and make general observations of the certified provider.~~

#### D. Onsite Preparation.

~~The Team Leader asks director of the certified provider to provide access to information determined by the Team as necessary to complete the Certification Review.~~

~~If applicable, the Team Leader shall post a sign or arrange for the director of the certified provider to post a sign in areas easily observable by individuals served and their families announcing that DDS is performing a Certification Review and that~~

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~~DDS team members are available to meet in private with individuals served or their families or both.~~

~~Throughout the Certification Review process, the Team should discuss among themselves, on a daily basis, observations made and information obtained in order to focus on the concerns of each team member, to facilitate information gathering and to facilitate decision making at the completion of the Certification Review.~~

#### ~~E. Initial Tour.~~

~~The initial tour of the provider's administrative facility(ies) and agency owned/operated/controlled sites is designed to provide team members with an initial assessment of the certified provider, the individuals served and their families, and any staff. During the initial tour, team members should:~~

- ~~• Make an initial evaluation of the environment of the certified provider,~~
- ~~• Identify areas of concern to be investigated during the Certification Review,~~
- ~~• Confirm or invalidate pre-review information about potential areas of concern, and~~
- ~~• Document their findings.~~

#### ~~F. Onsite Information Gathering.~~

~~The DDS Certification Review Team gathers information for the Certification Review from three (3) primary sources: review of records, interviews, and observations. Each team member should verify information and observations in terms of credibility and reliability. All findings must be documented. The Team should maintain an open and ongoing dialogue with the director and any staff throughout the Certification Review process.~~

~~The Team should meet on a daily basis to share information, such as findings to date, areas of concern, any changes needed in the focus of the Certification Review. These meetings include discussions of concerns observed, possible requirements to which those concerns relate, and strategies for gathering additional information to determine whether the certified provider is meeting certification standards.~~

~~*Immediate jeopardy:* Immediate jeopardy is defined as a situation in which the certified provider's failure to meet one or more certification standards has caused, or is likely to cause, serious injury, harm, impairment, or death of an individual served. The guiding principles for determining the scope and severity of noncompliance make it clear that immediate jeopardy can be related to mental or psychosocial well-being as well as physical well-being and that the situation in question need not be a widespread problem.~~

~~NOTE: See Section 8.I and the Certification Sanctions Matrix in Appendix A to this policy for more information on classifying the scope and severity of deficient practices.~~

~~At any time during the Certification Review, if one or more team members identify possible immediate jeopardy, the Team should meet immediately to confer. The team must determine whether there is immediate jeopardy during the information gathering task. If the team concurs that there is immediate jeopardy, the team leader immediately consults his or her supervisor. If the supervisor concurs, that the situation constitutes immediate jeopardy, the team lead informs the director of the certified provider or designee that DDS is invoking the immediate jeopardy certification revocation procedures. The team leader explains the nature of the immediate jeopardy to the director of the certified provider or designee who must submit a statement while the team is on-site asserting that the immediate jeopardy has been removed and including a plan of sufficient detail to demonstrate how and when the immediate jeopardy was removed.~~

~~The Team will provide the director of the certified provider with a written report concerning the nature of the immediate jeopardy within ten (10) days of the date of the exit conference.~~

~~*Substandard Quality of Care:* Substandard quality of care is defined as a deficient practice related to Certification Standards concerning Individual/Parent/Guardian Rights or Service Provision classified as an isolated incident at severity level 3 or as a pattern of deficient practices at severity level 2.~~

~~NOTE: See Section 8.I and the Certification Sanctions Matrix in Appendix A to this policy for more information on classifying the scope and severity of deficient practices.~~

~~At any time during the Certification Review, if a team member identifies possible substandard quality of care, the team member should notify other members of the team as soon as possible. The team may make a finding of substandard quality of care during the information gathering task or the information analysis and decision-making task.~~

~~If there is a deficiency(ies) related to noncompliance with Certification Standards concerning Individual/Parent/Guardian Rights or Service Provision and the team member classifies the deficiency as an isolated incidence of severity level 3 or as a pattern of severity level 2, the team member determines if there is sufficient evidence to support a decision that there is substandard quality of care. If the evidence is not sufficient to confirm or refute a finding of substandard quality of care, the team member may expand the Certification Review to include additional evaluation of the certified provider's compliance with the licensure standard at~~

~~issue. To determine whether or not there is substandard quality of care, the Team should assess additional information related to the Certification Standard at issue, such as written policies and procedures, staff qualifications and functional responsibilities, and specific agreements and contracts that may have contributed to the outcome. It may also be appropriate to conduct a more detailed review of related service delivery.~~

~~If the determination of substandard quality of care is made prior to the exit conference, the Team will provide the director of the certified provider with information concerning the nature of the substandard quality of care.~~

~~If the determination of substandard quality of care is made after the exit conference, the Team will provide the director of the certified provider with a written report concerning the nature of the substandard quality of care within fifteen (15) days of the date of the completion of the review.~~

#### ~~G. Information Analysis for Deficiency Determination.~~

~~The objective of information analysis for deficiency determination is to review and analyze all information collected and to determine whether or not the certified provider has failed to meet one or more of the applicable certification standards. Information analysis and decision making builds on discussions of the DDS Certification Review Team during daily meetings, which should include discussions of observed problems, area of concern, and possible failure to meet certification standards. The team leader or designee collates all information and records the substance of the decision-making discussions on the Certification Review report.~~

~~*Deficiency Criteria:* The Team bases all deficiency determinations on documented observations, statements by individuals served, statement by the families of individual serviced, statements by the director and staff, and available written documents.~~

~~*Evidence Evaluation:* The Team evaluates the evidence documented during the Certification Review to determine if a deficiency exists due to a failure to meet a certification standard and if there are any negative outcomes for individuals served due to the failure. The Team should evaluate all evidence in terms of credibility and reliability.~~

#### ~~H. Exit Conference.~~

~~The DDS Certification Review Team will conduct an exit conference with the certified provider immediately following the completion of the Certification Review. The general objective of the exit conference is to inform the certified provider of the Team's observations and preliminary findings.~~

During the exit conference, the Team describes the deficiencies that have been identified and the findings that substantiate these deficiencies. The Team provides the director and any staff with an opportunity to discuss and supply additional information that he or she believes is pertinent to the identified findings.

#### I. Writing the Report.

The report of the Certification Review should be written in terms specific enough to allow a reasonably knowledgeable person to understand the aspect(s) of the certification standard(s) that is (are) not met. The report should identify the specific certification standards not met and reflect the content of each certification standard identified. The report should include a summary of the evidence and supporting observations for each deficiency. The report shall identify the sources of evidence (e.g., interview, observation, or records review) and identify the impact or potential impact of the noncompliance on the individual served, and how it prevents the individual served from reaching his or her highest practicable physical, mental or psychosocial well-being. The levels of severity and scope of deficiencies should be clearly identifiable.

*Guidance on Severity Levels*—There are four (4) severity levels:

- ~~Level 1—No actual harm with potential for minimal harm is a deficiency that has the potential for causing no more than a minor negative impact of the individual served.~~
- ~~Level 2—No actual harm with potential for more than minimal harm that is not immediate jeopardy is a noncompliance that results in minimal physical, mental or psychosocial discomfort to the individual served or has the potential to compromise the individual served’s ability to maintain or reach his or her highest practicable physical, mental or psychosocial well-being as defined by a plan of care and provision of services.~~
- ~~Level 3—Actual harm that is not immediate jeopardy is noncompliance that results in a negative outcome that has compromised the individual served’s ability to maintain or reach his or her highest practicable physical, mental or psychosocial well-being as defined by an accurate and comprehensive assessment, plan of care, and provision of services. This *does not include* a deficient practice that only has limited consequence for the individual served and would be included in Level 2 or Level 1.~~
- ~~Level 4—Immediate jeopardy to the health or safety of an individual served is a situation in which immediate corrective action is necessary because the certified provider’s noncompliance with one or more certification standards has caused, or is likely to cause, serious injury, harm, impairment, or death to an individual served.~~

~~Guidance on Scope Levels—There are three (3) scope levels:~~

- ~~● Isolated—When one or a very limited number of individuals served are affected, when one or a very limited number of staff are involved, or when the situation has occurred only occasionally or in a very limited number of locations.~~
- ~~● Pattern—When more than a very limited number of individuals served are affected, when more than a very limited number of staff are involved, when the situation has occurred in several locations, or when the same individual served has been affected by reported occurrences of the same deficient practice. A pattern of deficient practices is not found to be pervasive throughout the operations of the certified provider. If the certified provider has a system or policy in place but the system or policy is being inadequately implemented in certain instances or if there is inadequate system with the potential to impact only a subset of individuals served, then the deficient practice is likely a pattern.~~
- ~~● Pervasive—When the problems causing the deficiencies are pervasive in the operations of the certified provider or represent systemic failure that affected or has the potential to affect a large portion or all of the individuals served by the certified provider. If the certified provider lacks a system or policy or has an inadequate system or policy to meet the certification standard and this failure has the potential to affect a large number of individuals served, then the deficient practice is likely widespread.~~

~~J. Issuing the Report.~~

~~DDS provides the certified provider with a written report documenting the findings made during the Certification Review within thirty (30) calendar days of the date of the exit conference.~~

~~If the Certification Review Report contains a deficiency that is classified as substandard quality of care, DDS provides the certified provider with a written report concerning the nature of the substandard quality of care within fifteen (15) days of the date of the exit conference.~~

~~If the Certification Review Report contains a deficiency that is classified as immediate jeopardy, DDS provides the certified provider with a written report concerning the nature of the immediate jeopardy within ten (10) days of the date of the exit conference.~~

~~K. Plan of Correction.~~

~~*In-General.* A plan of correction (POC) is a written statement developed by a certified provider to guide its efforts in achieving substantial compliance with~~

~~certification standards after a finding of substantial noncompliance. Substantial noncompliance refers to a deficiency(ies) that is (are) categorized as no actual harm with potential for more than minimal harm that is (are) not immediate jeopardy and is (are) not substandard quality of care.~~

~~In order for a plan of correction to be acceptable, it must:~~

- ~~• Contain elements detailing how the certified provider will correct the deficiency as it relates to the individual served;~~
- ~~• Indicate how the certified provider will act to protect individual service in similar situations;~~
- ~~• Include the measures the certified provider will take or the systems it will alter to ensure that the problem does not recur;~~
- ~~• Indicate how the certified provider plans to monitor its performance to make sure that solutions are sustained; and~~
- ~~• Provide dates when corrective action will be completed. Completion dates will be determined in conjunction with DDS.~~

~~DDS approves the plan of correction if it satisfies the elements described above. If DDS does not approve the plan of correction, DDS shall provide the certified provider with a written explanation stating the reasons the plan of correction does not satisfy the elements described above. The certified provider shall revise the plan of correction until it is approved by DDS. All revisions must be completed within the time frame designated below for submission of the plan of correction.~~

~~*POC when there is substantial compliance:* Substantial compliance means a level of compliance with Certification Standards such that any identified deficiencies pose no greater risk to the health or safety of individuals served than the potential for causing minimal harm. Substantial compliance constitutes compliance with Certification Standards.~~

~~When DDS finds that a certified provider is in substantial compliance but has deficiencies that are isolated with no actual harm and potential for only minimal harm, a plan of correction is not required but the certified provider is expected to correct all deficiencies.~~

~~When DDS finds that a certified provider is in substantial compliance but has deficiencies that constitute a pattern or widespread with no actual harm and potential for only minimal harm, a plan of correction is required. While a certified provider is expected to correct deficiencies at this level, these deficiencies are within the substantial compliance range and do not need to be reviewed for correction during subsequent follow-up reviews within the same Certification Review cycle.~~

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~~POC when there is not substantial compliance: Within fifteen (15) days of receipt of a certification report with deficiencies that are categorized as no actual harm with potential for more than minimal harm that is not immediate jeopardy and are not substandard quality of care, the certified provider develops and submits to DDS a written plan of correction.~~

~~POC when there is not substantial compliance and there is also substandard quality of care or actual harm that is not immediate jeopardy: Within ten (10) days of receipt of a certification report with deficiencies that are categorized as substandard quality of care or actual harm that is not immediate jeopardy, the certified provider develops and submits to DDS a written plan of correction.~~

~~POC when there is not substantial compliance and there is also with immediate jeopardy: Within two (2) days of receipt of a certification report with deficiencies that categorized as immediate jeopardy, the certified provider develops and submits to DDS a written plan of correction.~~

#### L. Post Certification Review Revisits.

~~DDS conducts a follow-up Abbreviated Review to confirm that the certified provider is in compliance with certification standards and has the ability to remain in compliance with certification standards. The purpose of the follow-up Abbreviated Review is to re-evaluate the specific care and services that were cited as noncompliant during the Certification Review, Service Concern Investigation, or other onsite Survey.~~

~~If DDS accepts the certified provider's plan of correction, DDS conducts a follow-up Abbreviated Review within thirty (30) calendar days of acceptance of the plan of correction but not before the latest date of corrective action proposed by the certified provider. At the follow-up Abbreviated Review, the Team should focus on the actions taken by the certified provider since the correction dates listed on the plan of correction.~~

~~Within fifteen (15) calendar days of the follow-up Abbreviated Review, DDS sends a written report documenting the findings made during the follow-up Abbreviated Review.~~

#### 8. Procedural Guidelines: Periodic Monitoring Review Process:

A Periodic Monitoring Review of a Provider may be conducted by a Monitoring Specialist at any time and for any reason. A Periodic Monitoring Review will generally be less comprehensive and more targeted than the Annual Monitoring Review. Many times a Periodic Monitoring Review will involve only off-site information review through CDS by the Monitoring Specialist, and a Monitoring Specialist may or may not provide advance

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notice to a Provider of their intent to conduct a Periodic Monitoring Review. Examples of situations where Periodic Monitoring Reviews might be conducted include, but are not limited to:

- During Temporary Certification for a new Provider;
- As a follow-up to an Annual Monitoring Review report, to monitor whether all non-compliance issues set out in the report have been corrected;
- Conducting random, unscheduled monitoring throughout the year to ensure consistent compliance with First Connections Certification Standards and First Connections Policies and Procedures;
- At the end of a specified timeframe relating to a corrective action, enforcement remedy or certification downgrade to determine if required action has been performed;
- When any information gathering is necessary to investigate a formal concern or complaint (as provided in the First Connections Policies and Procedures) filing with DDS; and
- Any other situation where DDS or the Monitoring Specialist determines that a Periodic Monitoring Review is warranted.

A Periodic Monitoring Review report will be prepared and sent to a Provider only (i) if non-compliance with the First Connections Certification Standards and/or First Connections Policies and Procedures was found during the Periodic Monitoring Review, (ii) if the Periodic Monitoring Review was a follow-up to a prior corrective action, enforcement remedy or certification downgrade; or (iii) if the Monitoring Specialist feels the circumstances require a Periodic Monitoring Review report. If a Periodic Monitoring Review report is prepared, then the report will set out the findings, any corrective action and/or other enforcement remedy/ies that are to be initiated, and, if applicable, a timeline for completion.

A Monitoring Specialist is required to initiate a referral to the Medicaid Audit division for investigation, if, in the course of any Annual or Periodic Monitoring Review, they identify instances of non-compliance with Medicaid billing. The results of the Medicaid Audit alone may result in DDS imposing enforcement remedies on a Provider, including, but not limited to, the recoupment of funds and/or de-certification. Any Provider placed on the Medicaid excluded provider list or that has its Medicaid billing number terminated or suspended will be automatically de-certified as a Provider in the First Connections program.

#### 9. Enforcement Remedies.

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DDS may impose any of the Enforcement Remedies described below alone or in combination with any other Enforcement Remedy or Remedies to encourage quick compliance with certification standards.

A. Certification downgrade.

~~1) Regular Certification with Requirements. If a certified provider is not in substantial compliance with applicable certification standards within thirty (30) calendar days after receiving notice of noncompliance in a Certification Review Report, the status of the certified provider's Regular Certification will be downgraded to a Regular Certification with Requirements. In order to achieve restoration of its Regular Certification, the certified provider corrects all identified deficiencies and demonstrates substantial compliance with certification standards within sixty (60) calendar days of being downgraded to a Regular Certification with Requirements. DDS may pass over Regular Certification with Requirements and immediately impose Provisional Certification when warranted by the scope and severity level of the noncompliance.~~

~~2) Provisional Certification. When a certified provider continues to be out of compliance with applicable certification standards at the end of the period allowed for a Regular Certification with Requirements or when warranted by the scope and severity level of the noncompliance, the certified provider's certification is downgraded to a Provisional Certification for a maximum term of one hundred and eighty calendar days (180) and Moratorium on New Admissions is imposed. During the term of a Provisional Certification, the certified provider submits weekly progress reports regarding compliance efforts until all deficiencies have been corrected. The failure of a certified provider to substantially comply with certification standards after sixty (60) calendar days of Provisional Certification results in the imposition of a Moratorium on Expansion.~~

B. Directed Plan of Correction.

~~A directed plan of correction is an Enforcement Remedy in which DDS develops a plan to require a certified provider to take action within a specified timeframe. Achieving substantial compliance is the responsibility of the certified provider whether or not a directed plan of correction is followed. If a certified provider fails to achieve substantial compliance after complying with a directed plan of correction, DDS may impose another Enforcement Remedy until the certified provider achieves substantial compliance or loses its certification.~~

~~DDS may impose a directed plan of correction fifteen (15) calendar days after the certified provider receives notice in non-immediate jeopardy situations and two (2)~~

~~calendar days after the certified provider receives notice in immediate jeopardy situations.~~

~~The date a directed plan of correction is imposed does not mean that all corrections must be completed by that date.~~

#### ~~C. Directed In-Service Training.~~

~~Directed in-service training is an Enforcement Remedy that DDS imposes when it believes that education is likely to correct the deficiencies and help the certified provider achieve substantial compliance. This remedy requires provider staff to attend an in-service training program.~~

~~DDS may provide special consultative services for obtaining this type of training. At a minimum, DDS should compile a list of resources that can provide directed in-service training and make this list available to certified providers and other interested parties.~~

~~The certified provider bears the expense of directed in-service training.~~

~~If a certified provider fails to achieve substantial compliance after completing directed in-service training, DDS may impose another Enforcement Remedy until the certified provider achieves substantial compliance or loses its certification.~~

#### ~~D. Referral to Medicaid Audit for Investigation.~~

~~Referral to Medicaid Audit for Investigation is an Enforcement Remedy that DDS imposes in response to identifying specific information that a certified provider has received inappropriate payment for services.~~

~~If an audit reveals that a certified provider has not complied with billing requirements in a reckless or intentional manner, DDS may impose additional Enforcement Remedies, including without limitation, certification revocation, exclusion and debarment.~~

#### ~~E. State Monitoring.~~

~~State Monitoring is an Enforcement Remedy that DDS impose when DDS determines that oversight of the certified provider's efforts to correct cited deficiencies is necessary as a safeguard against further harm to individuals served when harm or a situation with the potential for harm has occurred.~~

~~A State Monitor is an appropriate professional who:~~

- ~~• Is an employee or contractor of DDS;~~

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- ~~Is not an employee or contractor of the monitored provider,~~
- ~~Does not have an immediate family member who is served by the monitored provider, and~~
- ~~Does not have any other conflict of interest with the monitored provider.~~

~~When State Monitoring is imposed, DDS selects the State Monitor. Monitoring may occur anytime in a program or program component. State Monitors have complete access to the premises, staff, individuals served and their families, and all records of the certified provider at all times and in all instances for performance of the monitoring task.~~

~~Some situations in which State Monitoring may be appropriate include without limitation:~~

- ~~Poor compliance history, i.e. a pattern of poor quality of care, many complaints,~~
- ~~DDS concern that the situation has the potential to significantly worsen, or~~
- ~~Substandard quality of care or immediate jeopardy exists and the certified provider seems unable or unwilling to take corrective action.~~

~~The Enforcement Remedy of State Monitoring is discontinued when the certified provider demonstrates that it is in substantial compliance with certification standards and that it will remain in substantial compliance. A certified provider can demonstrate continued compliance by adherence to a plan of correction that delineates what systemic changes will be made to ensure that the deficient practice will not recur and how the certified provider will monitor its corrective actions to ensure it does not recur.~~

#### F. ~~Moratorium on New Admissions:~~

~~Moratorium on New Admissions is an Enforcement Remedy that DDS may impose any time DDS finds a certified provider to be out of substantial compliance as long as the program or program component is given written notice at least two (2) calendar days before the effective date in immediate jeopardy cases and at least fifteen (15) calendar days before the effective date in non-immediate jeopardy cases.~~

~~DDS imposes a Moratorium New Admissions when DDS finds that a certified provider is not in substantial compliance ninety (90) calendar days after the last day of the Certification Review identifying the deficiency, or when a program or program component has been found to have furnished substandard quality of care during its last three (3) consecutive Certification Reviews.~~

~~An individual admitted to a certified provider's service on or after the effective date of the remedy is considered a new admission. An individual admitted to a certified~~

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~~provider's service on or after the effective date of the remedy who is discharged from the service component or takes a temporary leave from the service is still considered new admission upon readmission or return.~~

~~An individual admitted to a certified provider's service before and discharged on or after the effective date of the remedy is not considered a new admission if the individual is subsequently readmitted to the service. An individual admitted to a certified provider's service before the effective date of the remedy who takes temporary leave before or after the effective date is not consider a new admission upon return.~~

~~Generally, if the certified provider achieves substantial compliance and it is verified through a follow-up Abbreviated Review or credible written evidence, DDS lifts the Moratorium on New Admissions. However, when a Moratorium on New Admissions is imposed for repeated instances of substandard quality of care, DDS may impose the remedy until the certified provider is in substantial compliance and DDS believes the certified provider will remain in substantial compliance.~~

#### G. Moratorium on Expansion:

~~Moratorium on Expansion is an Enforcement Remedy that DDS may impose when DDS finds a certified provider to be out of substantial compliance with certification standards after sixty (60) calendar days of Provisional Certification. A Moratorium on Expansion may include expanding capacity for current service delivery in existing service areas and expanding to offer current or new services in new service areas.~~

~~The failure of a certified provider to substantially comply with certification standards after sixty (60) calendar days of Provisional Certification indicates that the certified provider is unable or unwilling to take necessary corrective action and that individuals with developmental disabilities are in danger of losing services. A Moratorium on Expansion continues until the certified provider is in substantial compliance with applicable standards, and DDS believes the certified provider is willing and able to remain in substantial compliance.~~

~~If the certified provider has made considerable progress toward substantial compliance with applicable certification standards during the period of Provisional Certification, the DDS Director or designee may grant an extension before a Moratorium on Expansion is imposed.~~

#### H. Specific Service Prohibition:

~~A Specific Service Prohibition is an Enforcement Remedy that DDS may impose when DDS finds that a certified provider harmed a consumer. DDS may impose~~

~~the prohibition against serving a specific individual or individuals or against a specific class of individuals. The prohibition may be permanent or for a specific term depending on the circumstances of the case.~~

#### ~~I. Certification Revocation.~~

~~When considering whether to revoke the certification of a certified provider, DDS considers many factors, particularly the provider's noncompliance history (e.g., it is consistently in and out of noncompliance), the effectiveness of alternative Enforcement Remedies when previously imposed, and whether the certified provider has failed to follow through on an alternative Enforcement Remedy (e.g. directed plan of correction or directed in-service training). These considerations are not all inclusive but factors to consider when determining whether Certification Revocation is appropriate in a given case.~~

~~*Immediate Jeopardy.* When there is immediate jeopardy to the health or safety of an individual served, DDS revokes the certification of a certified provider to be effective within thirty (30) calendar days of the last day of the Certification Review that found the immediate jeopardy if the immediate jeopardy is not removed before then. If the certified provider provides a written and timely credible allegation that the immediate jeopardy has been removed, DDS will conduct a follow-up Abbreviated Survey prior to revocation if possible. In order for a Certification Revocation to be reversed, the immediate jeopardy must be removed even if the underlying deficiencies have not been fully corrected.~~

~~*No Immediate Jeopardy.* Certification Revocation is always an option that may be imposed for the noncompliance of any certified provider regardless of whether or not immediate jeopardy is present. When there is not immediate jeopardy, DDS revokes the Regular Certification of a certified provider if the certified provider fails to achieve substantial compliance after one hundred and eighty (180) calendar days of Provisional Certification.~~

#### ~~J. Voluntary Surrender of License.~~

~~If a certified provider intends to voluntarily surrender its certification, the director of the certified provider notifies DDS immediately. As a condition of certification, the program or program component agrees to assist DDS with transitioning consumers.~~

#### ~~K. Transitioning Consumers.~~

~~DDS has the ultimate responsibility for transitioning consumers when a certification is revoked. In some instances, the certified provider may assume responsibility for the safe and orderly transition of consumers when the~~

~~certification of the provider is revoked. However, this does not relieve DDS of its ultimate responsibility to transition consumers. The goal of transitioning consumers is to minimize the period of time during which consumers receive less than adequate care.~~

~~L. Exclusion.~~

~~Exclusion from contracting with all DHHS divisions and enrolling in the Arkansas Medicaid Program for a specific term is an Enforcement Remedy that may be imposed upon recommendation of DDS and approval by the DHHS Director.~~

~~M. Debarment.~~

~~Recommendation to appropriate federal regulatory agency for Permanent Debarment is an Enforcement Remedy that may be imposed upon recommendation of DDS and approval by the DHHS Director.~~

9. Enforcement Remedies

DDS may impose various enforcement remedies upon a Provider when a Monitoring Specialist discovers non-compliance with First Connections Certification Standards and/or First Connections Policies and Procedures. This section lists in detail the various enforcement remedies, in approximately increasing order of severity, which DDS may impose upon a Provider when a Monitoring Specialist discovers non-compliance with the First Connections Certification Standards and/or First Connections Policies and Procedures. These enforcement remedies are not mutually exclusive, and any one or more of these remedies may apply to a Provider simultaneously. Additionally, enforcement remedies may be applied to only one or more Early Intervention Services provided by a Provider (and not affect other Early Intervention Services offered by the Provider) or may be applied to an entire organizational Provider and every one of its employee Providers.

The number and severity of enforcement remedy/ies applied to a Provider will be determined on a case-by-case basis by the Monitoring Specialist who conducted the Certification Review, Annual Monitoring Review or Periodic Monitoring Review, as applicable. The enforcement remedy/ies applied will be based in part upon:

- Frequency of Non-compliance: Providers which are habitually found to be in non-compliance will face increasingly severe enforcement remedies.
- Responsiveness in Correcting Non-compliance: The less responsive a Provider is in correcting previous and/or current issues of non-compliance within timelines the more severe the enforcement remedy.

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- Re-lapse Non-compliance: Providers found to be out of compliance in areas previously addressed will face increasingly severe enforcement remedies when later found out of compliance for the same issue.
- Non-compliance Constituting Intentional Fraud: Non-compliance (either monetary or document falsification or other attempts to cover up an issue of non-compliance) constituting intentional fraud will result in more severe enforcement remedies.

Provider action or inaction that jeopardizes the health or safety of an individual (child served or family member) will be reported to the appropriate agencies for investigation. Substantiated reports will result in de-certification of the Provider.

A Monitoring Specialist must obtain the consent of the First Connections program coordinator prior to imposing any of the enforcement remedies set out in subsection D through H below. An appeal of any enforcement remedy imposed pursuant to this policy may be filed according to procedures outlined in DDS Policy #1076, or any DDS replacement or successor appeals policy.

A. Directed Plan of Correction.

A Directed Plan of Correction is a plan of action developed by the Monitoring Specialist that includes whatever the Monitoring Specialist reasonably believes is required to correct the various areas of Provider non-compliance. Achieving substantial compliance through completion of the Directed Plan of Correction is the responsibility of the Provider. A time frame for each specific action will be specified in the plan.

B. Directed In-Service Training.

Directed In-Service Training is required, targeted in-service training and/or technical assistance to assist Providers in correcting compliance deficiencies. The Monitoring Specialist determines: (i) the topic/s of training; (ii) the length of training/technical assistance; and (iii) the Provider staff that need to be in attendance (which may include all Provider staff).

C. Downgrade Certification to “Regular Certification with Requirements.”

If a Provider is not in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures within the timeframe stated in an Annual or Periodic Monitoring Review Report, the status of the Provider will be downgraded to a Regular Certification with Requirements.



A downgrade to Regular Certification with Requirements does not effect a Provider's ability to offer Early Intervention Services, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Monitoring Specialist can document a Provider's efforts towards correcting any non-compliance issues, the Monitoring Specialist may grant up to a sixty (60) day extension to the preliminary corrective period, but under no circumstances may a corrective period be longer than ninety (90) days.

During the correction period, the Provider shall submit weekly progress reports regarding compliance efforts to the Monitoring Specialist. In order to achieve restoration of its Regular Certification, the Provider must correct all identified deficiencies and demonstrate substantial compliance with all state and federal policies, guidelines and requirements. Failure of the Provider to correct all deficiencies and move into substantial compliance may result in suspended certification, withholding of payments, and/or recoupment of funds.

#### D. Withhold Payment for Services.

Withholding payments to a Provider relating to invoices for Early Intervention Services rendered will be reserved for specific circumstances, including, but not limited to, the following:

- A suspended or de-certified Provider (i.e. a Provider that is not certified to perform Early Intervention Services) submitting an invoice for the performance of an Early Intervention Service;
- Reasonable evidence that a Provider has engaged in fraudulent activities;
- Withholding of funds until the Provider follows through with agreed to provisions of a Directed Plan of Correction or other enforcement remedy; and
- Any other circumstance where there is reasonable and documented justification for withholding the payment of funds.

#### E. Repayment of Funds.

If justified by the circumstances, DDS reserves the right to require the repayment of funds previously paid to a Provider relating to Early Intervention Services. Such circumstances include, but are not limited to, the following:

- Payments were attributable to Early Intervention Services that were not actually performed;

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- Payments were attributable to Early Intervention Services that were not performed in accordance with the First Connections Certification Standards and/or First Connections Policies and Procedures;
- Overpayments made by First Connections to a Provider;
- Repayment required by court order, federal agency or other applicable state or federal law; and
- Any other circumstance where DDS has reasonable, documented justification for requiring the re-payment of funds previously paid to a Provider.

F. Moratorium on Expansion.

Moratorium on Expansion is an enforcement remedy that prohibits a Provider from expanding capacity for current Early Intervention Service delivery in existing certified service areas and expanding to offer current or new Early Intervention Services in new service areas. A Moratorium on Expansion shall remain in place until the Provider is in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures, and the Monitoring Specialist believes the Provider is willing and able to remain in substantial compliance.

G. Downgrade Certification to “Suspended Certification.”

A downgrade in certification to Suspended Certification removes a Provider from the CDS database, and prohibits a Provider from providing Early Intervention Services. A Provider will not be assigned new individuals or families entering First Connections while under Suspended Certification. Additionally, families of children already being served the Provider will immediately be contacted and informed of the Suspended Certification, and will be given the opportunity to be re-assigned to another area Provider in good standing. During the term of a Suspended Certification, the Provider shall submit weekly progress reports regarding its compliance efforts until all non-compliance deficiencies have been corrected. Suspended Certification status will not be removed until the Monitoring Specialist has determined the Provider has returned to substantial compliance with the First Connections Certification Standards and First Connections Policies and Procedures. The failure of a Provider to substantially comply within sixty (60) calendar days of its downgrade to Suspended Certification will result in de-certification of the Provider.

H. Revocation of Certification.

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De-certification of a Provider prevents the Provider from performing any further Early Intervention Services as of the date of de-certification, and the Provider will be removed from CDS. If the Provider is an organization, the same would apply to all of its employee Providers. All individuals actively receiving Early Intervention Services from the Provider will be re-assigned to other area Providers in good standing. DDS may withhold any payments to a de-certified Provider for a reasonable amount of time to determine the appropriateness of the requested payment, even if the Early Intervention Services submitted for payment were performed prior to de-certification. A Provider that is de-certified will have to wait a minimum of three (3) years before they will be allowed to apply for certification under the First Connections program again.

~~10. Solicitation.~~

~~A. “Solicitation” means the use of a method described in Section 10.B of this policy to attempt to unduly influence an individual served by a certified provider or his or her family or guardian to transfer from one provider to another provider. Solicitation is prohibited by the all of the following:~~

- ~~1) A certified provider or any individual acting on behalf of the certified provider;~~
- ~~2) Any staff member of a certified provider or any individual acting on behalf of the staff member; and~~
- ~~3) Any individual who provides or has provided professional or direct care services for a certified provider or any individual acting on his or her behalf.~~

~~B. The following methods of solicitation are prohibited:~~

- ~~1) With the intent of soliciting consumers, hiring an individual who has been previously employed by or contracted with another certified provider who subsequently contacts consumers on the individual’s caseload with the previous provider with the intent of inducing the consumer to transfer to the certified provider with which the individual is currently employed or contracted.~~

~~Protected Health Information, such as consumer addresses and telephone numbers, are considered confidential and the property of the certified provider with which the individual was or is employed or contracted. An individual formerly employed or contracted with a certified provider may not disclose Protected Health Information without a signed release from the consumer according to HIPAA. If DDS finds that an individual has released Protected Health Information in a manner contrary to HIPAA, DDS will notify the appropriate licensing or certification entity and the Office of Inspector General of the U.S. Department of Health and Human Services.~~

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~~When a consumer transitions between two (2) certified providers, the receiving provider shall indicate on the transition plan if the receiving provider has hired or contracted or intends to hire or contract an individual who previously served the transferring individual through the sending provider. If five (5) or more individuals transfer under the circumstances described in this paragraph, DDS contacts the individuals or their family members or guardians to determine if solicitation occurred.~~

~~2) Offering cash or gift incentives to an individual served or his or family or guardian to induce the individual served or his or her family or guardian to change providers;~~

~~3) Offering an individual served or his or her family or guardian free goods or services that are not available to other similarly stationed consumers to induce the individual served or his or her family or guardian to change providers;~~

~~4) Refusing to provide an individual served access to entitlement services for which the individual is eligible if the individual served or his or her family or guardian selects another certified provider to provide waiver services to the individual;~~

~~5) Making negative comments to a potential individual served, his or her family or guardian, or an advocate regarding the quality of services provided by another certified provider other than for the purpose of monitoring or official advocacy;~~

~~6) Promising to provide services in excess of those necessary to induce an individual served or his or her family or guardian to change programs;~~

~~7) Directly or indirectly giving an individual served or his or her family or guardian the false impression that the certified provider is the only agency that can provide the services desired by the individual served or his or her family or guardian, and~~

~~8) Engaging in any activity that DDS determines was intended to be solicitation as defined in Section 10.A of this policy.~~

~~C. Only an authorized DDS representative may offer an individual or his or her family or guardian provider choice.~~

~~D. DDS investigates claims of solicitation that appear to be consistent with the definition of solicitation in Section 10.A of this policy. If DDS makes a finding of prohibited solicitation, DDS imposes enforcement remedies under Section 9 consistent with the scope and severity of the solicitation. If a pattern of solicitation occurs, DDS may impose Licensure Revocation.~~

~~E. Marketing is distinguishable from solicitation and is considered an allowable practice. Examples of acceptable marketing practices include without limitation:~~

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- ~~1) General advertisement using traditional media;~~
- ~~2) Distribution of brochures and other informational materials regarding the services provided by a certified provider if the brochures and materials are factual and honestly presented;~~
- ~~3) Providing tours of a certified provider to interested individuals;~~
- ~~4) Mentioning other services provided by the certified provider in which a consumer might have an interest, and~~
- ~~5) Hosting informational gatherings during which the services provided by a certified provider are honestly described.~~

~~11. **Procedural Guidelines: Change in Director.**~~

~~A. A certified provider shall provide DDS with written notification of a change in the director of the certified provider immediately upon resignation, discharge, or death of the director.~~

~~B. Within sixty (60) calendar days after the effective date of a change in the director of a certified provider, DDS staff will conduct an Abbreviated Review of the certified provider to provide onsite technical assistance.~~

~~12. **Codes:** A certified provider is responsible for compliance with all applicable building codes, ordinances, rules, statutes and similar regulations that are required by city, county, state, or federal jurisdictions. Where such codes are not in effect, it is the responsibility of the certified provider to consult one of the national building codes generally used in the area for all components of the building type being used or constructed. Nothing in this policy relieves a certified provider these responsibilities.~~

~~13. **Appeals.** An appeal of any decision made under this policy may be filed according to procedures outlined in DDS Director’s Office Policy #1076.~~

~~**DDS Certification Sanctions Matrix**~~

~~**Appendix A**~~

	Scope of Noncompliance		
Severity of Noncompliance	<b>Isolated</b>	<b>Pattern</b>	<b>Pervasive</b>
Level 4	<b>“J”</b> <i>*Substandard Quality of Care</i> Plan of Correction	<b>“K”</b> <i>*Substandard Quality of Care</i> Plan of Correction	<b>“L”</b> <i>*Substandard Quality of Care</i> Plan of Correction

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	Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Specific Service Prohibition Transition Consumers Exclusion Debarment	Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition Transition Consumers Certification Revocation Exclusion Debarment	Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition Transition Consumers Certification Revocation Exclusion Debarment
Level 3	<b>“G”</b> <u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Specific Service Prohibition	<b>“H”</b> <u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition Transition Consumers Certification Revocation Exclusion	<b>“I”</b> <u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition Transition Consumers Certification Revocation Exclusion Debarment
Level 2	<b>“D”</b> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation	<b>“E”</b> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation	<b>“F”</b> <u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion
Level 1	<b>“A”</b> No Plan of Correction No Remedies Commitment to Correct	<b>“B”</b> Plan of Correction	<b>“C”</b> Plan of Correction

The DDS Certification Sanctions Matrix is used to promote consistent practices in imposing Enforcement Remedies. Deviations based on particular circumstances are appropriate and expected.

\*Substandard Quality of Care:

Substandard Quality of Care is any noncompliance with Individual/Parent/Guardian Rights and Service Provision Standards that constitutes immediate jeopardy to the health or safety of an individual served, or a pattern of or widespread actual harm that is not immediate

~~jeopardy, or a widespread potential for more than minimal harm that is not immediate jeopardy with no actual harm.~~

~~State Monitoring is imposed when DDS has found a certified provider to have provided substandard quality of care on three (3) consecutive Certification Reviews.~~

~~Factors Considered When Selecting Enforcement Remedies: In order to select the appropriate Enforcement Remedy(ies) for noncompliance, the seriousness of the deficiency(ies) is first assessed because specific levels of seriousness correlate with specific remedies. These factors are listed below. They relate to whether the deficiencies constitute:~~

~~No actual harm with a potential for minimal harm,  
No actual harm with a potential for more than minimal harm but not immediate jeopardy,  
Actual Harm that is not immediate jeopardy, or  
Immediate jeopardy to the health or safety of an individual served,~~

~~AND whether deficiencies  
Are Isolated  
Constitute a pattern, or  
Are Widespread.~~

~~Additional Factors that may be considered in selecting Enforcement Remedy(ies) include without limitation:~~

~~The relationship of one deficiency to other deficiencies,  
The prior history of noncompliance in general, and specifically with reference to the cited deficiency(ies), and  
The likelihood that the selected remedy(ies) will achieve correction and continued compliance.~~

ARKANSAS DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS POLICY 1092

**CERTIFICATION AND MONITORING POLICY FOR FIRST CONNECTIONS**

1. **Purpose**

The Arkansas Department of Human Services, Division of Developmental Disabilities Services (“DDS”) is the lead agency for the federal early intervention program in the State of Arkansas for infants and toddlers with disabilities and their families, under Part C of the Individuals with Disabilities Education Act (“First Connections”). DDS, as the lead agency, is responsible for the implementation, general administration and oversight of the First Connections program. As part of its oversight responsibility, DDS must ensure that the activities of participants in the First Connections program align with Part C of the Individuals with Disabilities Education Act (“IDEA”) and the guidelines issued by the Office of Special Education Programs (“OSEP”). DDS carries out this oversight responsibility through a certification and monitoring program.

This purpose of this policy is to establish the policies and procedures applicable to the First Connections certification and monitoring program. An appeal of any decision made pursuant to this policy may be filed according to procedures outlined in DDS Policy #1076, or any replacement or successor appeals policy.

2. **Scope**

This policy applies to: (i) individuals and organizations that provide or seek to provide Early Intervention Services (as defined in Section 3 below) through the First Connections program; and (ii) all staff responsible for the certification and monitoring of individuals and organizations participating in the First Connections program.

3. **Definitions**

- A. “*Annual Monitoring Review*” means the annual evaluation of a Provider by its Monitoring Specialist to ensure program quality and compliance with Part C of IDEA, guidelines issued by OSEP, First Connections Policies and Procedures and First Connections Certification Standards. Procedures relating to the Annual Monitoring Review are provided in Section 7 herein.
- B. “*CDS*” means the First Connections Comprehensive Database System.
- C. “*Certification Review*” means the review of an individual’s or organization’s licenses and/or certifications, along with any required application, to ensure that the individual or organization possesses all of the qualifications required by the First Connections Certification Standards to be a Provider. A Certification Review may be conducted at any time, but shall at a minimum be conducted once



every three (3) years. A Certification Review shall also always be conducted upon initial application to become a new Provider and upon application to provide a new Early Intervention Service.

- D. “First Connections Certification Standards” means the minimum licensing, certification and other requirements a Provider must obtain and maintain in order to offer a particular Early Intervention Service as outlined in the certification standards established at any given time by DDS for the First Connections program.
- E. “DDS” means the Arkansas Department of Human Services, Division of Developmental Disabilities Services, the lead agency for First Connections.
- F. “Early Intervention Services” means any of the following services performed by a Provider through the First Connections program:
1. Service Coordination;
  2. Developmental Therapy/Therapy Assistant Services;
  3. Speech Therapy Services;
  4. Physical Therapy Services;
  5. Occupational Therapy Services;
  6. Assistive Technology/Adaptive Equipment;
  7. Health Services;
  8. Social Work Services;
  9. Nutritional Services;
  10. Transportation;
  11. Vision Services;
  12. Multi-Disciplinary Evaluation;
  13. Medical Diagnostic Services;
  14. Psychological Services;
  15. Audiological;
  16. Family Training, Counseling and Home Visits; and
  17. Signed and Cued language.
- G. “First Connections” means the program in the State of Arkansas administered by DDS in accordance with Part C of the IDEA.
- H. “Monitoring Specialist” means the member of the First Connections certification and monitoring unit responsible for overseeing and conducting all certification and monitoring activities related to a Provider, including, but not limited to, all Certification Reviews, Annual Monitoring Reviews, and Periodic Monitoring Reviews.
- I. “Periodic Monitoring Review” means any evaluation of a Provider that is not an Annual Monitoring Review to ensure program quality and compliance with Part

C of IDEA, guidelines issued by OSEP, First Connections Policies and Procedures and First Connections Certification Standards. Procedures relating to a Periodic Monitoring Review are provided in Section 8 herein.

- J. *“First Connections Policies and Procedures”* means the rules, regulations, policies and procedures established at any given time by DDS (and approved by OSEP) for the First Connections program that prospective or current Providers must remain in substantial compliance with to participate in First Connections program.
- K. *“Provider”* means an individual or organization certified to perform one or more Early Intervention Services.

#### 4. **DDS Certification and Monitoring Program Generally.**

Federal regulations require DDS to ensure that only qualified personnel are providing Early Intervention Services, and that all Providers are performing Early Intervention Services in a manner that complies with the applicable federal and state regulations and guidelines. As a result, DDS has established the First Connections Certification Standards and First Connections Policies and Procedures with which all Providers must be in substantial compliance in order to participate in the First Connections program. The purpose of the certification and monitoring program is to ensure that all participants in the First Connections program are in substantial compliance with these First Connections Policies and Procedures and First Connections Certification Standards at all times.

The certification status of a Provider is dependent on the extent of the Provider’s substantial compliance at any given time with the currently effective First Connections Policies and Procedures and First Connections Certification Standards, as determined through Annual or Periodic Monitoring Reviews. DDS shall separately certify an individual or organization for each Early Intervention Service that the individual or organization seeks to provide. A certification is valid and effective only for the individual or organization to which the certification is issued, and a certification may not be transferred to another individual or organization. Once certified to provide an Early Intervention Service, the Provider must be able to produce a copy of the certification upon request and also appropriately upload the certification into CDS.

It is the responsibility of each Provider to ensure all required information is uploaded into CDS. If Monitoring Specialists are not able to locate required information in CDS when performing their certification and/or monitoring duties, then such information is presumed not to exist for First Connections compliance purposes.

#### 5. **Certification Status Levels**

Each Provider will always be certified under one of the following classifications:

DDS Policy 1092  
Certification and Monitoring Policy for First Connections  
Effective \_\_\_\_\_  
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- “*Temporary Certification*” is the preliminary certification status granted to a new Provider, or an existing Provider offering a new Early Intervention Service, upon the Provider demonstrating compliance with the First Connections Certification Standards relating to the Early Intervention Service/s seeking to be offered. Temporary Certification will be provided for a term of up to one hundred eighty (180) days, and is discussed in more detail in Section 6 herein.
- “*Regular Certification*” is the certification status granted to a Provider when the Provider is found to be in substantial compliance with all First Connections Certification Standards and First Connections Policies and Procedures.
- “*Regular Certification with Requirements*” is a downgrade from Regular Certification given to a Provider when they are found to be substantially out of compliance with applicable First Connections Certification Standards and/or First Connections Policies and Procedures by a Monitoring Specialist during an Annual or Periodic Monitoring Review. A downgrade to Regular Certification with Requirements does not affect a Provider’s ability to offer Early Intervention Services, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Monitoring Specialist can provide written documentation of a Provider’s efforts towards correcting any non-compliance issues, the Monitoring Specialist may grant up to a sixty (60) day extension to the preliminary corrective period. Under no circumstances may a corrective period be longer than ninety (90) days.
- “*Suspended Certification*” means that a Provider is removed from the CDS database as a Provider and is prohibited from providing Early Intervention Services.

6. **Procedural Guidelines: New Provider Certification Process**

A. **Initial Application Process.** In order to deliver any Early Intervention Service through the First Connections program, an individual or organization must first request, complete and submit an application packet. Potential applicants can contact the First Connections’ central office to obtain the contact information of a Monitoring Specialist that will provide the applicant with an application packet. Completed applications are to be returned to the Monitoring Specialist who issued it. Only completed applications will be considered.

B. **Temporary Certification.** If the Monitoring Specialist determines that the application and supporting documentation satisfy First Connections Certification Standards, the applicant is notified in writing that Temporary Certification status has been granted. Temporary Certification status permits the applicant to begin providing the applicable Early Intervention Services in the county or counties selected in the application. After services are initiated, the Monitoring Specialist

will conduct Periodic Monitoring Reviews, as deemed necessary, to monitor the applicant's compliance with First Connections Certification Standards and First Connections Policies and Procedures.

**C. Regular Certification or Denial of Certification.** At least thirty (30) days prior to the expiration of the applicant's Temporary Certification, the Monitoring Specialist will conduct the equivalent of an Annual Monitoring Review. If the Monitoring Specialist determines that the Provider is in substantial compliance with the First Connections Certification Standards and First Connections Policies and Procedures, the Provider is granted Regular Certification status. If the Monitoring Specialist determines that the Provider is not in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures, the Monitoring Specialist may impose corrective actions and/or enforcement remedies (see Section 9 for additional details). If the Provider is unable to achieve substantial compliance with applicable First Connections Certification Standards and First Connections Policies and Procedures prior to the expiration of the Temporary Certification, Regular Certification will be denied, and the applicant will no longer be permitted to provide the applicable Early Intervention Services.

An applicant that is denied Regular Certification will have to wait until the next new Provider enrollment period before they will be allowed to apply for certification under the First Connections program again.

## 7. **Procedural Guidelines: Annual Monitoring Review Process:**

A Monitoring Specialist will at least once a year conduct an Annual Monitoring Review of every assigned Provider to ensure continued substantial compliance by the Provider with the First Connections Certification Standards and First Connections Policies and Procedures. Annual Monitoring Reviews may be conducted through on-site visits, electronic off-site information review, or a combination of both. Monitoring Specialists, as part of an Annual Monitoring Review, may conduct fiscal monitoring, may interview staff and may interview parents of children currently or formerly served.

### A. Off-site Information Review

The objective of off-site information review is to analyze various sources of Provider information available, primarily through CDS and contact with the parent/s of individuals served by the Provider, to identify any areas of concern, non-compliance or other issues, and to focus the efforts of the Monitoring Specialist during any on-site review, if deemed necessary. The Monitoring Specialist may collect and analyze information from all available sources, including without limitation:

- Documentation from the Provider requested in advance;
- The prior year's Annual Monitoring Review report;

- The prior year's Determination Letter;
- Contact with the parents of individuals served by the Provider;
- Service concerns or formal complaints submitted to DDS during the prior year; and
- The results of any Periodic Monitoring Reviews during the prior year.

A Certification Review may be conducted at any time, but one must be conducted at least once every three (3) years at a minimum to confirm all the necessary certification material has been uploaded into CDS. Each Provider organization is responsible for ensuring that every one of its employee Providers has all necessary certification material uploaded into CDS at all times.

If the Monitoring Specialist determines that potential instances of non-compliance with First Connections Certification Standards and/or First Connections Policies and Procedures or other concerns and issues found during the off-site information review warrant additional investigation and review, the Monitoring Specialist may set up dates for conducting on-site information collection and review from the Provider.

#### B. On-site Information Review

The Monitoring Specialist will contact the individual listed as the Executive Director of the Provider within CDS to arrange a date and time for the on-site information review and identify which staff need to be present/involved. Each Provider will be responsible for providing the Monitoring Specialist access to its premises, records, staff, and individuals and families served to facilitate the on-site information review. The Monitoring Specialist will request any additional information that the Provider must submit prior to the on-site review. If the Monitoring Specialist has questions and needs additional information during the on-site review, he/she will request it from the Provider at the visit or request that it be sent following the on-site visit.

The extent and depth of the on-site information review necessary shall be determined on a case-by-case basis by the Monitoring Specialist based upon the severity and/or urgency of the non-compliance or other issues and concerns discovered by the Monitoring Specialist during the off-site information review.

An on-site information review may consist of any one or more of the following:

- Review of Provider on-site paper or electronic records
- Interviews with Provider administrators or other staff
- Interviews with parent/s of individuals served by the Provider
- Tour of any Provider facilities

- Any other reasonable information gathering activities requested by the Monitoring Specialist

To the extent feasible, the Monitoring Specialist will attempt to maintain open and ongoing dialogue with the Executive Director of the Provider throughout the on-site information review and shall take reasonable steps to minimize the disruption to the Provider's day-to-day operations during any on-site information review.

### C. Annual Monitoring Review Report

The Monitoring Specialist will provide the Executive Director of the Provider with an Annual Monitoring Review report following the Annual Monitoring Review. The Annual Monitoring Review report will set out the collective findings of the Monitoring Specialist during the Annual Monitoring Review and identify the specific First Connections Certification Standards and/or First Connections Policies and Procedures with which the Provider is out of compliance. The Annual Monitoring Review report will also inform the Provider of any enforcement remedies (as explained in more detail in Section 9 herein) and corrective actions imposed on and the Certification status granted to the Provider based upon the Monitoring Specialist's findings.

### 8. **Procedural Guidelines: Periodic Monitoring Review Process:**

A Periodic Monitoring Review of a Provider may be conducted by a Monitoring Specialist at any time and for any reason. A Periodic Monitoring Review will generally be less comprehensive and more targeted than the Annual Monitoring Review. Many times a Periodic Monitoring Review will involve only off-site information review through CDS by the Monitoring Specialist, and a Monitoring Specialist may or may not provide advance notice to a Provider of their intent to conduct a Periodic Monitoring Review. Examples of situations where Periodic Monitoring Reviews might be conducted include, but are not limited to:

- During Temporary Certification for a new Provider;
- As a follow-up to an Annual Monitoring Review report, to monitor whether all non-compliance issues set out in the report have been corrected;
- Conducting random, unscheduled monitoring throughout the year to ensure consistent compliance with First Connections Certification Standards and First Connections Policies and Procedures;
- At the end of a specified timeframe relating to a corrective action, enforcement remedy or certification downgrade to determine if required action has been performed;

- When any information gathering is necessary to investigate a formal concern or complaint (as provided in the First Connections Policies and Procedures) filing with DDS; and
- Any other situation where DDS or the Monitoring Specialist determines that a Periodic Monitoring Review is warranted.

A Periodic Monitoring Review report will be prepared and sent to a Provider only (i) if non-compliance with the First Connections Certification Standards and/or First Connections Policies and Procedures was found during the Periodic Monitoring Review, (ii) if the Periodic Monitoring Review was a follow-up to a prior corrective action, enforcement remedy or certification downgrade; or (iii) if the Monitoring Specialist feels the circumstances require a Periodic Monitoring Review report. If a Periodic Monitoring Review report is prepared, then the report will set out the findings, any corrective action and/or other enforcement remedy/ies that are to be initiated, and, if applicable, a timeline for completion.

A Monitoring Specialist is required to initiate a referral to the Medicaid Audit division for investigation, if, in the course of any Annual or Periodic Monitoring Review, they identify instances of non-compliance with Medicaid billing. The results of the Medicaid Audit alone may result in DDS imposing enforcement remedies on a Provider, including, but not limited to, the recoument of funds and/or de-certification. Any Provider placed on the Medicaid excluded provider list or that has its Medicaid billing number terminated or suspended will be automatically de-certified as a Provider in the First Connections program.

#### 9. **Enforcement Remedies**

DDS may impose various enforcement remedies upon a Provider when a Monitoring Specialist discovers non-compliance with First Connections Certification Standards and/or First Connections Policies and Procedures. This section lists in detail the various enforcement remedies, in approximately increasing order of severity, which DDS may impose upon a Provider when a Monitoring Specialist discovers non-compliance with the First Connections Certification Standards and/or First Connections Policies and Procedures. These enforcement remedies are not mutually exclusive, and any one or more of these remedies may apply to a Provider simultaneously. Additionally, enforcement remedies may be applied to only one or more Early Intervention Services provided by a Provider (and not affect other Early Intervention Services offered by the Provider) or may be applied to an entire organizational Provider and every one of its employee Providers.

The number and severity of enforcement remedy/ies applied to a Provider will be determined on a case-by-case basis by the Monitoring Specialist who conducted the Certification Review, Annual Monitoring Review or Periodic Monitoring Review, as applicable. The enforcement remedy/ies applied will be based in part upon:

- Frequency of Non-compliance: Providers which are habitually found to be in non-compliance will face increasingly severe enforcement remedies.
- Responsiveness in Correcting Non-compliance: The less responsive a Provider is in correcting previous and/or current issues of non-compliance within timelines the more severe the enforcement remedy.
- Re-lapse Non-compliance: Providers found to be out of compliance in areas previously addressed will face increasingly severe enforcement remedies when later found out of compliance for the same issue.
- Non-compliance Constituting Intentional Fraud: Non-compliance (either monetary or document falsification or other attempts to cover up an issue of non-compliance) constituting intentional fraud will result in more severe enforcement remedies.

Provider action or inaction that jeopardizes the health or safety of an individual (child served or family member) will be reported to the appropriate agencies for investigation. Substantiated reports will result in de-certification of the Provider.

A Monitoring Specialist must obtain the consent of the First Connections program coordinator prior to imposing any of the enforcement remedies set out in subsection D through H below. An appeal of any enforcement remedy imposed pursuant to this policy may be filed according to procedures outlined in DDS Policy #1076, or any DDS replacement or successor appeals policy.

A. Directed Plan of Correction

A Directed Plan of Correction is a plan of action developed by the Monitoring Specialist that includes whatever the Monitoring Specialist reasonably believes is required to correct the various areas of Provider non-compliance. Achieving substantial compliance through completion of the Directed Plan of Correction is the responsibility of the Provider. A time frame for each specific action will be specified in the plan.

B. Directed In-Service Training

Directed In-Service Training is required, targeted in-service training and/or technical assistance to assist Providers in correcting compliance deficiencies. The Monitoring Specialist determines: (i) the topic/s of training; (ii) the length of training/technical assistance; and (iii) the Provider staff that need to be in attendance (which may include all Provider staff).

C. Downgrade Certification to “Regular Certification with Requirements”



If a Provider is not in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures within the timeframe stated in an Annual or Periodic Monitoring Review Report, the status of the Provider will be downgraded to a Regular Certification with Requirements.

A downgrade to Regular Certification with Requirements does not effect a Provider's ability to offer Early Intervention Services, but does trigger an automatic thirty (30) day corrective period within which the Provider must correct any identified non-compliance issues. When a Monitoring Specialist can document a Provider's efforts towards correcting any non-compliance issues, the Monitoring Specialist may grant up to a sixty (60) day extension to the preliminary corrective period, but under no circumstances may a corrective period be longer than ninety (90) days.

During the correction period, the Provider shall submit weekly progress reports regarding compliance efforts to the Monitoring Specialist. In order to achieve restoration of its Regular Certification, the Provider must correct all identified deficiencies and demonstrate substantial compliance with all state and federal policies, guidelines and requirements. Failure of the Provider to correct all deficiencies and move into substantial compliance may result in suspended certification, withholding of payments, and/or recoupment of funds.

D. Withhold Payment for Services.

Withholding payments to a Provider relating to invoices for Early Intervention Services rendered will be reserved for specific circumstances, including, but not limited to, the following:

- A suspended or de-certified Provider (i.e. a Provider that is not certified to perform Early Intervention Services) submitting an invoice for the performance of an Early Intervention Service;
- Reasonable evidence that a Provider has engaged in fraudulent activities;
- Withholding of funds until the Provider follows through with agreed to provisions of a Directed Plan of Correction or other enforcement remedy; and
- Any other circumstance where there is reasonable and documented justification for withholding the payment of funds.

#### E. Repayment of Funds

If justified by the circumstances, DDS reserves the right to require the repayment of funds previously paid to a Provider relating to Early Intervention Services. Such circumstances include, but are not limited to, the following:

- Payments were attributable to Early Intervention Services that were not actually performed;
- Payments were attributable to Early Intervention Services that were not performed in accordance with the First Connections Certification Standards and/or First Connections Policies and Procedures;
- Overpayments made by First Connections to a Provider;
- Repayment required by court order, federal agency or other applicable state or federal law; and
- Any other circumstance where DDS has reasonable, documented justification for requiring the re-payment of funds previously paid to a Provider.

#### F. Moratorium on Expansion

Moratorium on Expansion is an enforcement remedy that prohibits a Provider from expanding capacity for current Early Intervention Service delivery in existing certified service areas and expanding to offer current or new Early Intervention Services in new service areas. A Moratorium on Expansion shall remain in place until the Provider is in substantial compliance with First Connections Certification Standards and First Connections Policies and Procedures, and the Monitoring Specialist believes the Provider is willing and able to remain in substantial compliance.

#### G. Downgrade Certification to “Suspended Certification”

A downgrade in certification to Suspended Certification removes a Provider from the CDS database, and prohibits a Provider from providing Early Intervention Services. A Provider will not be assigned new individuals or families entering First Connections while under Suspended Certification. Additionally, families of children already being served the Provider will immediately be contacted and informed of the Suspended Certification, and will be given the opportunity to be re-assigned to another area Provider in good standing. During the term of a Suspended Certification, the Provider shall submit weekly progress reports regarding its compliance efforts until all non-compliance deficiencies have been corrected. Suspended Certification status will not be removed until the Monitoring

Specialist has determined the Provider has returned to substantial compliance with the First Connections Certification Standards and First Connections Policies and Procedures. The failure of a Provider to substantially comply within sixty (60) calendar days of its downgrade to Suspended Certification will result in de-certification of the Provider.

H. Revocation of Certification

De-certification of a Provider prevents the Provider from performing any further Early Intervention Services as of the date of de-certification, and the Provider will be removed from CDS. If the Provider is an organization, the same would apply to all of its employee Providers. All individuals actively receiving Early Intervention Services from the Provider will be re-assigned to other area Providers in good standing. DDS may withhold any payments to a de-certified Provider for a reasonable amount of time to determine the appropriateness of the requested payment, even if the Early Intervention Services submitted for payment were performed prior to de-certification. A Provider that is de-certified will have to wait a minimum of three (3) years before they will be allowed to apply for certification under the First Connections program again.

## **SUMMARY OF CHANGES DDS POLICIES 1091 & 1092**

The Department of Human Services Division of Developmental Disability Services (DDS) is proposing changes to DDS Policy #1091, which is currently applicable to both the DDS Community and Employment Supports (CES) Waiver (formerly the Alternative Community Services Waiver) and the First Connections program.

The Department of Human Services, Division of Developmental Disability Services (DDS) is the lead agency for the federal early intervention program in the State of Arkansas for infants and toddlers with disabilities and their families, under Part C of the Individuals with Disabilities Education Act. The name of this program in Arkansas is “First Connections.”

To clarify that this policy applies to two separate programs, DDS Policy #1091 will be split into two new policies. DDS Policy #1091 will cover the certification, investigation and monitoring policies and procedures specifically applicable and tailored to the CES Waiver program. DDS Policy #1092 will be created out of the remaining language from #1092 to cover the certification, investigation and monitoring policies and procedures specifically to the First Connections program.