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Transmittal Sheet

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Developmental Disabilities Services

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Statutory Authority for Promulgating Rules Arkansas Code Annotated 20-76-201

Rule Title: DDS Admin. 1089, Expansion of Children's Early Intervention Day Treatment Services

Intended Effective Date

(Check One)

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

Mac Golden mac.e.golden@dhs.arkansas.gov

June 21, 2021

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

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

Signature

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Title

June 24, 2021

Date

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

Policy Type	Subject of Policy	Policy No.
Administrative	Criteria for Expansion of Adult DDTCS Services	1089 A

- I. Purpose.** This policy implements Ark. Code Ann. § 20-48-105, as amended by Act 1017 of 2013.
- II. Scope.** This policy applies to all Division of Developmental Disabilities Services (“DDS” or “Division”) staff charged with implementation of licensure requirements, and to DDS licensed community based providers of nonresidential services to adults that are or could be covered under the Arkansas DDTCS program
- This policy does not apply to the provision or regulation of services under the ACS Waiver Program or to Early Intervention services delivered pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), Public Law 108-446.

III. Definitions.

1. Existing Provider:

- A) A DDS licensed nonprofit community program that offers nonresidential services to adults covered under the Arkansas DDTCS program at an approved site within the county in question, or;
- B) A DDS licensed nonprofit community program that does not have an approved site in a county but provides developmental disabilities services covered under the Arkansas DDTCS program to 20 or more adults who reside in that county.
- C) A nonprofit community program that was issued a DDS license on or before February 1, 2007, that does not operate an approved site but provides developmental disabilities services to adults.

2. Underserved: A county is underserved if:

- A) There is no DDS licensed provider operating a site offering adult development community-based, nonresidential services covered by the Arkansas DDTCS program in the county.
- B) There is at least one site operated by a DDS licensed provider in the county, but a service covered under the DDTCS program for adults is unavailable to an eligible adult recipient at an existing site in that county.

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- C) There is at least one site operated by a DDS licensed provider in the county, but a parent, guardian, recipient, or prospective eligible adult who has exhausted the grievance mediation procedure set forth in section V of this policy remains dissatisfied and desires another choice of providers of DDTCS covered adult services in that county.

IV. Existing Provider Expansion: Existing providers of adult services having no approved site within the county may purchase, construct, or lease a site in the county subject to DDS site approval. Approval shall be limited to:

1. Providers that serve at least 20 eligible, enrolled, and participating adults of that county that are covered under the Arkansas DDTCS program.
2. Providers that were issued a DDS license on or before February 1, 2007, but that do not currently operate an approved site for adult services. Such providers may open a site for the provision of adult services in the county where the nonprofit community program maintains its headquarters. If a provider subject to this provision has more than one headquarters, it must designate one county as housing the primary headquarters for purposes of this section.

V. Dissatisfied Parent, Guardian, Recipient, or Prospective Eligible Individual Grievance Mediation Procedure. If a parent, guardian, recipient, or prospective eligible adult individual provides DDS with a written statement of dissatisfaction with an eligible adult's current service provider, and asserts that other providers in the recipient adult's county of residence cannot meet his or her needs, DDS will schedule mediation between authorized representatives of the parties as soon as practicable but no later than 45 days from the date of receipt of the statement of dissatisfaction.

1. Every parent, guardian, or adult recipient will be provided notice by their chosen provider of available service options and grievance procedures, including DDS contact information regarding grievances in compliance with DDS licensure standards.
2. If DDS receives an allegation that the statement of dissatisfaction was solicited in violation of DDS licensure policy, DDS shall investigate the allegation. The individual or organization making the allegation shall provide DDS with all documents, supporting materials, and other relevant information which form the basis of the allegation within ten (10) business days.
3. If the mediation fails to resolve the grievance, and parent, guardian, recipient, or prospective eligible adult desires another choice of provider, DDS shall declare the county underserved as defined in section III(C) of this policy.

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4. The purpose of the mediation process is to provide a mechanism to resolve a legitimate grievance brought by a parent, guardian, adult recipient, or prospective eligible adult, and is subject to the following provisions:
 - A) The grievance mediation procedure is intended to resolve disputes related to dissatisfaction with the quality or quantity of services provided or available.
 - B) In the exercise of its discretion, if DDS determines that a statement of dissatisfaction is wholly unrelated to the quality or quantity of services provided or available, the Division may decline to schedule the mediation.
 - C) In the exercise of its discretion, if DDS determines that a statement of dissatisfaction is wholly unrelated to the quality or quantity of services provided or available, the Division shall not declare the recipient's county of residence as underserved as defined in section III(C) of this policy.

VI. General Provisions. DDS may authorize the expansion of the number of developmental disabilities service provider's sites for adult services in a specific county if it determines the county as underserved.

Following such a determination, DDS will apply the following procedures:

1. DDS will send written notice that a county is underserved to all qualified nonprofit community programs for adult services as defined in Ark. Code Ann. §20-48-101(6)(A) that are existing providers in the underserved county. The notified providers shall have 30 days from receipt of notice to state in writing to DDS whether they wish to alter their operations to eliminate the reason or reasons the county is underserved.
2. Any provider stating an intention to alter its operations must accomplish the alteration within 90 days from the date it receives notification from DDS that the county is underserved.
3. The 90 day period may be extended by DDS if the provider demonstrates in writing to the Division that there is good cause for the delay. In no event shall an aggregate of 180 days be exceeded unless substantial progress has been made towards meeting site approval requirements. DDS shall consider the following: Whether a lease has been secured or construction commenced; whether staff has been recruited or hired for employment.

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4. If no existing provider of a qualified nonprofit community program for adult services states an intention to alter its services, or if a provider expresses an intention to alter its services but fails to accomplish the alteration before deadlines stated above DDS shall proceed to the following step.
5. DDS shall send written notice that the county is underserved to all qualified nonprofit community programs providing adult services, as defined in Ark. Code Ann. §20-48-101(6)(A), having one or more approved sites within the State of Arkansas. The notified providers shall have 30 days from receipt of notice to state in writing to DDS whether they wish to expand operations to eliminate the reason or reasons that the county is underserved with regard to adult services.
 - A) Any provider stating an intention to alter its operations must accomplish the alteration within 90 days from the date it receives notification from DDS that the county is underserved.
 - B) The 90 day period may be extended by DDS if the provider demonstrates in writing to the Division that there is good cause for the delay. In no event shall an aggregate of 180 days be exceeded unless substantial progress has been made towards meeting site approval requirements. DDS shall consider the following: Whether a lease has been secured or construction commenced; whether staff has been recruited or hired for employment.
 - C) If no existing provider of a qualified nonprofit community program states an intention to alter its services, or if a provider expresses an intention to alter its services but fails to accomplish the alteration before deadlines stated above DDS shall proceed to the following step.
6. DDS will publish notice to the general public in statewide print media that the agency is accepting applications from any accredited nonprofit entity, as defined in Ark. Code Ann. §20-48-101(1) (A), that provides adult services in the underserved county. Any such entity shall have 30 days from the date of publication to state in writing that it desires to obtain a license and offer the services in question.
 - A) Any accredited nonprofit entity that states in writing an intention to begin providing adult services under this section shall have 90 days from the date it received notification from DDS to obtain a license from DDS and begin provision of the services in question.

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- B) The 90 day period may be extended by DDS if the provider demonstrates in writing to the Division that there is good cause for the delay. In no event shall an aggregate of 180 days be exceeded unless substantial progress has been made towards meeting site approval requirements. DDS shall consider the following: Whether a lease has been secured or construction commenced; whether staff has been recruited or hired for employment.
- C) C) If no in-state accredited nonprofit entity that provides adult services indicates a desire to apply for a DDS license, or if such an organization fails to obtain a license and begin providing services prior to the deadline, DDS will accept applications from accredited nonprofit organization from outside the State of Arkansas.

7. **Limitation:** Existing providers who are on a regular with requirements, temporary, or provisional licensure status with DDS, or are excluded under DHS Policy 1088 may not file any notice or application to expand under this policy.

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Administrative	Criteria for Expansion of Early Intervention Day Treatment Services	1089-B

I. **Purpose.** This policy implements Ark. Code Ann. § 20-48-1101 *et seq.*

II. **Scope.** This policy applies to:

1. All Division of Developmental Disabilities Services ("DDS" or "Division") staff charged with implementation of licensure requirements.
2. DDS licensed community based providers of nonresidential services that are or could be covered under the Arkansas developmental day treatment clinic services ("DDTCS") program for children who have a developmental disability.
3. Programs that satisfy all certification criteria established by the Department of Human Services ("DHS" or "Department") for child health management services ("CHMS") and child health management services operated by an academic medical center.
4. Programs related to the delivery of early intervention day treatment services provided by a successor program that is created as a replacement for, combination of, or derived in whole or in part from the CHMS program and the DDTCS program for children. A successor program is not required to include CHMS programs operated by an academic medical center, but CHMS programs operated by an academic medical center shall be subject to all other provisions of this policy.
5. This policy does not apply to the provision or regulation of services under the ACS Waiver Program or to Early Intervention services delivered pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"), Public Law 108-446.

III. **Definitions.**

1. **"Accredited entity"** means a corporate entity that meets the definition of Ark. Code Ann. § 20-48-1102(1).
2. **"Child health management services"** means an array of clinic services for children:
 - (A) Intended to provide full medical multidiscipline diagnosis, evaluation, and treatment of developmental delays in Medicaid recipients; and

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- (B) That are diagnostic, screening, evaluation, preventive, therapeutic, palliative, or rehabilitative services, including early intervention day treatment services

3. **“Child health management services operated by an academic medical center”** means an academic medical center program specializing in developmental pediatrics that is administratively staffed and operated by an academic medical center and under the direction of a board-certified or board-eligible developmental pediatrician.
 - (A) An academic medical center consists of a medical school and its primary teaching hospitals and clinical programs.
 - (B) For a child health management services program operated by an academic medical center, services may be provided at different sites operated by the academic medical center as long as the child health management services program falls under one administrative structure within the academic medical center.
4. **“Developmental day treatment clinic services for children”** means early intervention day treatment provided to children by a nonprofit community program that:
 - (A) Is licensed to provide center-based community services by the Division.
 - (B) Serves as a quasi-governmental instrumentality of the state by providing support and services to persons who have a developmental disability or delay and would otherwise require support and services through state-operated programs and facilities.
5. **“Early Developmental Center”** means a site from which early intervention day treatment services are provided.
6. **“Early intervention day treatment”** means services provided by a pediatric day treatment program run by early childhood specialists, overseen by a physician and serving children with developmental disabilities, developmental delays, or a medical condition that puts them at risk for developmental delay.

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- (A) Early intervention day treatment includes without limitation diagnostic, screening, evaluation, preventive, therapeutic, palliative, rehabilitative and habilitative services, including speech, occupational, and physical therapies and any medical or remedial services recommended by a physician for the maximum reduction of physical or mental disability and restoration of the child to the best possible functional level.
- (B) CHMS and DDTCS or a successor program constitute the state's early intervention day treatment program.

7. "Existing Operations" means:

- (A) Early intervention day treatment services provided by a child health management services program that was either operating a site on or before July 1, 2013 or submitted a completed application to the Division of Medical Services of the Department of Human Services to serve as a Medicaid provider no later than July 1, 2013.
- (B) Early intervention day treatment services provided by a licensed developmental day treatment clinic services program.
- (C) An early intervention day treatment program that does not have an approved site in a county but provides early intervention day treatment services covered under the Arkansas DDTCS or CHMS program to 30 or more enrolled children who reside in that county.

8. "Successor Program" means a program:

- (A) That provides early intervention day treatment to children;
- (B) That is created as a replacement for, combination of, or derived in whole or in part from the CHMS program and the DDTCS program for children; and
- (C) In which the for-profit and nonprofit providers from CHMS programs and DDTCS programs are eligible to participate.
- (D) Any successor program is not required to include CHMS services offered by an academic medical center.

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9. “Underserved” means:

A county is underserved with regard to early intervention day treatment services under the following conditions:

- (A) There is no DDS licensed or DHS certified provider with existing operations operating a site offering nonresidential services to children covered by the Arkansas DDTCS or CHMS program in the county.
- (B) There is at least one site operated by a DDS licensed or DHS certified provider in the county, but a service covered under the DDTCS or CHMS program for children is unavailable to an eligible recipient at an existing site in that county.
- (C) There is at least one site offering early intervention day treatment clinic services operated by a DDS licensed or DHS certified provider in the county, but a parent, guardian, recipient, or prospective eligible child who has exhausted the grievance mediation procedure set forth in section V of this policy remains dissatisfied and desires another choice of providers of early intervention day treatment services for children in that county.

IV. Existing Provider Expansion: Existing providers having no approved site for the provision of early intervention day treatment services within a county may purchase, construct, or lease a site in that county subject to DDS site approval. New site approval under this provision shall be limited to sites in a county that is contiguous to the county where the provider operates an approved site and shall be based on the needs, benefit, and convenience of the children and families served, and shall be limited to:

- 1. Providers serving at least 30 children who are eligible, enrolled, and participating in an early intervention day treatment program as defined at Ark. Code Ann. § 20-48-1102(5), but reside in the county in which the provider has no approved site but wishes to expand.
- 2. Providers that were issued a DDS license on or before February 1, 2007, but that do not currently operate an approved site. Such providers may open a site in the county where the nonprofit community program maintains its headquarters. If a provider subject to this provision has more than one

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headquarters, it must designate one county as housing the primary headquarters for purposes of this section.

- V. **Dissatisfied Parent, Guardian, Recipient, or Prospective Eligible Individual Grievance Mediation Procedure.** If a parent, guardian, recipient, or prospective eligible individual provides DDS with a written statement of dissatisfaction with an eligible individual's current service provider, and asserts that other providers in the recipient's county of residence cannot meet his or her needs, DDS will schedule mediation between authorized representatives of the parties as soon as practicable but no later than 45 days from the date of receipt of the statement of dissatisfaction.
- A. Every parent, guardian, and recipient will be provided notice by their chosen provider of available service options and grievance procedures, including DDS contact information regarding grievances in compliance with DDS licensure standards.
 - B. If DDS receives an allegation that the statement of dissatisfaction was solicited in violation of DDS licensure policy, DDS shall investigate the allegation. The individual or organization making the allegation shall provide DDS with all documents, supporting materials, and other relevant information which form the basis of the allegation within ten (10) business days.
 - C. If the mediation fails to resolve the grievance, and parent, guardian, recipient, or prospective eligible individual desires another choice of provider, DDS shall declare the county underserved as defined in section III(9)(C) of this policy.
 - D. The purpose of the mediation process is to provide a mechanism to resolve a legitimate grievance brought by a parent, guardian, recipient, or prospective eligible individual, and is subject to the following provisions:
 - (i) The grievance mediation procedure is intended to resolve disputes related to dissatisfaction with the quality or quantity of services provided or available.
 - (ii) In the exercise of its discretion, if DDS determines that a statement of dissatisfaction is wholly unrelated to the quality or quantity of services provided or available, the Division may decline to schedule the mediation.
 - (iii) In the exercise of its discretion, if DDS determines that a statement of dissatisfaction is wholly unrelated to the quality or quantity of

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services provided or available, the Division shall not declare the recipient's county of residence as underserved as defined in section III(9)(C).

VI. Prerequisites for Certification and Licensure.

1. Children's Health Management Services:
 - (A) Certification by the Department is required for operation as a child health management services program.
 - (B) The Department shall grant certification on a county-wide basis.
 - (C) Before obtaining certification, a child health management services program is required to apply to and obtain the approval of the Division to implement new child health management services under the criteria established under Ark. Code Ann. § 20-48-1101 *et seq.*
 - (D) A certified child health management services program with existing operations on the effective date of this act shall not be required to obtain the approval of the Division to continue existing operations.
2. Developmental Day Treatment Clinic Services for Children.
 - (A) Licensure from the Division is required for operation of a developmental day treatment clinic for children.
 - (B) The Division shall grant licensure on a county-wide basis.
 - (C) Before obtaining licensure, a nonprofit community program seeking to operate a developmental day treatment clinic services for children is required to apply to and obtain the approval of the Division to implement new developmental day treatment clinic services for children under the criteria established under Ark. Code Ann. § 20-48-1101 *et seq.*
 - (D) A licensed nonprofit community program providing developmental day treatment clinic services for children with existing operations

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on the effective date of this act shall not be required to obtain the approval of the Division to continue existing operations.

3. A certified CHMS program or a licensed DDTCS program with existing operations on July 1, 2013 is not required to obtain approval from DDS to continue existing operations.

VII. Determination of Underserved Status for Expansion of Services.

1. An expansion of early intervention day treatment services in a county is necessary when the Division determines that a county is underserved with regard to:
 - (A) Early intervention day treatment services.
 - (B) A specific category of early intervention day treatment services currently offered to children with developmental disabilities or delays.
2. As a condition of the issuance of a new certification to operate a CHMS program, a new license to operate a DDTCS program for children, or a new certification or license for a successor program, the Division must determine that a county of the state is underserved in accordance with Ark. Code Ann. § 20-48-1104.
3. The Division shall have sixty (60) days from the date of an application for expansion of early intervention day treatment services in which to determine whether a county is underserved.
 - (A) The Division shall provide the applicant with a written report of its findings and conclusions by certified mail.
 - (B) The Division shall provide a copy of the report to the appropriate licensing or certification authority of the applicant.
4. If the Division determines that the county is not underserved under this policy, the Division will notify the applicant that they shall have thirty (30) days from the date of the applicant's receipt of the written report in which to appeal the determination to the Office of Appeals and Hearings of the Department of Human Services under the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et seq.*

VIII. Notice of Underserved Area.

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1. The Division shall provide written notice by certified mail of its designation that an area is underserved to all CHMS programs, DDTCS programs for children, and successor programs with existing operations in the county designated by the Division as underserved.
 - (A) Any qualified provider stating an intention to alter its operations must accomplish the alteration within 90 days from the date it receives notification from DDS that the county is underserved.
 - (B) The 90 day period may be extended by DDS if the provider demonstrates in writing to the Division that there is good cause for the delay. In no event shall an aggregate of 180 days be exceeded unless substantial progress has been made towards meeting site approval requirements. DDS shall consider the following: Whether a lease has been secured or construction commenced; whether staff has been recruited or hired for employment.
 - (C) If no existing provider states an intention to alter its services, or if a provider expresses an intention to alter its services but fails to accomplish the alteration before deadlines stated above DDS shall proceed to the following step.
2. If all CHMS programs, DDTCS programs for children, and successor programs with existing operations in the county designated by the Division as underserved determine not to expand early intervention day treatment services, including CHMS, DDTCS for children, or successor program services in the underserved county, the Division shall provide written notice by certified mail of its designation that an area is underserved to all qualified providers of CHMS, DDTCS for children, and any successor program services in the remainder of the state.
 - (A) Any qualified provider stating an intention to alter its operations must accomplish the alteration within 90 days from the date it receives notification from DDS that the county is underserved.
 - (B) The 90 day period may be extended by DDS if the provider demonstrates in writing to the Division that there is good cause for the delay. In no event shall an aggregate of 180 days be exceeded unless substantial progress has been made towards meeting site approval requirements. DDS shall consider the following: Whether

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a lease has been secured or construction commenced; whether staff has been recruited or hired for employment.

- (C) If no existing qualified provider in the state states an intention to alter its services, or if a provider expresses an intention to alter its services but fails to accomplish the alteration before deadlines stated above DDS shall proceed to the following step.
- 3. If all CHMS programs, DDTCS programs for children, and successor programs in the remainder of the state determine not to expand early intervention day treatment services, including CHMS, DDTCS for children, or successor program services in the underserved county, the Division shall provide notice to the general public in a newspaper of statewide general circulation. In the event a new entity that has never been a provider of CHMS or DDTCS for children services is approved, the deadlines for implementing a new program will be the same as those found in VIII(1)(A)-(C) and VIII(2)(A)-(C).

IX. Order of Priority for Granting Approval.

- 1. When considering an application for approval under this policy for expansion of early intervention day treatment services, including CHMS, DDTCS for children, or any successor program services, the Division shall give approval in the following order of preference:
 - (A) A certified CHMS, a licensed DDTCS for children, or a successor program with existing operations in the county identified by the Division as underserved.
 - (B) A CHMS program, a licensed DDTCS for children, or a successor program from another county in the state.
 - (C) An accredited entity in the underserved county.
 - (D) An accredited entity from another county in the state, and
 - (E) An accredited entity from outside the state
- 2. The Division shall not require accreditation of the following entities in order to approve the entity's application for expansion of early intervention day treatment services:

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- (A) A certified CHMS program with existing operations on July 1, 2013.
- (B) A licensed nonprofit community program providing developmental day treatment services for children with existing operations on July 1, 2013.
- (C) A successor program that was a certified CHMS program with existing operations on July 1, 2013.
- (D) A successor program that was a licensed nonprofit community program providing DDTCS services for children with existing operations on July 1, 2013.

3. Limitation:

- (A) DDTCS providers with existing operations who are on a regular with requirements, temporary, or provisional licensure status with DDS, or are excluded under DHS Policy 1088 may not file any notice or application to expand under this policy.
- (B) CHMS providers with existing operations who are subject to a certification sanction or administrative remedy by DHS, the Department of Health, or are excluded under DHS Policy 1088 may not file any notice or application to expand under this policy.