

# ARKANSAS REGISTER

## Transmittal Sheet

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



Secretary of State

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For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency \_\_\_\_\_

Department \_\_\_\_\_

Contact \_\_\_\_\_ E-mail \_\_\_\_\_ Phone \_\_\_\_\_

Statutory Authority for Promulgating Rules \_\_\_\_\_

Rule Title: \_\_\_\_\_

### Intended Effective Date

(Check One)

Date

☐ Emergency (ACA 25-15-204) Legal Notice Published ..... \_\_\_\_\_

☐ 10 Days After Filing (ACA 25-15-204) Final Date for Public Comment ..... \_\_\_\_\_

☐ Other \_\_\_\_\_ Reviewed by Legislative Council ..... \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Adopted by State Agency ..... \_\_\_\_\_

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

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.)

*Mary Franklin*

Signature

Phone Number

E-mail Address

Title

Date

### A-230 Twelve Months Continuous Coverage

MS Manual ??/??/??

Twelve (12) months continuous coverage means that children under nineteen (19) years of age are guaranteed twelve (12) months of continuous coverage regardless of changes in income and other eligibility criteria which could result in ineligibility.

There are eligibility groups that are ineligible to receive the twelve (12) months of continuous coverage. The groups that are ineligible to receive the twelve (12) months continuous coverage are:

1. Medically Needy Categories
2. Pregnant Woman Unborn
3. Foster Care Spenddown
4. Transitional Medicaid

Changes in income and other eligibility criteria that occur during the year will not affect the child's eligibility. Therefore, participants are not required to report changes in income until renewal. The only time a child loses eligibility during the twelve (12) month period is if the child dies, moves out of state, or reaches nineteen (19) years of age.

**NOTE:** Some categories require certain eligibility requirements to remain eligible for that category of assistance. (For example: eligibility for adoption subsidies) If the recipient no longer meets requirements to stay in that category, they will be transitioned to ARKids A for the remainder of their twelve (12) months of continuous coverage. (The categories listed above that are ineligible to receive continuous coverage are not eligible to switch to ARKids A if they do not meet requirements of their program.)

For ARKids, the twelve (12) months of continuous coverage will begin with the later of the last approval or last renewal date and will end on the last day of the twelfth month. For Newborns, coverage will begin on the date of birth and will end on the last day of the month of the child's first birthday. (See [MS I-230](#) for transitioning a newborn to ARKids.)

**EXAMPLE:** Mary's ARKids application date was January 2, 2014, and her application was approved on February 2, 2014. Her coverage will begin January 1, 2014. An income change occurs in July, which caused ineligibility. Mary's ARKids case will not be closed until December 31, 2014, unless she moves out of state or turns nineteen (19) years of age before the twelve (12) continuous months end.

### **I-510 ARKids A & B**

MS Manual ??/??/??

If information is provided that would cause the ARKids recipient to be ineligible, the ARKids recipient will not change coverage during their twelve (12) month continuous coverage period. (Refer to [MS A-230](#).)

## **RULES SUBMITTED FOR REPEAL**

**Rule #1: DDS Policy 3004: Maltreatment Prohibition, Prevention, Reporting, and Investigation**

**Rule #2: DDS Policy 3005: Respite Care**

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~1. **Philosophy** Every individual served by the Division of Developmental Disabilities Services (DDS) has the right to be free from maltreatment. DDS strictly prohibits maltreatment (which includes but is not limited to physical, verbal, psychological, or sexual abuse, neglect, exploitation, misappropriation of property, and violation of rights) of individuals receiving services.~~

~~2. **Purpose** Each facility shall do all that is within its control to prevent occurrences of maltreatment and to report and investigate maltreatment when it occurs. This policy establishes a maltreatment prohibition protocol and defines responsibilities for reporting and investigating alleged, suspected, and witnessed maltreatment of individuals served by DDS.~~

~~This Policy does not replace or remove the mandated legal responsibility of any entity to report maltreatment or of any external entity to conduct investigations as required by law.~~

~~3. **Scope** Compliance with this policy is the responsibility of all facility staff, clients, consultants, volunteers, staff of other agencies serving the client, family members, legal guardians, friends, or other individuals. It is the responsibility of the on-site administrator to ensure overall compliance with this policy and to take all necessary precautions to prevent maltreatment.~~

~~4. **Definitions**~~

~~1. **Maltreatment** – Actions which include, but are not limited to, physical, verbal, psychological, or sexual abuse, neglect, exploitation, misappropriation of property, and violation of rights of individuals receiving services~~

~~2. **Founded charge of maltreatment** – Credible evidence exists that supports the charge of maltreatment of an individual by a DDS employee.~~

~~3. **On-site administrator** – The administrator or his or her designee.~~

~~See other terms as defined by statutes in Appendix A and B.~~

~~Replacement: This Policy replaces: DDS Commissioner's Office Policy 3004-I (January 28, 1981, June 4, 1982, and May 25, 1983); DDS Deputy Director's Office Policy 3004-I (January 8, 1987); DDS Director's Office Policy 3004-I (May 1, 1993, December 1, 1993, and May 22, 1995).~~

~~References: Act 1208 of 1991; Arkansas Code Annotated (ACA) § 5-28-101; 12-12-507 (d) (e); 12-12-509 (a) (1); 12-12-509 (2) (A) (B); 12-12-503 (10); DHS Policy 1090; DDS Director's Office Policies 1027, 3010-I, 3011-D, and DDS Procedural Guidelines for Investigations~~

~~Reviewed: Administrative Rules & Regulations Subcommittee of Arkansas Legislative Council: (New date)~~

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- ~~5. Policy DDS Programs (hereafter referred to as facilities) will implement this policy and develop and implement consistent procedures for the prevention, identification, reporting, and investigation of maltreatment.~~

~~6. Procedures~~

~~A. Prohibition of Maltreatment~~

~~The on-site administrator is responsible for implementing this policy and consistent procedures that prohibit maltreatment through screening, training, prevention, and identification. Below are ways in which facilities should implement each component.~~

~~1. Screening:~~

~~Screen potential employees for a history of maltreatment, as defined by applicable requirements. This includes:~~

- ~~• attempting to obtain information from previous employers and/or current employers,~~
- ~~• checking with the appropriate licensing boards, registries, and DHS personnel offices, and~~
- ~~• performing criminal record checks.~~

~~2. Training:~~

~~Train employees, through orientation and through on-going sessions, on issues related to maltreatment prohibition practices such as:~~

- ~~• Rights of clients~~
- ~~• Recognition of events that may precede or trigger certain behaviors~~
- ~~• Early intervention techniques for positive behavioral support~~
- ~~• Approved interventions to deal with aggressive and/or catastrophic reactions~~
- ~~• Recognizing signs of staff burnout, frustration and stress that may lead to maltreatment;~~
- ~~• Definition of maltreatment, and~~
- ~~• Reporting suspected maltreatment.~~

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DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS DIRECTOR'S OFFICE POLICY MANUAL~~

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**3. Prevention:**

~~Provide clients, families, and staff information on how and to whom they may report concerns, incidents and grievances; and how they may receive feedback regarding the concerns that have been expressed.~~

~~Identify, correct and intervene in situations in which maltreatment are more likely to occur. This includes an analysis of:~~

- ~~• Features of the physical environment that may make maltreatment and/or neglect more likely to occur, such as secluded areas of the facility;~~
- ~~• Failure to recognize and respect client rights.~~
- ~~• The deployment of staff on each shift in sufficient numbers to meet the needs of the clients, and assure that the staff assigned have knowledge of the individual clients' care needs;~~
- ~~• Inappropriate staff behaviors, such as:~~
  - ~~▪ derogatory language,~~
  - ~~▪ rough handling,~~
  - ~~▪ ignoring clients while giving care,~~
  - ~~▪ directing clients who need toileting assistance to urinate or defecate in their beds; and~~
  - ~~▪ use of items for staff convenience (i.e., disposable briefs, restraints)~~
- ~~• The assessment, care planning, and monitoring of clients with needs and behaviors which might lead to conflict or neglect. This would include clients with a history of aggressive behaviors, clients who have behaviors such as entering other clients' rooms, clients with self-injurious behaviors, clients with communication disorders, and clients that require extensive care.~~

**4. Identification:**

~~Identify events, occurrences, patterns, and trends, such as bruising of clients, or a change in behavior that may suggest maltreatment.~~

**B. Reporting.**

- ~~1. All alleged, suspected, and witnessed maltreatment will be immediately reported by all individuals having knowledge of the alleged incident to the on-site administrator.~~
- ~~2. All alleged, suspected, and witnessed maltreatment will be immediately reported to the appropriate abuse reporting hotlines by the on-site administrator.~~

~~NOTE: Nothing in this policy removes the right and obligation of a mandated reporter (see Appendix B) to immediately report an incident directly to the appropriate abuse reporting hotline, as well as to the on-site administrator.~~

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DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
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<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

- ~~3. Reporting shall not be delayed for any type of investigation.~~
- ~~4. Incidents shall be reported in accordance with DHS Policy 1090, Incident Reporting, and the DHS Incident Reporting and Information System (IRIS).~~
- ~~5. Reports of allegations shall also be made by telephone or fax by the on-site administrator/designee to local law enforcement where the facility is located and to the individual's parent/guardian/advocate.~~
- ~~6. Incidents which are not specifically defined in statute as abuse but which have or may have a negative impact on clients shall be reported as noted in item 4 above. An example would be one or more acts of discourteous treatment by an employee, as defined in DHS Policies 1084 and 1085, Minimum Conduct Standards.~~

**~~C. Protection of Individuals During Investigations~~**

~~The on-site administrator is responsible for ensuring that staff accused or suspected of maltreatment leave the facility grounds immediately and have no contact with clients until an investigation has been completed. Under no circumstances will the subject(s) or an investigation resume regular duties or assume new duties at the facility until an investigation is complete.~~

**~~D. Investigations~~**

- ~~1. Investigations will begin promptly after an incident is reported. When applicable, the on-site administrator may delegate this task to a trained investigator on staff.~~
- ~~2. Allegations of maltreatment will be investigated according to DDS Procedural Guidelines for Investigations. Physical evidence (i.e., bruises, marks, etc.) shall be photographed when an incident is reported and again no more than three days later.~~
- ~~3. The on-site administrator may request that the Human Rights Committee review and make recommendations on current investigations and shall notify the Committee of all founded cases of maltreatment.~~
- ~~4. As mandated by statute, the on-site administrator will defer investigations to the proper entity (law enforcement, protective service agencies, Office of Attorney General, etc.).~~
- ~~5. Officials outside DDS who are authorized to conduct investigations shall request and obtain a copy of relevant documents from the on-site administrator.~~



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**~~E. Investigation Reports~~**

- ~~1. When a reported incident has been determined to warrant an investigation, the on-site administrator must submit a report of findings to the Office of Long Term Care (OLTC) within five (5) working days of the facility's knowledge of the incident, to comply with OLTC regulation LTC 300 *et seq.*~~
- ~~2. If the administrator is unable to submit a final report to OLTC within five days, he or she must submit a status report to OLTC within the five-day timeframe. This status report must detail the findings that have been determined to that point and what areas need further investigation.~~
- ~~3. A full report, in the format of a DDS Investigative File, must be completed and submitted to the DDS Director and to OLTC within 14 calendar days of notification that an incident is being investigated.~~
- ~~4. An extension of the 14-day timeframe must be requested of and granted by the Director's Office. Documentation of the extension approval shall be part of the file.~~
- ~~5. The DDS Director's Office shall send a copy of all investigative files to the appropriate Protective Services Agency, the Office of Chief Counsel, and the Office of the Attorney General.~~

**~~F. Discipline.~~**

- ~~1. Founded charge of maltreatment  
The employee is immediately terminated and his/her personnel file is designated as "not eligible for rehire" by DHS.~~
- ~~2. Failure to report alleged, suspected, or witnessed maltreatment  
The employee is subject to termination, as in item F-1. If not terminated, the on-site administrator will utilize progressive discipline as noted in DHS Policy 1084 Employee Discipline, unless the documented circumstances clearly warrant a deviation from the guidelines, due to aggravating or mitigating facts.~~
- ~~3. Delay in reporting alleged, suspected, or witnessed maltreatment  
The employee is subject to termination, as in item F-1. If not terminated, the on-site administrator will utilize progressive discipline as noted in DHS Policy 1084 Employee Discipline, unless the documented circumstances clearly warrant a deviation from the guidelines, due to aggravating or mitigating facts.~~

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

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~~4. Other Involvement~~

~~Any employee who is involved in any way with any aspect of a case of maltreatment and who is not terminated will be required to attend training relative to maltreatment prevention, reporting, and investigation. The on-site administrator shall specify the training course(s) and ensure that documentation of training is maintained.~~

**G. Record Keeping.**

- ~~1. Each facility shall maintain a copy of all files related to cases of alleged, suspected, or witnessed maltreatment in a secure location. This record will include the original incident report (IRIS) and all follow-up reports; the on-site administrator's investigation report; any correspondence; any documentation of supporting evidence (photos, etc.), and documentation of the actions taken by the on-site administrator. These internal records shall be maintained for no less than ten (10) years. Original investigative files will be maintained in the DDS Director's office and retained indefinitely, in either paper format or other medium.~~
- ~~2. A summary report of investigations of all alleged, suspected, and witnessed maltreatment conducted at the HDCs and subsequent outcomes shall be submitted to the DDS Director by January 15 of each year for the previous calendar year. Individual identifier information shall not be used. Victims shall be identified by case number and staff shall be identified by Job Title.~~
- ~~3. DDS Systems Development Section will also submit a summary report of the same information, as reported by DDS Community Programs, to the DDS Director by January 15 each year for the previous calendar year. Requests for the summary reports noted in G.2 and G.3 shall be made in writing to the DDS Director.~~

**H. Release of Investigative Files.**

~~It is the intent of this policy to protect the anonymity of all clients noted in investigative reports and the names of those who report abuse. For specific guidance for the release of information under the Freedom of Information Act (FOIA), see DHS Policy 1053. All client and reporter identifiers must be deleted (redacted) prior to release.~~

~~NOTE: When an investigation results in disciplinary action that is grieved, a copy of pertinent information from the investigation report will be provided to the grievant with client and reporter identifiers deleted. This may not apply to the grievance process at the state level.~~

**I. Confidentiality.**

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~All aspects of allegations, reports, and investigations of child and adult maltreatment are confidential. Verified violations will be subject to discipline under DHS Policy 1084, Employee Discipline and DHS Policy 1085, Minimum Conduct Standards.~~

**J. Appeals.**

~~Employees who have been disciplined based on provisions set forth in this policy retain the right of appeal according to established grievance procedures outlined in DHS Policy 1086, Employee Grievance Procedure.~~

REPEAL

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DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS DIRECTOR'S OFFICE POLICY MANUAL~~

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~Appendix A~~

~~Statutory definitions~~

~~**Adult abuse (5-28-101)**~~

~~(1) "Abuse" means:~~

~~(A) Any intentional and unnecessary physical act which inflicts pain on or causes injury to an endangered or impaired adult, including sexual abuse; or~~

~~(B) Any intentional or demeaning act which subjects an endangered or impaired adult to ridicule or psychological injury in a manner likely to provoke fear or alarm;~~

~~(2) "Caregiver" means a related or unrelated person, owner, agent, high managerial agent of a public or private organization, or a public or private organization that has the responsibility for the protection, care, or custody of an endangered or impaired adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court;~~

~~(3)(A) "Department" means the Department of Human Services.~~

~~(B) The Director of the Department of Human Services may assign responsibilities for administering the various duties imposed upon the department under this chapter to respective divisions of the department which, in his or her opinion, are best able to render service or administer the provisions of this chapter;~~

~~(4) "Endangered adult" means:~~

~~(A) An adult eighteen (18) years of age or older who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to that person and who demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or~~

~~(B) A resident eighteen (18) years of age or older of a long-term care facility, which is required to be licensed under § 20-10-224, who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to the person and who demonstrates the lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;~~

~~(5) "Exploitation" means the illegal use or management of an endangered or impaired adult's funds, assets, or property, or the use of an endangered or impaired adult's person, power of attorney, or guardianship for the profit or advantage of himself, herself, or another;~~

~~(6)(A) "Imminent danger to health or safety" means a situation in which death or severe bodily injury could reasonably be expected to occur without intervention.~~

~~(B) The burden of proof shall be upon the department to show by clear and convincing evidence that such imminent danger exists.~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~(7)(A) **"Impaired adult"** means a person eighteen (18) years or older who, as a result of mental or physical impairment, is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation, and as a consequence thereof is endangered.~~

~~(B) For purposes of this chapter, adult clients of a long-term care facility are presumed to be impaired adults;~~

~~(8) **"Neglect"** means acts or omissions by an endangered adult; for example, self-neglect or intentional acts or omissions by a caregiver responsible for the care and supervision of an endangered or impaired adult constituting:~~

~~(A) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or impaired adult;~~

~~(B) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered or impaired adult to the appropriate medical personnel; or~~

~~(C) Negligently failing to carry out a prescribed treatment plan;~~

~~(9)(A) **"Physical injury"** means the impairment of a physical condition or the infliction of substantial pain.~~

~~(B) Where the person is an endangered or impaired adult, there shall be a presumption that any physical abuse resulted in the infliction of substantial pain;~~

~~(10)(A) **"Protective services"** means services to protect the endangered or impaired adult from:~~

~~(i) Self-neglect or self-abuse; and~~

~~(ii) Abuse or neglect by others.~~

~~(B) Protective services shall include, but not be limited to:~~

~~(i) Evaluation of the need for services;~~

~~(ii) Arrangements for appropriate services;~~

~~(iii) Assistance in obtaining financial benefits to which the person is entitled; or~~

~~(iv) Securing medical and legal services.~~

~~(C)(i) Protective services may include:~~

~~(a) Referrals for services available in the community;~~

~~(b) Seeking protective custody or court-ordered services for endangered adults; or~~

~~(c) In appropriate cases, assistance in locating an appropriate person or entity interested in and able to assume guardianship over an endangered adult.~~

~~(ii) In situations involving exploitation of an endangered or impaired adult not resulting in any imminent danger to health or safety or involving protection of the property of such an impaired adult, protective services may include one (1) or more of the following:~~

~~(a) Referrals for legal assistance;~~

~~(b) Referrals, as appropriate, to law enforcement or prosecutors; or~~

~~(c) Assistance in locating an appropriate person or entity interested in and able to assume guardianship;~~

~~(11) **"Serious bodily harm"** means physical abuse, sexual abuse, physical injury, or serious physical injury as defined in this chapter;~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~(12) "Serious physical injury" means physical injury to an endangered or impaired adult that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;~~

~~(13) "Sexual abuse" means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless, as those terms are defined in § 5-14-101; and~~

~~(14) "Subject of the report" means the endangered or impaired adult, the adult's guardian, and the offender.~~

**Child abuse (12-12-503)**

~~(1) "Abandonment" means:~~

~~(A) Failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future;~~

~~(B) Failure to support or maintain regular contact with the juvenile without just cause; or~~

~~(C) An articulated intent to forego parental responsibility;~~

~~(2)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:~~

~~(i) Extreme or repeated cruelty to a juvenile;~~

~~(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;~~

~~(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;~~

~~(iv) Any injury that is at variance with the history given;~~

~~(v) Any nonaccidental physical injury;~~

~~(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:~~

~~(a) Throwing, kicking, burning, biting, or cutting a child;~~

~~(b) Striking a child with a closed fist;~~

~~(c) Shaking a child; or~~

~~(d) Striking a child on the face;~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~(vii) Any of the following intentional or knowing acts, with or without physical injury:~~

- ~~(a) Striking a child age six (6) or younger on the face;~~
- ~~(b) Shaking a child age three (3) or younger; or~~
- ~~(c) Interfering with a child's breathing.~~

~~(B)(i) The list in subdivision (2)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.~~

~~(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.~~

~~(C)(i) "Abuse" shall not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.~~

~~(ii) "Abuse" shall not include when a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if:~~

~~(a) The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;~~

~~(b) The agency has policy and procedures regarding restraints;~~

~~(c) No other alternative exists to control the child except for a restraint;~~

~~(d) The child is in danger or hurting himself or herself or others;~~

~~(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and~~

~~(f) The restraint is for a reasonable period of time.~~

~~(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.~~

~~(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;~~

~~(3) "Caretaker" means a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare;~~

~~(4)(A) "Central intake", otherwise referred to as the "child abuse hotline", refers to a unit that shall be established by the Department of Human Services for the purpose of receiving and recording notification made pursuant to this subchapter.~~

~~(B) Central intake shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;~~



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DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
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<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~(5) "Child" or "juvenile" means an individual who:~~

~~(A) Is from birth to the age of eighteen (18);~~

~~(B) Is under the age of twenty-one (21) years, whether married or single, who was adjudicated delinquent under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., for an act committed prior to the age of eighteen (18) years, and for whom the court retains jurisdiction; or~~

~~(C) Was adjudicated dependent-neglected under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., before reaching the age of eighteen (18) years, and who, while engaged in a course of instruction or treatments, requests the court to retain jurisdiction until the course has been completed;~~

~~(6) "Child maltreatment" means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;~~

~~(7) "Department" means the Department of Human Services;~~

~~(8) "Deviate sexual activity" means any act of sexual gratification involving:~~

~~(A) Penetration, however slight, of the anus or mouth of one person by the penis of another person; or~~

~~(B) Penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;~~

~~(9)(A)(i) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of physical injury to or death, rape, sexual abuse, or kidnapping of any person.~~

~~(ii) If the act was committed against the will of the juvenile, then forcible compulsion has been used.~~

~~(B) The age, developmental state, and stature of the victim, and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove compulsion;~~

~~(10) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or of any other person under circumstances in which the person knows the conduct is likely to cause affront or alarm;~~

~~(11) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;~~

~~(12) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, which constitute:~~

~~(A) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;~~



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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~(B) Failure or refusal to provide necessary food, clothing, shelter, and education required by law, excluding the failure to follow an individualized educational program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected;~~

~~(C) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness where the existence of such condition was known or should have been known;~~

~~(D) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile;~~

~~(E) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;~~

~~(F) Failure, although able, to assume responsibility for the care and custody of the juvenile or participate in a plan to assume such responsibility; or~~

~~(G) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone at an inappropriate age or in inappropriate circumstances that put the juvenile in danger;~~

~~(13) **"Parent"** means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;~~

~~(14) **"Pornography"** means:~~

~~(A) Obscene or licentious material, including pictures, movies, and videos, lacking serious literary, artistic, political, or scientific value, which, when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest; or~~

~~(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value;~~

~~(15) **"Serious bodily injury"** means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;~~

~~(16) **"Severe maltreatment"** means sexual abuse, sexual exploitation, acts or omissions which may or do result in death, abuse involving the use of a deadly weapon as defined by the Arkansas Criminal Code, § 5-1-101 et seq., bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child;~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~(17) "Sexual abuse" means:~~

~~(A) By a person ten (10) years of age or older to a person younger than eighteen (18) years of age:~~

~~(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;~~

~~(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;~~

~~(iii) Indecent exposure; or~~

~~(iv) Forcing, permitting, or encouraging the watching of pornography or live sexual activity;~~

~~(B) Between a person eighteen (18) years of age or older and a person not his or her spouse who is younger than sixteen (16) years of age:~~

~~(i) Sexual intercourse, deviate sexual activity, or sexual contact or solicitation; or~~

~~(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or~~

~~(C) Between a person younger than eighteen (18) years of age and a sibling or caretaker:~~

~~(i) Sexual intercourse, deviate sexual activity, or sexual contact or solicitation; or~~

~~(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;~~

~~(18)(A) "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.~~

~~(B) Provided, that nothing in this section shall permit normal affectionate hugging to be construed as sexual contact;~~

~~(19) "Sexual exploitation" means allowing, permitting, or encouraging participation or depiction of the juvenile in prostitution, obscene photographing, filming, or obscenely depicting a juvenile for any use or purpose; and~~

~~(20) "Subject of the report" means:~~

~~(A) The offender;~~

~~(B) The parents, guardians, and legal custodians of the child who is subject to suspected maltreatment; and~~

~~(C) The child who is the subject of suspected maltreatment.~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

## **~~Appendix B~~**

### **~~(5-28-203) Mandated Reporters (adult)~~**

~~Persons required to report abuse:~~

~~(a)(1) Whenever any of the following has observed or has reasonable cause to suspect that an endangered or impaired adult has been subjected to conditions or circumstances which would reasonably result in abuse, sexual abuse, neglect, or exploitation, as defined in this chapter, he or she shall immediately report or cause a report to be made in accordance with the provisions of this section:~~

~~(A) A physician;~~

~~(B) A surgeon;~~

~~(C) A coroner;~~

~~(D) A dentist;~~

~~(E) An osteopath;~~

~~(F) A resident intern;~~

~~(G) A registered nurse;~~

~~(H) Hospital personnel who are engaged in the administration, examination, care, or treatment of persons;~~

~~(I) Any social worker;~~

~~(J) A case manager;~~

~~(K) A case worker;~~

~~(L) A mental health professional;~~

~~(M) A peace officer;~~

~~(N) A law enforcement officer;~~

~~(O) A facility administrator;~~

~~(P) An employee in a facility;~~

~~(Q) An employee of the Department of Human Services;~~

~~(R) A firefighter; or~~

~~(S) An emergency medical technician.~~

~~(2) Whenever a person is required to report under this chapter in his or her capacity as a member of the staff, an employee in a facility, or an employee of the department, he or she shall immediately notify the person in charge of the institution, facility, or agency, or that person's designated agent, who shall then become responsible for making a report or cause a report to be made.~~

~~(3) In addition to those persons and officials required to report suspected adult abuse, sexual abuse, or neglect, any other person may make a report if the person has reasonable cause to suspect that an adult has been abused, neglected, or exploited, as defined in this chapter.~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

~~(b)(1) A report required under this chapter shall be made to the central registry by the receiving agency for abused or neglected adults not residing in long-term care facilities.~~

~~(2) A report for abused or neglected adults residing in a long-term care facility shall be made immediately to the local law enforcement agency for the jurisdiction in which the facility is located and to the Office of Long Term Care of the Division of Medical Services of the Department of Human Services, pursuant to regulations of that office.~~

~~(3) The office shall notify the central registry and the office of the Attorney General. No privilege or contract shall relieve anyone required by this subchapter to make notification of the requirement of making notification.~~

**12-12-507. Reports of suspected abuse or neglect (child)**

- ~~(a) Any person with reasonable cause to suspect child maltreatment or that a child has died as a result of child maltreatment, or who observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment, may immediately notify the child abuse hotline.~~
- ~~(b) When any of the following has reasonable cause to suspect that a child has been subjected to child maltreatment or has died as a result of child maltreatment, or who observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment, he or she shall immediately notify the child abuse hotline:~~
- ~~(1) Any child or foster care worker;~~
  - ~~(2) A coroner;~~
  - ~~(3) A day care center worker;~~
  - ~~(4) A dentist;~~
  - ~~(5) A domestic abuse advocate;~~
  - ~~(6) A domestic violence shelter employee;~~
  - ~~(7) A domestic violence shelter volunteer;~~
  - ~~(8) An employee of the Division of Youth Services of the Department of Human Services;~~
  - ~~(9) An employee working under contract for the Division of Youth Services of the Department of Human Services;~~
  - ~~(10) A family service worker;~~
  - ~~(11) A judge;~~
  - ~~(12) A law enforcement official;~~
  - ~~(13) A licensed nurse;~~
  - ~~(14) Any medical personnel who may be engaged in the admission, examination, care, or treatment of persons;~~
  - ~~(15) A mental health professional;~~
  - ~~(16) An osteopath;~~
  - ~~(17) A physician;~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy No.</del>
<del>Service</del>	<del>Maltreatment Prohibition, Prevention, Reporting, and Investigation</del>	<del>3004-I</del>

- ~~(18) A peace officer;~~
- ~~(19) A prosecuting attorney;~~
- ~~(20) A resident intern;~~
- ~~(21) A school counselor;~~
- ~~(22) A school official;~~
- ~~(23) A social worker;~~
- ~~(24) A surgeon; or~~
- ~~(25) A teacher.~~

~~REPEAL~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy</del>
------------------------	------------------------------	-------------------

~~No.~~

<del>Service</del>	<del>Respite Care</del>	
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~~3005-D~~

- ~~1. Purpose. This policy has been prepared to define and set parameters for Human Development Center respite care services provided by Developmental Disabilities Services.~~
- ~~2. Scope. All users/applicants for HDC respite care services, their families/surrogates, other interested parties, and DDS employees are affected by this policy.~~
- ~~3. Eligibility and Selection. Individuals eligible for respite care services are those defined in DDS Policy #1035. Selection is based upon space availability, chronological order of request, priority of need, and proximity to home.~~
- ~~4. Respite Care Defined. Human Development Centers offer short term residential and supervisory services intended to provide a period of relief from the care of an individual who has exceptional and demanding needs. Unless approved by the HDC Superintendent/designee, respite care services will not include planned education, habilitation or training.~~
  - ~~A. Regular Respite Care: Twenty-four (24) hour care services provided for up to fourteen (14) days, and may be extended up to thirty (30) days upon approval of the HDC Superintendent/designee.~~
  - ~~B. Emergency Respite Care: Twenty-four (24) hour care services provided to assist individuals and families through emergency situations in which the health and welfare of the individual and/or family is seriously jeopardized, in increments of no more than fourteen (14) days, for a maximum of thirty (30) days.~~
  - ~~C. Short-Term Respite Care: Twenty-four (24) hour care services provided for one (1) or two (2) days, no more than twice a month to give individuals and/or family brief but more frequent relief from family services.~~

~~Replacement Notation: This policy replaces 3005-D, effective December 17, 1979; January 26, 1980; March 18, 1980; November 21, 1981; February 25, 1983; January 8, 1987; and May 4, 1987; and December 1, 1993.~~

~~Effective Date: December 1, 1997~~

~~Sheet 1 of 5~~

~~Administrative Rules & Regulations Sub Committee of the Arkansas Legislative Council:  
November 4, 1993.~~

~~REPEAL~~

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

<u>Policy Type</u>	<u>Subject of Policy</u>	<u>Policy</u>
--------------------	--------------------------	---------------

No.

Service

Respite Care

3005-D

~~D. Summer Respite Care: Twenty-four (24) hour care provided annually for fourteen (14) days to give individuals and/or families an opportunity to have summer vacation experiences.~~

~~E. Crisis Abatement: Thirty (30) days or less of consecutive placement and no more than 48 cumulative days per waiver eligible year, to reduce or prevent escalation of behaviors of persons receiving Home and Community Based Waiver Services.~~

~~5. Fees.~~

~~A. If at all possible, recipients of respite care will pay something for the services, even if the amount is minimal.~~

~~B. Fees will be charged based on a sliding scale according to the family/responsible party income.~~

~~C. Fees will be automatically adjusted annually as costs fluctuate.~~

~~1) Sliding fees will be based on the total income of persons living in the household. If an individual receives income from a third party source or other personal income, the fee will be the total of that income less \$30.00, of the amount according to the sliding scale for the household, whichever is greater.~~

~~2) For adults living with family members, the fee will be based on household income, or third party payment less \$30.00, whichever is greater.~~

~~D. If an adult lives in an apartment, group home, or other public housing, only his or her income should be considered. Fees will be total income less \$30.00.~~

~~E. For the purpose of the sliding fee scale, exemptions shall be the number as determined by IRS guidelines for tax purposes.~~



~~Effective Date:~~      ~~December 1, 1997~~

~~Sheet 2 of 5~~

~~REPEAL~~

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

~~Policy Type~~ ~~Subject of Policy~~ ~~Policy~~

~~No.~~

~~Service~~ ~~Respite Care~~

~~3005-D~~

~~F. RESPITE CARE FEES~~

~~Daily Fee Scale~~

<del>GROSS ANNUAL INCOME</del>	<del>DEPENDENTS</del>					
	<del>1</del>	<del>2</del>	<del>3</del>	<del>4</del>	<del>5</del>	<del>6</del>
<del>\$ 0 - 4,999</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>
<del>5,000 - 7,299</del>	<del>1.00</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>
<del>7,300 - 9,599</del>	<del>2.00</del>	<del>1.00</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>
<del>9,600 - 11,899</del>	<del>3.00</del>	<del>2.00</del>	<del>1.00</del>	<del>-0-</del>	<del>-0-</del>	<del>-0-</del>
<del>11,900 - 14,199</del>	<del>4.00</del>	<del>3.00</del>	<del>2.00</del>	<del>1.00</del>	<del>-0-</del>	<del>-0-</del>
<del>14,200 - 16,499</del>	<del>5.00</del>	<del>4.00</del>	<del>3.00</del>	<del>2.00</del>	<del>1.00</del>	<del>-0-</del>
<del>16,500 - 18,799</del>	<del>6.00</del>	<del>5.00</del>	<del>4.00</del>	<del>3.00</del>	<del>2.00</del>	<del>1.00</del>
<del>18,800 - 21,099</del>	<del>7.00</del>	<del>6.00</del>	<del>5.00</del>	<del>4.00</del>	<del>3.00</del>	<del>2.00</del>
<del>21,100 - 23,399</del>	<del>8.00</del>	<del>7.00</del>	<del>6.00</del>	<del>5.00</del>	<del>4.00</del>	<del>3.00</del>
<del>23,400 - 25,699</del>	<del>9.00</del>	<del>8.00</del>	<del>7.00</del>	<del>6.00</del>	<del>5.00</del>	<del>4.00</del>
<del>25,700 - 27,999</del>	<del>10.00</del>	<del>9.00</del>	<del>8.00</del>	<del>7.00</del>	<del>6.00</del>	<del>5.00</del>
<del>28,000 - 30,299</del>	<del>11.00</del>	<del>10.00</del>	<del>9.00</del>	<del>8.00</del>	<del>7.00</del>	<del>6.00</del>
<del>30,300 - 32,599</del>	<del>12.00</del>	<del>11.00</del>	<del>10.00</del>	<del>9.00</del>	<del>8.00</del>	<del>7.00</del>
<del>32,600 - 34,899</del>	<del>13.00</del>	<del>12.00</del>	<del>11.00</del>	<del>10.00</del>	<del>9.00</del>	<del>8.00</del>
<del>34,900 - 37,199</del>	<del>14.00</del>	<del>13.00</del>	<del>12.00</del>	<del>11.00</del>	<del>10.00</del>	<del>9.00</del>
<del>37,200 - 39,499</del>	<del>15.00</del>	<del>14.00</del>	<del>13.00</del>	<del>12.00</del>	<del>11.00</del>	<del>10.00</del>
<del>39,500 - 41,799</del>	<del>16.00</del>	<del>15.00</del>	<del>14.00</del>	<del>13.00</del>	<del>12.00</del>	<del>11.00</del>
<del>41,800 - 44,099</del>	<del>17.00</del>	<del>16.00</del>	<del>15.00</del>	<del>14.00</del>	<del>13.00</del>	<del>12.00</del>
<del>44,100 - 46,399</del>	<del>18.00</del>	<del>17.00</del>	<del>16.00</del>	<del>15.00</del>	<del>14.00</del>	<del>13.00</del>
<del>46,400 - 48,699</del>	<del>19.00</del>	<del>18.00</del>	<del>17.00</del>	<del>16.00</del>	<del>15.00</del>	<del>14.00</del>
<del>48,700 - Above</del>	<del>20.00</del>	<del>19.00</del>	<del>18.00</del>	<del>17.00</del>	<del>16.00</del>	<del>15.00</del>

~~NOTE: Fee Scale effective July 22, 1983~~

6. ~~Limitation. No Human Development Center shall jeopardize compliance with any applicable State or Federal Law or regulation when providing respite care services.~~

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

<u>Policy Type</u>	<u>Subject of Policy</u>	<u>Policy</u>
--------------------	--------------------------	---------------

No.

Service

Respite Care

3005-D

7. Procedural Guidelines.

A. ~~The DDS Service Coordinator will provide a packet of descriptive information on the individual as a request for services to include current social, psychological, and medical information at a minimum.~~

B. ~~The Superintendent/designee will respond in writing to all formal requests for respite services.~~

C. ~~Upon approval, admission arrangements will be coordinated through the HDC social services department.~~

1. ~~Entry requirements include a current TB skin test and physical examination to include assurance that the individual is free from infectious disease.~~

2. ~~The individual will bring a medication supply sufficient for the entire respite stay.~~

3. ~~A completed agreement to pay work sheet informs the responsible party of the daily charge for services, if any, and confirms that this payment responsibility has been discussed prior to initiation of services.~~

4. ~~In an emergency situation entry, all requirements can be waived by the Superintendent.~~

D. ~~Emergency respite requests are coordinated through the Field Services Supervisor. In an emergency situation, all entry requirements can be waived by the Superintendent.~~

8. Cancellation of Respite Request. ~~Under certain circumstances, the Human Development Center may find it necessary to cancel respite care.~~

A. ~~The HDC may cancel a scheduled respite referral twenty-four (24) hours prior to admission date if bed space becomes unavailable. Notice goes back to the DDS Service Coordinator, who notifies the individual/parent or guardian and Field Services Supervisor.~~

~~REPEAL~~

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

<del>Policy Type</del>	<del>Subject of Policy</del>	<del>Policy</del>
------------------------	------------------------------	-------------------

~~No~~

~~Service~~

~~Respite Care~~

~~3005-D~~

- ~~B. If the HDC finds it necessary to terminate early, respite care in progress, the DDS Service Coordinator who made the referral shall be contacted. The Service Coordinator is responsible for contacting the parents/guardians and providing explanation. If Service Coordinator is unavailable, and discharge must occur immediately, HDC staff will assume this responsibility. If possible, an alternate HDC respite care site will be found where the individual can be transferred.~~
- ~~9. Abuse of Service. When abuse of respite care occurs the DDS Service Coordinator shall be notified by the HDC staff and then shall counsel with the individual and/or parent/guardian and inform them that continued practice could/would result in failure to receive further respite service.~~
- ~~10. Abandonment. If the individual's parent or responsible party fails to pick up the individual on the agreed date of discharge, the DDS Service Coordinator (HDC staff if Field staff unavailable) shall call the parents or responsible party to find out why pickup was not made.~~
- ~~If the Service Coordinator cannot reach the individual's parent or responsible party by 2 hours after the agreed day and time of discharge, or if the individual's parent or responsible party refuses to pick up the individual, the Superintendent/designee shall call the appropriate Protective Services authority to charge abandonment. Call Division of Children and Family Services, Protective Services Unit, if the individual is a minor; or call Division of Aging and Adult Services, Adult Protection Services Unit, if the individual is 18 or over.~~
- ~~NOTE: At Superintendent/designee discretion, extension of time may be allowed for extenuating circumstances.~~
- ~~11. Appeal Process. If at any point in this process the request for respite services is denied, the individual/parent/guardian has the right to appeal this decision following the DDS Director's Office Policy #1076.~~

~~AGREEMENT TO PAY WORKSHEET~~

~~INDIVIDUAL'S NAME:~~ \_\_\_\_\_ ~~COUNTY:~~

~~GUARDIAN (if applicable):~~

~~ADDRESS:~~

<del>Estimate of Fees:</del>	<del>Amount of person's income per month</del>	<del>\$</del>
	<del>Less personal spending money</del>	<del>\$ <u>-30.00</u></del>
	<del>Subtotal</del>	<del>\$</del>
	<del>\$ _____ divided by the =</del>	<del>\$</del>
	<del>Subtotal number of days in</del>	<del>Daily charge for</del>
	<del>the month</del>	<del>services</del>

~~I understand that the above amount is an estimate only and the final charges will be computed on the day of admission. I understand that I am responsible for payment.~~

\_\_\_\_\_  
~~Individual~~ ~~Date~~

\_\_\_\_\_  
~~Parent/Guardian (if applicable)~~ ~~Date~~

\_\_\_\_\_  
~~Witness~~ ~~Date~~