

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____

DIVISION _____

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE NO. _____ **FAX NO.** _____ **EMAIL:** _____

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

SHORT TITLE OF THIS RULE _____

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 Does this proposed, amended, or repealed rule have a financial impact?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

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

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

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

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

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

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

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

Current Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Next Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____

Other (Identify) _____

Total _____

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

Current Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____

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total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule?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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

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

Yes _____ No _____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

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

Statement of Necessity and Rule Summary Certification in Deaf Mental Health

Statement of Necessity

Acts 2019, No. 644, creates a Bill of Rights for persons in need of mental health services who are also deaf or hard of hearing and requires the Division of Aging, Adult, and Behavioral Health Services (DAABHS) to establish a certification process to ensure that persons in need of mental health services receive culturally affirmative and linguistically appropriate treatment services. The establishment of a certification will increase the capacity of the mental health professionals in Arkansas to respond more appropriately to the varying needs of deaf and hard of hearing Arkansans.

Rule Summary

Effective January 1, 2020, the Division of Aging, Adult, and Behavioral Health Services (DAABHS) is promulgating a new rule, Certification in Deaf Mental Health, to implement Acts 2019, No. 644. This new rule outlines the qualifications and process to become a Certified Mental Health Professional. The rule sets requirements concerning the following:

- Education and experience
- Training for initial certification and recertification
- Application process and application review process
- Compliance with state and federal laws, rules, and regulations
- Conformance to professionally recognized behavioral health rehabilitative treatment models
- Provider renewal
- Noncompliance with requirements
- Appeal process

NOTICE OF RULE MAKING

The Director of the Division of Aging, Adult and Behavioral Health Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule(s) under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-76-201, 20-77-107, and 25-10-129; Act 644 of 2019.

Effective January 1, 2020:

The Division of Aging, Adult, and Behavioral Health Services (DAABHS) is promulgating a new rule, Certification in Deaf Mental Health, to implement Acts 2019, No. 644. This new rule outlines the qualifications and process to become a Certified Mental Health Professional. The rule sets requirements concerning the following:

- Education and experience
- Training for initial certification and recertification
- Application process and application review process
- Compliance with state and federal laws, rules, and regulations
- Conformance to professionally recognized behavioral health rehabilitative treatment models
- Provider renewal
- Noncompliance with requirements
- Appeal process

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the DHS Legal Notices website at <https://humanservices.arkansas.gov/resources/legal-notices>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than November 3, 2019. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6266.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. **4501874629**

Jay Hill, Director
Division of Aging, Adult and Behavioral Health Services



Arkansas Department of Human Services

Certification in Deaf Mental Health



1/1/2020

I. PURPOSE & SCOPE:

- A. To ensure that mental health services which are allowable and delivered by a Department of Human Services (DHS) Certified Mental Health Professional comply with applicable laws, which require, among other things, that all deaf and hard of hearing persons have access to appropriate mental health services that are provided:
 - i) In the primary communication method of the individual, as determined by the preference of the individual who is deaf or hard of hearing, or by an appropriate communication assessment, or both;
 - ii) Using appropriate accommodations and access services; and
 - iii) By the following licensed mental health professionals: psychiatrists, advance practice registered nurses, psychologists, therapists, counselors, and social workers.
- B. Deaf and hard of hearing Arkansans have a right to receive accessible, culturally affirmative and linguistically appropriate mental health services. The needs may vary greatly. For culturally Deaf people, linguistically appropriate may mean that the services are delivered in American Sign Language by a mental health provider who understands Deaf culture. For someone who is hard of hearing, culturally appropriate and accessible services may mean that the services are delivered through the use of assistive listening technology. The establishment of a certification will increase the capacity of the mental health professionals in Arkansas to respond more appropriately to the varying needs of deaf and hard of hearing Arkansans.
- C. The purpose of this certification is to increase the capacity of mental health professionals in Arkansas to provide culturally affirmative, accessible, and linguistically appropriate mental health services to Arkansans who are deaf or hard of hearing. These professionals shall recognize when appropriate referrals need to be made or other professionals need to be consulted. Professionals certified to provide mental health services to people who are deaf or hard of hearing shall possess the following competencies:
 - a. fluency in the primary language or communication method of the individual who is deaf or hard of hearing,
 - b. understanding of the unique experience of being deaf or hard of hearing in a hearing world,
 - c. knowledge of the barriers deaf and hard of hearing people face and solutions for removing those barriers in the delivery of mental health services,
 - d. knowledgeable of effective strategies for provision of services, and
 - e. ability to collaborate skillfully with interpreters and other access providers.
- D. Definitions for the purpose of this certification manual are as follows:
 - 1. **Advanced Practice Nurse (APN)** means a person holding a current Arkansas License from the Arkansas State Board of Nursing with specialty education and experience in at least one (1) of the following:
 - a. Adult Psychiatric Mental Health Clinical Nurse Specialist;
 - b. Child Psychiatric Mental Health Clinical Nurse Specialist;

- c. Adult Psychiatric Mental Health APN; or
 - d. Family Psychiatric Mental Health APN.
2. **Aural Communication** means the transmission of information through the auditory system which includes the system of speaking and hearing. It usually encompasses both verbal and paralinguistic communication to convey meaning. Paralinguistic communication would include things such as volume, speed, and intonation of voice, along with gestures and facial expressions or other non-verbal cues.
 3. **Communication assessment** means an evidenced-based assessment which is approved by the Deaf Mental Health Advisory Committee prior to implementation. A list of approved communication assessments will be available on the Division of Aging, Adult, and Behavioral Health Services (DAABHS) webpage.
 4. **Communication method** means any one (1), or combinations, of the following languages or systems of communication used by clients, which may include, but are not limited to:
 - a. American Sign Language;
 - b. An English-based system, such as signed English or cued speech;
 - c. High visual orientation communication;
 - d. Tactile American Sign Language
 - e. Spoken English, aural communication, and speechreading (also known as lip-reading); or
 - f. Speech-to-text services, to include but not limited to, CART (Communication Access Realtime Translation) or Typewell, for example.
 5. **Culturally affirmative mental health services** means the full continuum of mental health services that are respectful to and informed by the values and norms of the culture of the individual being served, including members of the Deaf community and culture, that are delivered by licensed mental health professionals who have been certified under the guidelines of this manual. This may also include services to be provided by ancillary staff who are licensed or unlicensed.
 6. **Deaf** means the condition of having a hearing loss at the level that results in the individual having difficulty processing linguistic information through hearing, regardless of amplification or other assistive technology, and thus relying on visual means of communication.
 7. **English-based system** means a sign system that uses manual signs or cues in English word order, sometimes with added affixes that are not present in American Sign Language.
 8. **Fluent** means a score of “Advanced” or higher for licensed mental health professionals certified under the guidelines of this manual, or a score of “Intermediate Plus” for other licensed or non-licensed ancillary staff qualified to work in a mental health setting on a sign language communication skills assessment, including without limitation the Sign Language Proficiency Interview assessment and other communication skills assessments.
 9. **Hard of hearing** means the condition of having a hearing loss, whether permanent or fluctuating, that may be corrected by amplification or other

hearing assistive technology, but yet presents challenges in processing linguistic information through hearing.

10. **Independently Licensed Clinician** means a person holding a current Arkansas license from the applicable State Board as a Licensed Clinical Social Worker (LCSW), Licensed Marriage and Family Therapist (LMFT), Licensed Psychologist (LP), Licensed Psychological Examiner – Independent (LPEI), or a Licensed Professional Counselor (LPC).
 11. **Interpreter** means a licensed qualified interpreter or a licensed provisional interpreter as defined under §20-14-802.
 12. **Linguistically appropriate mental health services** means the full continuum of mental health services that are made available in the communication method preferred by the client or in the communication method that is determined to be most effective by a communication assessment.
 13. **Non-independently Licensed Clinician** means a person holding a current Arkansas license from the applicable State Board as a Licensed Master Social Worker (LMSW), Licensed Associate Marital and Family Therapist (LAMFT), Licensed Associate Counselor (LAC), Licensed Psychological Examiner (LPE), or a Provisionally Licensed Psychologist (PLP).
 14. **Primary communication method** means the communication method preferred by the individual who is deaf or hard of hearing that will be most effective, as determined by the preference of the individual who is deaf or hard of hearing or by an appropriate communication assessment, or both.
- E. A licensed professional certified through this manual shall offer culturally affirmative and linguistically appropriate mental health services to a client in the client's primary communication method. The Certified Mental Health Professional shall not deny access to services in the client's primary communication method to a client due to the client's having residual hearing ability, whether supported by amplification or other hearing assistive technology. The Certified Mental Health Professional shall not deny access to services in the client's primary communication method to a client due to the client's previous experience with some other communication method.
- F. Deaf and hard of hearing persons have the right to decline culturally affirmative and linguistically appropriate mental health services.
- G. The requirements and obligations imposed by this rule are substantive, not procedural.
- H. In the event of any change in or loss of full privileges related to their professional license, or actions that would impact the Certified Mental Health Professionals' ability to appropriately perform his or her duties, the Certified Mental Health Professional must notify DHS/DAABHS immediately.

II. CERTIFIED MENTAL HEALTH PROFESSIONALS

- A. A Certified Mental Health Professional is approved to provide evidenced-based mental health services which address the unique treatment needs of deaf or hard of hearing individuals and

their families or caregivers. A Certified Mental Health Professional shall provide mental health services which contribute to the improvement of the individual's cognitive, behavioral, and social functioning and must be provided by a professional, acting within their Scope of Practice, who has been determined to meet competencies identified by DHS/DAABHS to provide mental health services which are culturally affirmative and linguistically appropriate.

B. The minimum education/experience required to become a Certified Mental Health Professional is outlined below:

- a. A current Arkansas-licensed Doctor of Medicine, or Arkansas-licensed Doctor of Osteopathic Medicine;
- b. A current Arkansas-licensed Advanced Practice Nurse;
- c. A current Arkansas-licensed Independently Licensed Clinician at the Master's/Doctoral level; or
- d. A current Arkansas-licensed Non-Independently Licensed Clinician at the Master's/Doctoral level who is receiving supervision according to the requirements of their licensing board.

C. All Certified Mental Health Professionals must have completed required training as outlined below:

- a. For initial certification:
 1. The Mental Health Professional candidate must possess evidence of an Advanced level certification, or higher level of certification, on a sign language communication skills assessment.
 2. The Mental Health Professional candidate must have attended, participated in, and successfully completed the DHS/DAABHS approved training, which includes twelve (12) weeks of weekly consultation calls, provided by a trainer authorized by the Department of Human Services or designee.
 3. The Mental Health Professional candidate must have demonstrated competencies in the provision of culturally affirmative and linguistically appropriate mental health services introduced during the DHS/DAABHS approved training as evidenced by obtaining a certificate of completion of all requirements related to the DHS/DAABHS approved training, which must be submitted with the application.
 4. The Mental Health Professional candidate must submit evidence of a current Arkansas license as a mental health professional, APN, or physician.

b. For recertification every five (5) years:

1. Evidence of continued Advanced level, or higher, certification on a sign language communication skills assessment as determined by the certifying body.
 2. Evidence of continuing education credit directly related to provision of services to this special population amounting to at least three (3) hours for each twelve (12) month period of the five (5) year renewal period, totaling a minimum of fifteen (15) hours per renewal period.
 3. The Certified Mental Health Professional renewal application must include evidence of a current Arkansas license as a mental health professional, APN, or physician at the time of renewal request.
- c. Decisions for approving Certified Mental Health Professionals based on completion of similar training as part of a specialized graduate or post-graduate training in evidence-based interventions for individuals who are deaf or hard of hearing will exclusively be made by Arkansas DHS/DAABHS. DHS/DAABHS reserves the right to consult with the established Deaf Mental Health Advisory Committee for their review of any alternative education course or training to solicit recommendations on acceptable education, course work, or training.

III. APPLICATION PROCESS FOR CERTIFIED MENTAL HEALTH PROFESSIONAL:

- A. Applications and renewals will be accepted by electronic mail or postal mail, but preferably by electronic mail to the following email address: DHS.BehavioralHealth@dhs.arkansas.gov with **Certified Mental Health Professional Application** indicated on the subject line. Please ensure that all required documentation is included with the initial application or renewal application.
- B. DAABHS Form 801 may be used for the initial application and the renewal application. Please check the appropriate box on the form to indicate which action you are seeking.

IV. APPLICATION REVIEW PROCESS:

- A. Timeline:
 1. DHS will review all application forms and materials within thirty (30) calendar days after DHS receives a complete application package. DHS will return incomplete applications to senders without review.
 2. For approved applications, DHS will furnish an approval letter via postal or electronic mail within ten (10) calendar days of issuing approval.
- B. Determinations:

1. Application approved.
2. Application returned for additional information.
3. Application denied. DHS will state the reasons for denial in a written response to the applicant within ten (10) calendar days of the determination.

V. DHS Access to Applicants/Providers:

For the purposes of quality review or investigations, DHS may contact applicants or Certified Mental Health Professionals at any time. Contact may take place through announced or unannounced visits.

VI. ADDITIONAL REQUIREMENTS:

A. Care and Services must:

1. Comply with all state and federal laws, rules, and regulations applicable to the furnishing of mental health services funded in whole or in part by federal funds, to all state laws and rules applicable to health coverage.
2. Conform to professionally recognized behavioral health rehabilitative treatment models; and
3. Be established by clinically sound documentation that is accurate and demonstrates compliance with applicable payor source for health coverage, as well as licensure/board requirements.

- B.** A Certified Mental Health Professional may not furnish services to any deaf or hard of hearing client during any time the individual's professional license is not current or valid.

VII. PROVIDER RENEWAL:

- A.** The term of DAABHS certification approval is continuous for five (5) years from the date of approval.
- B.** An application for renewal must be checked as such on the appropriate form as a renewal application.
- C.** DHS must receive renewal applications and all required supporting documentation at least fifteen (15) calendar days before the DAABHS Mental Health Professional Certification expiration date.
- D.** If DHS has not renewed the provider before the certification expiration date, status is void

beginning 12:00 a.m. Central Standard Time the next day.

VIII. NONCOMPLIANCE

Failure to comply with the requirements outlined in this manual may result in one (1) or more of the following:

1. Submission and implementation of an acceptable corrective action plan as a condition of retaining Mental Health Professional Certification;
2. Suspension of Deaf Mental Health Professional Certification for either a fixed period, to be determined by DHS, or until the provider meets all conditions specified in the suspension notice; or,
3. Termination of Deaf Mental Health Professional Certification.
4. Without limitation, DHS reserves the right to report egregious professional violations to the appropriate licensing board.

IX. APPEAL PROCESS

- A. If DHS denies, suspends, or revokes Deaf Mental Health Professional certification status (takes adverse action), the affected provider may appeal the DHS adverse action. Appeals must be submitted in writing to the Division of Aging, Adult, and Behavioral Health Services Director. The provider has thirty (30) calendar days from the date of the notice of adverse action to appeal. An appeal request received within thirty-five (35) calendar days of the date of the notice will be deemed timely. The appeal must state with particularity the error or errors asserted to have been made by DHS in denying, suspending or revoking the referenced certification status, and cite the legal authority for each assertion of error.
- B. Within thirty (30) calendar days after receiving an appeal the DAABHS Director shall: (1) designate a person who did not participate in reviewing the application or in the appealed-from adverse decision to hear the appeal; (2) set a date for the appeal hearing; (3) notify the appellant in writing of the date, time, and place of the hearing. The hearing shall be set within sixty (60) calendar days of the date DAABHS receives the request for appeal, unless a party to the appeal requests and receives a continuance for good cause.
- C. DHS shall record each hearing and maintain the hearing record.
- D. The hearing official shall issue the decision within forty-five (45) calendar days of the date that the hearing record is completed and closed. The hearing official shall issue the decision in a written document that contains findings of fact, conclusions of law, and the decision. The findings, conclusions, and decision shall be mailed to the appellant except that if the appellant is represented by counsel, a copy of the findings, conclusions, and decision shall also be mailed to the appellant's counsel. The decision is the final agency determination under the Administrative Procedure Act.

- E. Delays caused by the appealing party shall not count against any deadline. Failure to issue the decision within the time required is not a decision on the merits and shall not alter the rights or status of any party to the appeal, except that any party may pursue legal process to compel the hearing official to render a decision.

PROPOSED