

ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

John Thurston

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Medical Services

Contact Mac E. Golden E-mail Mac.E.Golden@dhs.arkansas.gov Phone 501.320.6383

Statutory Authority for Promulgating Rules Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

Rule Title: Medication Assisted Treatment (MAT) and OTC (Over the Counter) Updates

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☒ Other 02/05/2024
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

09/23/2023

10/22/2023

01/26/2024

02/05/2024

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

Renita Jones

Renita.Jones@dhs.arkansas.gov

01/26/2024

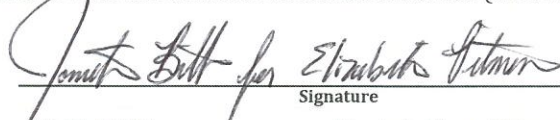
Contact Person

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

501-244-3944

Phone Number

Elizabeth.Pitman@dhs.arkansas.gov

E-mail Address

Director

Title

January 26, 2024

Date

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED

CATEGORICALLY NEEDY

Revised: October 1, 2023

2.a. Outpatient Hospital Services (Continued)

Non-Emergency Services

Outpatient hospital services other than those which qualify as emergency, outpatient surgical procedures and treatment, and therapy services are covered as non-emergency services.

Benefit Limit

Outpatient hospital services are limited to a total of twelve (12) visits a year. This yearly limit is based on the State Fiscal Year - July 1 through June 30. Outpatient hospital services include the following:

- non-emergency outpatient hospital and related physician and nurse practitioner services; and
- outpatient hospital therapy and treatment services and related physician and nurse practitioner services.

For services beyond the 12-visit limit, an extension of benefits will be provided if medically necessary. The following diagnoses are considered categorically medically necessary and do not require prior authorization for medical necessity: Malignant neoplasm; HIV infection; renal failure; opioid use disorder when the visit is part of a Medication Assisted Treatment Plan; and pregnancy. All other diagnoses are subject to prior authorization before benefits can be extended.

Outpatient hospital services are not benefit limited for recipients in the Child Health Services (EPSDT) Program.

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED

Revised: October 1, 2023

CATEOGORICALLY NEEDY

2.b. Rural Health Clinic Services

5. Services of nurse midwives
6. Visiting nurse services on a part-time or intermittent basis to home-bound patients (limited to areas in which there is a shortage of home health agencies).

Rural health clinic ambulatory services are defined as any other ambulatory service included in the Medicaid State Plan if the Rural health clinic offers such a service (e.g. dental, visual, etc.). The “other ambulatory services” that are provided by the Rural health clinic will count against the limit established in the plan for that service.

Medication Assisted Treatment visits do not count against the Rural Health Clinic encounter benefit limit when the visit is part of a Medication Assisted Treatment plan.

2.c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by a FQHC in accordance with Section 4231 of the State Medicaid Manual (NCFA – Pub. 45-4). Federally qualified health center services are limited to sixteen (16) encounters per client, per State Fiscal Year (July 1 through June 30) for clients twenty-one (21) years or older. The applicable benefit limit will be considered in conjunction with the benefit limit established for physicians' services, medical services furnished by a dentist, office medical services furnished by an optometrist, certified nurse midwife services, rural health clinic encounters, and advanced practice registered nurse services, or a combination of the seven.

For federally qualified health center core services beyond the benefit limit, extensions will be available if medically necessary. Beneficiaries under age twenty-one (21) in the Child Health Services (EPSDT) Program are not benefit limited.

FQHC hospital visits are limited to one (1) day of care for inpatient hospital covered days regardless of the number of hospital visits rendered. The hospital visits do not count against the FQHC encounter benefit limit.

Medication Assisted Treatment visits do not count against the FQHC encounter benefit limit when the visit is part of a Medication Assisted Treatment plan.

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED

Revised: October 1, 2023

CATEGORICALLY NEEDY

3. Other Laboratory and X-Ray Services

Other **professional and technical laboratory and radiological services** are covered when ordered and provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of his or her practice, as defined **under 42 CFR 440.30 in an office or similar facility other than a hospital outpatient department or clinic.**

Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY, July 1 – June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY. Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).

Extensions of the benefit limit for recipients twenty-one (21) years of age or older will be provided through prior authorization, if medically necessary. The five hundred dollars (\$500) per SFY diagnostic laboratory services benefit limit, and the five hundred dollars (\$500) per SFY radiology/other services benefit limit, do not apply to services provided to recipients under twenty-one (21) years of age enrolled in the Child Health Services/Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program.

- (1) The following diagnoses are specifically exempt from the five hundred dollars (\$500) per SFY diagnostic laboratory services benefit limit, and the five hundred dollars (\$500) per SFY radiology/other services health benefit limits: (a) Malignant neoplasm; (b) HIV infection; and (c) renal failure. The cost of related diagnostic laboratory services, and radiology/other services will not be included in the calculation of the recipient's five hundred dollars (\$500) per SFY diagnostic laboratory services benefit limits or the five hundred dollars (\$500) per SFY radiology/other services health benefit limits.
- (2) Drug screening will be specifically exempt from the five hundred dollars (\$500) per SFY diagnostic laboratory services health benefit limit when the diagnosis is for Opioid Use Disorder (OUD), and the screening is part of a Medication Assisted Treatment (MAT) plan. The cost of these screenings will not be included in the calculation of the recipient's five hundred dollars (\$500) diagnostic laboratory services health benefit limit.
- (3) Magnetic Resonance Imaging (MRI) and Cardiac Catheterization procedures are specifically exempt from the five hundred dollars (\$500) per SFY outpatient diagnostic laboratory services benefit limit or the five hundred dollars (\$500) per SFY radiology/other services health benefit limits. The cost of these procedures will not be included in the calculation of the recipient's five hundred dollars (\$500) per SFY diagnostic laboratory services benefit limit, or the recipient's five hundred dollars (\$500) per SFY radiology/other services health benefit limits.
- (4) Portable X-Ray Services are subject to the five hundred dollars (\$500) per SFY radiology/other services benefit limit. Extensions of the benefit limit for recipients twenty-one (21) years of age or older will be provided through prior authorization, if medically necessary. Services may be provided to an eligible recipient in their place of residence upon the written order of the recipient's physician. Portable X-ray services are limited to the following:
 - a. Skeletal films that involve arms and legs, pelvis, vertebral column, and skull;
 - b. Chest films that do not involve the use of contrast media; and
 - c. Abdominal films that do not involve the use of contrast media.
- (5) Two (2) chiropractic X-rays are covered per SFY. Chiropractic X-Ray Services are subject to the five hundred dollars (\$500) benefit limit per SFY for radiology/other services. Extensions of the radiology/other services benefit limit for recipients twenty-one (21) years of age or older will be provided through prior authorization, if medically necessary.

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED

Revised: October 1, 2023

CATEGORICALLY NEEDY

12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist

a. Prescribed Drugs

- (1) Each recipient age twenty-one (21) or older may have up to six (6) prescriptions each month under the program. Family Planning, tobacco cessation, prescription drugs for opioid **or alcohol** use disorder as part of a Medication Assisted Treatment plan, EPSDT, high blood pressure, **hypercholesterolemia**, blood modifiers, diabetes and respiratory illness inhaler prescriptions do not count against the prescription limit.
- (2) Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.
- (3) The Medicaid agency provides coverage, to the same extent that it provides coverage for all Medicaid recipients, for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses – with the exception of those covered by Part D plans as supplemental benefits through enhanced alternative coverage as provided in 42 C.F.R. §423.104 (f) (1) (ii) (A) – to full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit – Part D.

The following excluded drugs, set forth on the [Arkansas Medicaid Pharmacy Vendor's Website](#), are covered:

- a. select agents when used for weight gain
 - b. select agents when used for the symptomatic relief of cough and colds
 - c. select prescription vitamins and mineral products, except prenatal vitamins and fluoride
 - d. select nonprescription drugs
- (4) The State will reimburse only for the drugs of pharmaceutical manufacturers who have entered into and have in effect a rebate agreement in compliance with Section 1927 of the Social Security Act, unless the exceptions in Section 1902(a)(54), 1927(a)(3), or 1927(d) apply. The State permits coverage of participating manufacturers' drugs, even though it may be using a formulary or other restrictions. Utilization controls will include prior authorization and may include drug utilization reviews. Any prior authorization program instituted after July 1, 1991 will provide for a 24-hour turnaround from receipt of the request for prior authorization. The prior authorization program also provides for at least a seventy-two (72) hour supply of drugs in emergency situations.

State/Territory: ARKANSAS

**AMOUNT, DURATION, AND SCOPE OF SERVICES PROVIDED MEDICALLY NEEDY
GROUP(S):**

4.d. Tobacco cessation counseling services for pregnant women

☒ Provided: ☐ No limitations ☒ with limitations*

e. Medication-Assisted Treatment for opioid use disorders when provided as part of a Medication Assisted Treatment plan

☒ Provided: ☐ No limitations ☒ with limitations*

5.a. Physicians' services, whether furnished in the office, the patient's home, a hospital, a nursing facility, or elsewhere.

☒ Provided: ☐ No limitations ☒ with limitations*

b. Medical and surgical services furnished by a dentist (in accordance with section 1905(a)(5)(B) of the Act).

☒ Provided: ☐ No limitations ☒ with limitations*

*Description provided on attachment.

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED

Revised: October 1, 2023
MEDICALLY NEEDY

2.a. Outpatient Hospital Services (Continued)

Non-Emergency Services

Outpatient hospital services other than those which qualify as emergency, outpatient surgical procedures and treatment, and therapy services are covered as non-emergency services.

Benefit Limit

Outpatient hospital services are limited to a total of twelve (12) visits a year. This yearly limit is based on the State Fiscal Year - July 1 through June 30. Outpatient hospital services include the following:

- non-emergency outpatient hospital and related physician and nurse practitioner services; and
- outpatient hospital therapy and treatment services and related physician and nurse practitioner services.

For services beyond the 12-visit limit, an extension of benefits will be provided if medically necessary. The following diagnoses are considered categorically medically necessary and do not require prior authorization for medical necessity: Malignant neoplasm; HIV infection; renal failure; opioid use disorder when the visit is part of a Medication Assisted Treatment plan, and pregnancy. All other diagnoses are subject to prior authorization before benefits can be extended.

Outpatient hospital services are not benefit limited for recipients in the Child Health Services (EPSDT) Program.

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED
MEDICALLY NEEDY

Revised: October 1, 2023

2.b. Rural Health Clinic Services

5. Services of nurse midwives; and
6. Visiting nurse services on a part-time or intermittent basis to home-bound patients (limited to areas in which there is a shortage of home health agencies).

Rural health clinic ambulatory services are defined as any other ambulatory service included in the Medicaid State Plan if the rural health clinic offers such a service (e.g. dental, visual, etc.). The “other ambulatory services” that are provided by the rural health clinic will count against the limit established in the plan for that service.

Medication Assisted Treatment visits do not count against the Rural Health Clinic encounter benefit limit when the diagnosis is for opioid use disorder and is part of a Medication Assisted Treatment plan.

- 2.c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by a FQHC in accordance with Section 4231 of the State Medicaid Manual) NCFA – Pub. 45-4).

Federally qualified health center services are limited to sixteen (16) encounters per client, per State Fiscal Year (July 1 through June 30) for clients twenty-one (21) years or older. The applicable benefit limit will be considered in conjunction with the benefit limit established for physicians' services, medical services furnished by a dentist, office medical services furnished by an optometrist, certified nurse midwife services, rural health clinic encounters, and advanced practice registered nurse services, or a combination of the seven.

Benefit extensions will be available if medically necessary. Clients under age twenty-one (21) in the Child Health Services (EPSDT) Program are not benefit limited.

FQHC hospital visits are limited to one (1) day of care for inpatient hospital covered days regardless of the number of hospital visits rendered. The hospital visits do not count against the FQHC encounter benefit limit.

Medication Assisted Treatment visits do not count against the FQHC encounter benefit limit when the diagnosis is for opioid use disorder and is part of a Medication Assisted Treatment plan.

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED

Revised: October 1, 2023
MEDICALLY NEEDY

3. Other Laboratory and X-Ray Services

Other professional and technical laboratory and radiological services are covered when ordered and provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of his or her practice, as defined under 42 CFR 440.30 in an office or similar facility other than a hospital outpatient department or clinic.

Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY, July 1-June 30), and radiology/other services benefits are limited to five hundred dollars (\$500) per SFY. Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).

Extensions of the benefit limit for recipients twenty-one (21) years of age or older will be provided through prior authorization, if medically necessary. The five hundred dollars (\$500) per SFY diagnostic laboratory services benefit limit, and the five hundred dollars (\$500) per SFY radiology/other services benefit limit, do not apply to services provided to recipients under twenty-one (21) years of age enrolled in the Child Health Services/Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program.

- (1) The following diagnoses are specifically exempt from the five hundred dollars (\$500) per SFY diagnostic laboratory services benefit limit, and the five hundred dollars (\$500) per SFY radiology/other services health benefit limits: (a) Malignant neoplasm; (b) HIV infection; and (c) renal failure. The cost of related diagnostic laboratory services and radiology/other services will not be included in the calculation of the recipient's five hundred dollars (\$500) per SFY diagnostic laboratory services benefit limit or the five hundred dollars (\$500) per SFY radiology/other services health benefit limit.
- (2) Drug screening will be specifically exempt from the five hundred dollars (\$500) per SFY diagnostic laboratory services health benefit limit when the diagnosis is for Opioid Use Disorder (OUD), and the screening is part of a Medication Assisted Treatment (MAT) plan. The cost of these screenings will not be included in the calculation of the recipient's five hundred dollars (\$500) diagnostic laboratory or radiology/other services health benefit limits.
- (3) Magnetic Resonance Imaging (MRI) and Cardiac Catheterization procedures are specifically exempt from the five hundred dollars (\$500) per SFY outpatient diagnostic laboratory services benefit limit or five hundred dollars (\$500) per SFY radiology/other services health benefit limit. The cost of these procedures will not be included in the calculation of the recipient's five hundred dollars (\$500) per SFY diagnostic laboratory services benefit limit or the recipient's five hundred dollars (\$500) per SFY radiology/other services health benefit limit.
- (4) Portable X-Ray Services are subject to the five hundred dollars (\$500) per SFY X-ray services benefit limit. Extensions of the benefit limit for recipients twenty-one (21) years of age or older will be provided through prior authorization, if medically necessary. Services may be provided to an eligible recipient in their residence upon the written order of the recipient's physician. Portable X-ray services are limited to the following:
 - a. Skeletal films that involve arms and legs, pelvis, vertebral column, and skull;
 - b. Chest films that do not involve the use of contrast media; and
 - c. Abdominal films that do not involve the use of contrast media.
- (5) Two (2) chiropractic X-rays are covered per SFY. Chiropractic X-Ray Services are subject to the five hundred dollars (\$500) benefit limit per SFY for radiology/other services. Extensions of the radiology/other services benefit limit for recipients twenty-one (21) years of age or older will be provided through prior authorization, if medically necessary.

4.a. Nursing Facility Services - Not Provided

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED

October 1, 2023

MEDICALLY NEEDY

4.c. Family Planning Services

- (1) Comprehensive family planning services are limited to an original examination and up to three (3) follow-up visits annually. This limit is based on the state fiscal year (July 1 through June 30).

4.d. (1) Face-to-Face Tobacco Cessation Counseling Services provided (by):

[X] (i) By or under supervision of a physician;

[X] (ii) By any other health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services *other* than tobacco cessation services; * or

(iii) Any other health care professional legally authorized to provide tobacco cessation services under State law *and* who is specifically *designated* by the Secretary in regulations. (None are designated at this time)

*Describe if there are any limits on who can provide these counseling services

Arkansas Medicaid does not limit who can provide these counseling services at this time so long as they meet (ii) and (iii).

****Any benefit package that consists of *less* than four (4) counseling sessions per quit attempt, with a minimum of two (2) quit attempts per 12-month period (eight (8) per year) should be explained below.**

(2) Face-to-Face Tobacco Cessation Counseling Services Benefit Package for Pregnant Women

Provided: [x] No limitations [] With limitations*

*Any benefit package that consists of *less* than four (4) counseling sessions per quit attempt, with a minimum of two (2) quit attempts per 12-month period (eight (8) per year) should be explained below.

4.e. Prescription drugs for treatment of opioid use disorder

- a. Preferred prescription drugs (preferred on the PDL) used for treatment of opioid **or alcohol** use disorder require no prior authorization and do not count against the monthly prescription limits when prescribed as part of a Medication Assisted Treatment plan.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM
STATE ARKANSAS

ATTACHMENT 3.1-B
Page 4g

AMOUNT, DURATION, AND SCOPE OF
SERVICES PROVIDED

Revised: October 1, 2023

MEDICALLY NEEDY

12. Prescribed drugs, dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist

a. Prescribed Drugs

- (1) Each recipient age twenty-one (21) or older may have up to six (6) prescriptions each month under the program. Family Planning, tobacco cessation, prescription drugs for opioid **or alcohol** use disorder when part of a Medication Assisted Treatment plan, EPSDT, high blood pressure, **hypercholesterolemia**, blood modifiers, diabetes and respiratory illness inhaler prescriptions do not count against the prescription limit.
- (2) Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.
- (3) The Medicaid agency provides coverage, to the same extent that it provides coverage for all Medicaid recipients, for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses – with the exception of those covered by Part D plans as supplemental benefits through enhanced alternative coverage as provided in 42 C.F.R. §423.104 (f) (1) (ii) (A) – to full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit – Part D.

The following excluded drugs, set forth on the [Arkansas Medicaid Pharmacy Vendor's Website](#), are covered:

a. select agents when used for weight gain:

b. select agents when used for the symptomatic relief of cough and colds:

c. select prescription vitamins and mineral products, except prenatal vitamins and fluoride:

d. select nonprescription drugs:

- (4) The State will reimburse only for the drugs of pharmaceutical manufacturers who have entered into and have in effect a rebate agreement in compliance with Section 1927 of the Social Security Act, unless the exceptions in Section 1902(a)(54), 1927(a)(3), or 1927(d) apply. The State permits coverage of participating manufacturers' drugs, even though it may be using a formulary or other restrictions. Utilization controls will include prior authorization and may include drug utilization reviews. Any prior authorization program instituted after July 1, 1991, will provide for a 24-hour turnaround from receipt of the request for prior authorization. The prior authorization program also provides for at least a 72-hour supply of drugs in emergency situations.

State: ARKANSAS

Citation	Condition or Requirement
	1. Describe any additional circumstances of “cause” for disenrollment (if any).
	K. <u>Information requirements for beneficiaries</u>
	Place a check mark to affirm state compliance.
1932(a)(5) CFR 438.50 42 CFR 438.10	<u>X</u> The state assures that its state plan program complies with 42 CFR 42 438.10(i) for information requirements specific to MCOs and PCCM programs operated under section 1932(a)(1)(A)(i) state plan amendments. (Place a check mark to affirm state compliance.)
1932(a)(5)(D) 1905(t)	L. <u>List all services that are excluded for each model (MCO & PCCM)</u> The following PCCM exempt services do not require PCP authorization: Dental Services Emergency hospital care Developmental Disabilities Services Community and Employment Support Family Planning Anesthesia Alternative Waiver Programs Adult Developmental Day Treatment Services Core Services only Disease Control Services for Communicable Diseases ARChoices waiver services Gynecological care Inpatient Hospital admissions on the effective date of PCP enrollment or on the day after the effective date of PCP enrollment Medication-Assisted Treatment Services for opioid use disorder when part of a Medication Assisted Treatment plan Mental health services as follows: a. Psychiatry for services provided by a psychiatrist enrolled in Arkansas Medicaid and practice as an individual practitioner b. Rehabilitative Services for Youth and Children Nurse Midwife services ICF/IID Services Nursing Facility services Hospital non-emergency or outpatient clinic services on the effective date of PCP enrollment or on the day after the effective date of PCP enrollment. Ophthalmology and Optometry services Obstetric (antepartum, delivery, and postpartum) services Pharmacy Physician Services for inpatients acute care Transportation

State of Arkansas

1905(a)(29) Medication Assisted Treatment (MAT)

Citation: 3.1(b)(1) Amount, Duration, and Scope of Services: Medically Needy
(Continued)

1915(a)(29) __X__ MAT as described and limited in Supplement 1 to Attachment 3.1-B.

ATTACHMENT 3.1-B identifies the medical and remedial services provided to the medically needy.

State of Arkansas

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the Medically Needy (continued)

i. General Assurance

MAT is covered under the Medicaid state plan for all Medicaid clients who meet the medical necessity criteria for receipt of the service for the period beginning October 1, 2020, and ending September 30, 2025.

ii. Assurances

- a. The state assures coverage of Naltrexone, Buprenorphine, and Methadone and all of the forms of these drugs for MAT that are approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).
- b. The state assures that Methadone for MAT is provided by Opioid Treatment Programs that meet the requirements in 42 C.F.R. Part 8.
- c. The state assures coverage for all formulations of MAT drugs and biologicals for opioid use disorder (OUD) that are approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).

State of Arkansas

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the Medically Needy (continued)

- iii. **Service Package**
The state covers the following counseling services and behavioral health therapies as part of MAT.

- a) Please set forth each service and components of each service (if applicable), along with a description of each service and component service.

MAT is covered exclusively under section 1905(a)(29) for the period of 10/01/2020 through 9/30/2025.

Services available:

1. Individual Behavioral Health Counseling
2. Group Behavioral Health Counseling
3. Marital/Family Behavioral Health Counseling that involves the participation of a non-Medicaid eligible is for the direct benefit of the client. The service must actively involve the client in the sense of being tailored to the client's individual needs. There may be times when, based on clinical judgment, the client is not present during the delivery of the service, but remains the focus of the service.

State of ARKANSAS

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the
Categorically Needy (continued)

- b) Please include each practitioner and provider entity that furnishes each service and component service.
 - 1. Physicians, Physician Assistants and Nurse Practitioners may provide counseling and behavioral health therapies.
 - 2. Licensed Behavioral Health Practitioners: Licensed Psychologists (LP), Licensed Psychological Examiners – Independent (LPEI), Licensed Professional Counselors (LPC), Licensed Certified Social Workers (LCSW), Licensed Marital and Family Therapists (LMFT). This group’s role is to provide the behavioral and substance use disorder counseling required.
- c) Please include a brief summary of the qualifications for each practitioner or provider entity that the state requires. Include any licensure, certification, registration, education, experience, training and supervisory arrangements that the state requires.

Physicians and Nurse Practitioners must be Arkansas Licensed.

Physician Assistants must have a legal agreement to practice under an Arkansas Licensed Physician per Arkansas statute.

State of ARKANSAS

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the
Categorically Needy (continued)

Licensed Psychologists (LP), Licensed Psychological Examiners – Independent (LPEI), Licensed Professional Counselors (LPC), Licensed Certified Social Workers (LCSW), and Licensed Marital and Family Therapists (LMFT) must possess a current and valid Arkansas license.

iv. Utilization Controls

- ☒ The state has drug utilization controls in place. (Check each of the following that apply)
- ☐ Generic first policy
- ☒ Preferred drug lists
- ☐ Clinical criteria
- ☒ Quantity limits
- ☐ The state does not have drug utilization controls in place.

v. Limitations

Describe the state's limitations on amount, duration, and scope of MAT drugs, biologicals, and counseling and behavioral therapies related to MAT.

MAT drugs and biologicals are limited based on the FDA indication and manufacturers' prescribing guidelines. Some medications are also subject to status on the Preferred Drug List (**PDL**).

The preferred (**PDL**) agents for MAT therapy **do not** require a PA.

The Arkansas Medicaid Pharmacy program removed the prior authorization for preferred Buprenorphine products on 1/1/2020, due to Arkansas State Law from Act 964 which prohibits a prior authorization for Medication Assisted Treatment of Opioid Use Disorder. The removal of prior authorization was for MAT treatment according to SAMHSA guidelines. In addition, on 1/22/2021, per section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), for all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) to be covered, Arkansas instructed the pharmacy vendor to bypass the non-rebate-participation, repackaged indicator, inner indicator, and prioritize coverage of all the pharmacy MAT products.

PRA Disclosure Statement - This information is being collected to assist the Centers for Medicare & Medicaid Services in implementing section 1006(b) of the SUPPORT for Patients and Communities Act (P.L. 115-271) enacted on October 24, 2018. Section 1006(b) requires state Medicaid plans to provide coverage of Medication-Assisted Treatment (MAT) for all Medicaid enrollees as a mandatory Medicaid state plan benefit for the period beginning October 1, 2020, and ending September 30, 2025. Under the Privacy Act of 1974 any personally identifying information obtained will be kept private to the extent of the law. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for this project is 0938-1148 (CMS-10398 # 60). Public burden for all of the collection of information requirements under this control number is estimated to take about 80 hours per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to CMS, 7500 Security Boulevard, Attn: Paperwork Reduction Act Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

State of ARKANSAS

1905(a)(29) Medication-Assisted Treatment (MAT)

Citation: 3.1(a)(1) Amount, Duration, and Scope of Services: Categorically Needy
(Continued)

1905(a)(29) ___X__MAT as described and limited in Supplement __5__ to Attachment 3.1-A.

ATTACHMENT 3.1-A identifies the medical and remedial services provided to the categorically needy.

State of ARKANSAS

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the
Categorically Needy (continued)

i. General Assurance

MAT is covered under the Medicaid state plan for all Medicaid clients who meet the medical necessity criteria for receipt of the service for the period beginning October 1, 2020 and ending September 30, 2025.

ii. Assurances

- a. The state assures coverage of Naltrexone, Buprenorphine, and Methadone, all of the forms of these drugs for MAT that are approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), and all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).
- b. The state assures that Methadone for MAT is provided by Opioid Treatment Programs that meet the requirements in 42 C.F.R. Part 8.
- c. The state assures coverage for all formulations of MAT drugs and biologicals for **opioid use disorder (OUD)** that are approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).

State of ARKANSAS

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the
Categorically Needy (continued)

iii. Service Package

The state covers the following counseling services and behavioral health therapies as part of MAT.

- a) Please set forth each service and components of each service (if applicable), along with a description of each service and component service.

MAT is covered exclusively under section 1905(a)(29) for the period of 10/01/2020 through 9/30/2025.

Services available:

1. Individual Behavioral Health Counseling
2. Group Behavioral Health Counseling
3. Marital/Family Behavioral Health Counseling that involves the participation of a non-Medicaid eligible is for the direct benefit of the client. The service must actively involve the client in the sense of being tailored to the client's individual needs. There may be times when, based on clinical judgment, the client is not present during the delivery of the service, but remains the focus of the service.

State of ARKANSAS

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the
Categorically Needy (continued)

b) Please include each practitioner and provider entity that furnishes each service and component service.

1. Physicians, Physician Assistants, and Nurse Practitioners may provide counseling and behavioral health therapies.

2. Licensed Behavioral Health Practitioners: Licensed Psychologists (LP), Licensed Psychological Examiners – Independent (LPEI), Licensed Professional Counselors (LPC), Licensed Certified Social Workers (LCSW), Licensed Marital and Family Therapists (LMFT), This group's role is to provide the behavioral and substance use disorder counseling required

c) Please include a brief summary of the qualifications for each practitioner or provider entity that the state requires. Include any licensure, certification, registration, education, experience, training, and supervisory arrangements that the state requires.

Physicians and Nurse Practitioners must be Arkansas Licensed.

Physician Assistants must have a legal agreement to practice under an Arkansas Licensed Physician per Arkansas statute.

State of ARKANSAS

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the
Categorically Needy (continued)

Licensed Psychologists (LP), Licensed Psychological Examiners – Independent (LPEI), Licensed Professional Counselors (LPC), Licensed Certified Social Workers (LCSW), and Licensed Marital and Family Therapists (LMFT) must possess a current and valid Arkansas license.

iv. Utilization Controls

- ☒ The state has drug utilization controls in place. (Check each of the following that apply)
- ☐ Generic first policy
- ☒ Preferred drug lists
- ☐ Clinical criteria
- ☒ Quantity limits
- ☐ The state does not have drug utilization controls in place.

v. Limitations

Describe the state's limitations on amount, duration, and scope of MAT drugs, biologicals, and counseling and behavioral therapies related to MAT.

MAT drugs and biologicals are limited based on the FDA indication and manufacturers' prescribing guidelines. Some medications are also subject to status on the Preferred Drug List (**PDL**).

The preferred (**PDL**) agents for MAT therapy **do not** require a Prior Authorization.

The Arkansas Medicaid Pharmacy program removed the prior authorization for preferred Buprenorphine products on 1/1/2020, due to Arkansas State Law from Act 964 which prohibits a prior authorization for Medication Assisted Treatment of Opioid Use Disorder. The removal of prior authorization was for MAT treatment according to SAMHSA guidelines. In addition, on 1/22/2021, per section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), for all biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) to be covered, Arkansas instructed the pharmacy vendor to bypass the non-rebate-participation, repackaged indicator, inner indicator, and prioritize coverage of all the pharmacy MAT products.

State of ARKANSAS

1905(a)(29) Medication-Assisted Treatment (MAT)

Amount, Duration, and Scope of Medical and Remedial Care Services Provided to the
Categorically Needy (continued)

PRA Disclosure Statement - This information is being collected to assist the Centers for Medicare & Medicaid Services in implementing section 1006(b) of the SUPPORT for Patients and Communities Act (P.L. 115-271) enacted on October 24, 2018. Section 1006(b) requires state Medicaid plans to provide coverage of Medication-Assisted Treatment (MAT) for all Medicaid enrollees as a mandatory Medicaid state plan benefit for the period beginning October 1, 2020, and ending September 30, 2025. Under the Privacy Act of 1974 any personally identifying information obtained will be kept private to the extent of the law. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for this project is 0938-1148 (CMS-10398 # 60). Public burden for all of the collection of information requirements under this control number is estimated to take about 80 hours per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to CMS, 7500 Security Boulevard, Attn: Paperwork Reduction Act Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

TOC required**172.100 Services not Requiring a PCP Referral****2-1-24**

The services listed in this section do not require a PCP referral:

- A. Adult Developmental Day Treatment (ADDT) core services;
- B. ARChoices waiver services;
- C. Anesthesia services, excluding outpatient pain management;
- D. Assessment (including the physician's assessment) in the emergency department of an acute care hospital to determine whether an emergency condition exists. The physician and facility assessment services do not require a PCP referral (if the Medicaid beneficiary is enrolled with a PCP);
- E. Chiropractic services;
- F. Dental services;
- G. Developmental Disabilities Services Community and Employment Support;
- H. Disease control services for communicable diseases, including testing for and treating sexually transmitted diseases such as HIV/AIDS;
- I. Emergency services in an acute care hospital emergency department, including emergency physician services;
- J. Family Planning services;
- K. Gynecological care;
- L. Inpatient hospital admissions on the effective date of PCP enrollment or on the day after the effective date of PCP enrollment;
- M. Mental health services, as follows:
 - 1. Psychiatry for services provided by a psychiatrist enrolled in Arkansas Medicaid and practicing as an individual practitioner
 - 2. Medication Assisted Treatment for Opioid Use Disorder
 - 3. Rehabilitative Services for Youth and Children (RSYC) Program
- N. Obstetric (antepartum, delivery, and postpartum) services
 - 1. Only obstetric-gynecologic services are exempt from the PCP referral requirement
 - 2. The obstetrician or the PCP may order home health care for antepartum or postpartum complications
 - 3. The PCP must perform non-obstetric, non-gynecologic medical services for a pregnant woman or refer her to an appropriate provider
- O. Nursing facility services and intermediate care facility for individuals with intellectual disabilities (ICF/IID) services;
- P. Ophthalmology services, including eye examinations, eyeglasses, and the treatment of diseases and conditions of the eye;

-
- Q. Optometry services;
 - R. Pharmacy services;
 - S. Physician services for inpatients in an acute care hospital, including direct patient care (initial and subsequent evaluation and management services, surgery, etc.), and indirect care (pathology, interpretation of X-rays, etc.);
 - T. Hospital non-emergency or outpatient clinic services on the effective date of PCP enrollment or on the day after the effective date of PCP enrollment;
 - U. Physician visits (except consultations, which do require PCP referral) in the outpatient departments of acute care hospitals but only if the Medicaid beneficiary is enrolled with a PCP and the services are within applicable benefit limitations;
 - V. Professional components of diagnostic laboratory, radiology, and machine tests in the outpatient departments of acute care hospitals, but only if the Medicaid beneficiary is enrolled with a PCP and the services are within applicable benefit limitations;
 - W. Targeted Case Management services provided by the Division of Youth Services or the Division of Children and Family Services under an inter-agency agreement with the Division of Medical Services;
 - X. Transportation (emergency and non-emergency) to Medicaid-covered services; and
 - Y. Other services, such as sexual abuse examinations, when the Medicaid Program determines that restricting access to care would be detrimental to the patient's welfare or to program integrity or would create unnecessary hardship.

TOC required

214.200 Medication Assisted Treatment and Opioid Use Disorder or Alcohol 2-1-24
Use Disorder Treatment Drugs

Medication Assisted Treatment for Opioid or Alcohol Use Disorders is available to all qualifying Medicaid beneficiaries. All rules and regulations promulgated within the Physician's provider manual for provision of this service must be followed.

TOC not required**212.220 Services Furnished in Collaboration with a Physician****2-1-24**

Nurse practitioner services are performed in collaboration with a physician or physicians.

- A. Collaboration is a process in which a nurse practitioner works with one (1) or more physicians to deliver health care services within the scope of the practitioner's expertise, with medical direction, and appropriate supervision as provided for in jointly developed guidelines or other mechanisms as provided by State law.
- B. The collaborating physician does not need to be present with the nurse practitioner when the services are furnished or to make an independent evaluation of each patient who is seen by the nurse practitioner.
- C. Medication Assisted Treatment (MAT) for Opioid or Alcohol Use Disorders is available to all qualifying Medicaid beneficiaries. All rules and regulations promulgated within the Physician's provider manual for provision of this service must be followed.

220.000 Benefit Limits**2-1-24**

- A. Arkansas Medicaid clients aged twenty-one (21) and older are limited to sixteen (16) FQHC core service encounters per state fiscal year (SFY, July 1 through June 30).

The following services are counted toward the sixteen (16) encounters per SFY benefit limit:

- 1. Federally Qualified Health Center (FQHC) encounters;
- 2. Physician visits in the office, patient's home, or nursing facility;
- 3. Certified nurse-midwife visits;
- 4. RHC encounters;
- 5. Medical services provided by a dentist;
- 6. Medical services provided by an optometrist; and
- 7. Advanced practice registered nurse services in the office, patient's home, or nursing facility.

- B. The following services are not counted toward the sixteen (16) encounters per SFY benefit limit:

- 1. FQHC inpatient hospital visits do not count against the FQHC encounter benefit limit. Medicaid covers only one (1) FQHC inpatient hospital visit per Medicaid-covered inpatient day, for clients of all ages.
- 2. Obstetric and gynecologic procedures reported by CPT surgical procedure code do not count against the FQHC encounter benefit limit.
- 3. Family planning surgeries and encounters do not count against the FQHC encounter benefit limit.
- 4. Medication Assisted Treatment for Opioid Use Disorder does not count against the FQHC encounter limit when it is the primary diagnosis ([View ICD OUD Codes](#)).

- C. Medicaid clients under the age of twenty-one (21) in the Child Health Services (EPSDT) Program are not subject to an FQHC encounter benefit limit.

TOC required**272.501 Medication Assisted Treatment and Opioid or Alcohol Use Disorder Treatment Drugs 2-1-24**

Medication Assisted Treatment for Opioid or Alcohol Use Disorders is available to all qualifying Medicaid beneficiaries. All rules and regulations promulgated within the Physician's provider manual for provision of this service must be followed.

Effective for dates of services on and after **October 1, 2023**, the following Healthcare Common Procedure Coding System Level II (HCPCS) procedure codes are payable:

[**View or print the procedure codes for Hospital/Critical Access Hospitals/ESRD services.**](#)

To access prior approval of these HCPCS procedure codes when necessary, refer to the Pharmacy Memorandums, Criteria Documents and forms found at the [**DHS contracted Pharmacy vendor website.**](#)

TOC required**252.448 Medication Assisted Treatment and Opioid or Alcohol Use Disorder Treatment Drugs 2-1-24**

Medication Assisted Treatment for Opioid or Alcohol Use Disorders is available to all qualifying Medicaid beneficiaries. All rules and regulations promulgated within the Physician's provider manual for provision of this service must be followed.

Effective for dates of services on and after **October 1, 2023**, the following Healthcare Common Procedure Coding System Level II (HCPCS) procedure codes are payable:

[View or print the procedure codes for Nurse Practitioner services.](#)

To access prior approval of these HCPCS procedure codes when necessary, refer to the Pharmacy Memorandums, Criteria Documents and forms found at the **[DHS contracted Pharmacy vendor website.](#)**

TOC required**211.105 Coverage of Medication Assisted Treatment and Opioid Use 2-1-24**
Disorder or Alcohol Use Disorder Treatment Drugs

Coverage of preferred prescription drugs (preferred on the PDL) for opioid or alcohol use disorder are available without prior authorization to eligible Medicaid beneficiaries. Products for other use disorders may still require PA. Additional criteria can be found at the [DHS contracted Pharmacy vendor's website](#).

Coverage and Limitations

- A. Reimbursement for preferred drugs is available with a valid prescription when prescribed according to FDA approved label.
- B. Prescription drugs will not count against the monthly prescription benefit limit and are not subject to co-pay when used for a primary diagnosis of opioid or alcohol use disorder.
- C. FDA dosing and prescribing limitations apply.

212.000 Exclusions 2-1-24

- A. Products manufactured by non-rebating pharmaceutical companies.
- B. Effective January 1, 2006, the Medicaid agency will not cover any drug covered by Medicare Part D for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.
- C. The Medicaid agency provides coverage, to the same extent that it provides coverage for all Medicaid beneficiaries under § 1927 (d) of the Social Security Act, for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses; with the exception of those covered by Part D plans as supplemental benefits through enhanced alternative coverage as provided in 42 CFR § 423.104 (f) (1) (ii) (A), to full-benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit - Part D.

The following excluded drugs are set forth on the [DHS Contracted Pharmacy Vendor website](#).

- 1. Select agents when used for weight gain
- 2. Select agents when used for the symptomatic relief of cough and colds
- 3. Select prescription vitamins and mineral products, except prenatal vitamins and fluoride
- 4. Select nonprescription drugs
- D. Medical accessories are not covered under the Arkansas Medicaid Pharmacy Program. Typical examples of medical accessories are atomizers, nebulizers, hot water bottles, fountain syringes, ice bags and caps, urinals, bedpans, glucose monitoring devices and supplies, cotton, gauze and bandages, wheelchairs, crutches, braces, supports, diapers, and nutritional products.

213.100 Monthly Prescription Limits 2-1-24

- A. Each prescription for all Medicaid-eligible clients may be filled for up to a maximum thirty-one-day supply. Maintenance medications for chronic illnesses must be prescribed and dispensed in quantities sufficient (not to exceed the maximum thirty-one-day supply per prescription) to effect optimum economy in dispensing. For drugs that are specially

packaged for therapy exceeding thirty-one (31) days, the days' supply limit (other than thirty-one (31)), as approved by the agency, will be allowed for claims processing. Contact the Pharmacy Help Desk to inquire about specific days' supply limits on specially packaged dosage units.

[View or print the contact information for the DHS contracted Pharmacy vendor.](#)

- B. Each Medicaid-eligible client twenty-one (21) years of age and older is limited to six (6) Medicaid-paid prescriptions per calendar month.

Each prescription filled counts toward the monthly prescription limit except for the following:

1. Family planning items. Including without limitation, birth control pills, contraceptive foams, contraceptive sponges, suppositories, jellies, prophylactics, and diaphragms;
 2. Prescriptions for Medicaid-eligible long-term care facility residents (must be for Medicaid-covered drugs);
 3. Prescriptions for Medicaid-eligible clients under twenty-one (21) years of age in the Child Health Services/Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program. (must be for Medicaid-covered drugs);
 4. Prescriptions for opioid or alcohol use disorder treatment;
 5. Prescriptions for tobacco cessation products;
 6. Prescriptions for the treatment of high blood pressure;
 7. Prescriptions for the treatment of hypercholesterolemia;
 8. Blood modifier medications;
 9. Prescriptions for the treatment of diabetes; and
 10. Inhalers to treat respiratory illness.
- C. Living Choices Assisted Living Program clients are eligible for up to nine (9) medically necessary prescriptions per month.
- D. After the client has received the maximum monthly benefit or the maximum monthly extended benefit, they will be responsible for paying for their own medications for the remainder of the month.

TOC required**201.500 Providers of Medication-Assisted Treatment (MAT) for Opioid or Alcohol Use Disorder 2-1-24**

Providers of Medication-Assisted Treatment (MAT) for Opioid or Alcohol Use Disorder must be licensed in Arkansas and be enrolled with Arkansas Medicaid.

201.510 Providers of Medication-Assisted Treatment (MAT) for Opioid or Alcohol Use Disorder in Arkansas and Bordering States 2-1-24

Providers of MAT in Arkansas and the six (6) bordering states (Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas) may be included as routine services providers if they meet all participation requirements for enrollment in Arkansas Medicaid and requirements outlined in Section 201.500.

Reimbursement may be available for MAT covered in the Arkansas Medicaid Program when treating Opioid or Alcohol Use Disorders. Claims must be filed according to the specifications in this manual. This includes assignment of ICD and HCPCS codes for all services rendered.

201.520 Providers of Medication-Assisted Treatment (MAT) for Opioid or Alcohol Use Disorder in States Not Bordering Arkansas 2-1-24

- A. Providers in states not bordering Arkansas may enroll in the Arkansas Medicaid Program as limited services providers only after they have provided services to an Arkansas Medicaid eligible beneficiary and have a claim or claims to file with Arkansas Medicaid.

To enroll, a non-bordering state provider must download an Arkansas Medicaid application and contract from the Arkansas Medicaid website and submit the application, contract, and claim to Arkansas Medicaid Provider Enrollment. A provider number will be assigned upon approval of the provider application and Medicaid contract. [View or print the provider enrollment and contract package \(Application Packet\).](#) [View or print Provider Enrollment Unit contact information.](#)

- B. Limited services providers remain enrolled for one (1) year.
1. If a limited services provider provides services to another Arkansas Medicaid beneficiary during the year of enrollment and bills Medicaid, the enrollment may continue for one (1) year past the most recent claim's last date of service, if the enrollment file is kept current.
 2. During the enrollment period, the provider may file any subsequent claims directly to the Medicaid fiscal agent. Limited services providers are strongly encouraged to file subsequent claims through the Arkansas Medicaid website because the front-end processing of web-based claims ensures prompt adjudication and facilitates reimbursement.

203.271 Medication-Assisted Treatment Provider Role for Administering Opioid or Alcohol Use Disorder Services 2-1-24

SAMHSA defines Medication Assisted Treatment (MAT) as the use of medications in combination with counseling and behavioral therapies for the treatment of substance use disorders. A combination of medication and behavioral therapies is effective in the treatment of substance use disorders and can help some people to sustain recovery. This definition and other MAT guidelines can be found at the [SAMHSA website](#).

Only providers who have met the requirements of Section 201.500 may prescribe medication required for the treatment of Opioid or Alcohol Use Disorder for Arkansas Medicaid beneficiaries in conjunction with coordinating all follow-up and referrals for counseling and other services. This program applies only to prescribers of FDA-approved drugs for treatment of Opioid or Alcohol Use Disorder and will not be reimbursed for the practice of pain management.

263.100 Coverage of Drugs Used for Opioid or Alcohol Use Treatment**2-1-24**

Coverage of preferred prescription drugs (preferred on the PDL) for opioid or alcohol use disorder and tobacco cessation are available without prior authorization to eligible Medicaid beneficiaries. Products for other use disorders may still require PA. Additional criteria can be found at the [DHS contracted Pharmacy vendor's website](#).

Coverage and Limitations

- A. Reimbursement for preferred drugs is available with a valid prescription when prescribed according to FDA approved label.
- B. Prescription drugs for treatment of opioid or alcohol use disorder will not count against the monthly prescription benefit limit and are not subject to co-pay.
- C. FDA dosing and prescribing limitations apply.

292.920 Medication Assisted Treatment (MAT) for Opioid Use Disorder**2-1-24**

There are two (2) methods of billing for MAT.

1. Method 1- Inclusive Rate

- a. The inclusive method of billing shall be used when all SAMHSA guideline services as set forth at a minimum in Section 230.000 are provided on the same date of service by the same billing group.
 - i. For new patients, the provider group shall use HCPCS code, modifier X2 and list an Opioid Use Disorder ICD-10 code as primary. The performing provider must be enrolled as a MAT provider and the claim will pay a single rate for all services (Office Visit, counseling, case management, medication induction/maintenance, etc). Drug and lab testing/screening will continue to be billed separately, using an X2 modifier with the proper code for the test or screen.
 - ii. For established patients requiring continuing follow-up MAT treatment, the provider group shall use HCPCS code, modifiers U8, X2, and list an Opioid Use Disorder ICD-10 code as primary. The performing provider must be enrolled as a MAT provider and the claim will pay a single rate for all follow-up services as indicated on the treatment plan and set forth at a minimum in Section 230.000 (Office Visit, counseling and medication induction/maintenance, etc). Drug and lab testing/screening will continue to be billed separately, using an X2 modifier with the proper code for the test or screen.
 - iii. For established patients requiring maintenance follow-up MAT treatment, the provider group shall use HCPCS code, modifiers U8, X4, and list an Opioid Use Disorder ICD-10 code as primary. The performing provider must be enrolled as a MAT provider and the claim will pay a single rate for all follow-up services as indicated on the treatment plan and set forth at a minimum in Section 230.000 (Office Visit, counseling and medication induction/maintenance, etc). Drug and lab testing/screening will continue to be billed separately, using an X4 modifier with the proper code for the test or screen.
 - iv. The specific HCPCS code and modifiers found in the following link are required

for billing the inclusive rate. [View or print the procedure codes and modifiers for MAT services.](#)

2. Method 2 – Regular Fee-for-Service Rates

- a. The regular Fee-for-Service method of billing shall be used when all SAMHSA guideline services as set forth at a minimum in Section 230.000 cannot be provided on the same date of service, or cannot be provided by the same billing group who has the MAT specialized performing provider; therefore, causing some SAMHSA guideline services to be referred elsewhere.
 - i. For new patients, the MAT provider shall use the appropriate E & M (office visit) code, add modifier X2, and list an Opioid Use Disorder ICD-10 code as primary. The provider shall use the proper Lab and Urine Screening codes plus the additional X2 modifier for the screenings required.
 - ii. For established patients requiring continuing treatment, the MAT provider shall use the appropriate E & M (office visit) code, add modifier X2, and list an Opioid Use Disorder ICD-10 code as primary. The provider shall use the proper Lab and Urine Screening codes plus the additional X2 modifier for the screenings required.
 - iii. For established patients requiring maintenance treatment, the MAT provider shall use the appropriate E & M (office visit) code, add modifier X4, and list an Opioid Use Disorder ICD-10 code as primary. The provider shall use the proper Lab and Urine Screening codes plus the additional X4 modifier for the screenings required.

Allowable ICD-10 codes for Opioid Use Disorder may be found here: ([View ICD OUD Codes.](#))

Allowable lab and screening codes may be found here: ([View Lab and Screening Codes.](#))

Providers utilizing telemedicine, regardless of Method, shall adhere to telemedicine rules listed in Sections 105.190 and 305.000 in addition to those above. The provider at the distance site shall use both the GT modifier and the X2 or X4 modifier on the service claim.

TOC not required**211.100 Rural Health Clinic Core Services****2-1-24**

Rural Health Clinic core services are as follows:

- A. Professional services that are performed by a physician at the clinic or are performed away from the clinic by a physician whose agreement with the clinic provides that he or she will be paid by the clinic for such services;
- B. Services and supplies furnished "incident to" a physician's professional services;
- C. Services provided by non-physician, services of physician assistants, nurse practitioners, nurse midwives, and specialized nurse practitioners when the provider is legally:
 - 1. employed by, or receiving compensation from a rural health clinic;
 - 2. under the medical supervision of a physician;
 - 3. acting in accordance with any medical orders for the care and treatment of a patient prepared by a physician; and
 - 4. acting within their scope of practice by providing services they are legally permitted to perform by the state in which the service is provided if the services would be covered if furnished by a physician;
- D. Services and supplies that are furnished as an incident to professional services furnished by a nurse practitioner, physician assistant, nurse midwife, or other specialized nurse practitioner;
- E. Visiting nurse services on a part-time or intermittent basis to home-bound patients in areas in which there is a shortage of home health agencies.

Note: For purposes of visiting nurse care, a home-bound patient is one who is permanently or temporarily confined to his or her place of residence because of a medical or health condition. Institutions, such as a hospital or nursing care facility, are not considered a patient's residence.

Note: A patient's place of residence is where he or she lives, unless he or she is in an institution such as a nursing facility, hospital, or intermediate care facility for individuals with intellectual disabilities (ICF/IID); and

- F. Medication Assisted Treatment (MAT) for Opioid or Alcohol Use Disorders is available to all qualifying Medicaid beneficiaries. All rules and regulations promulgated within the Physician's provider manual for provision of this service must be followed.

218.100 RHC Encounter Benefit Limits**2-1-24**

- A. Medicaid clients under the age of twenty-one (21) in the Child Health Services (EPSDT) Program do not have a rural health clinic RHC encounter benefit limit.
- B. A benefit limit of sixteen (16) encounters per state fiscal year (SFY), July 1 through June 30, has been established for clients twenty-one (21) years or older. The following services are counted toward the per SFY encounter benefit limit:
 - 1. Provider visits in the office, client's home, or nursing facility;
 - 2. Certified nurse-midwife visits;
 - 3. RHC encounters;

4. Medical services provided by a dentist;
5. Medical services provided by an optometrist;
6. Advanced practice registered nurse (APRN) services in the office, client's home, or nursing facility; and
7. Federally qualified health center (FQHC) encounters.

Global obstetric fees are not counted against the service encounter limit. Itemized obstetric office visits are not counted in the limit.

The established benefit limit does not apply to individuals receiving Medication Assisted Treatment for Opioid Use Disorder when it is the primary diagnosis ([View ICD OUD Codes](#)).

Extensions of the benefit limit will be considered for services beyond the established benefit limit when documentation verifies medical necessity. Refer to Section 218.310 of this manual for procedures for obtaining extension of benefits.

RULES SUBMITTED FOR REPEAL

Rule #1: PUB 85: Differential Response: A Family-Centered Approach to Strengthen and Support Families

Rule #2: PUB 357: Child Maltreatment Investigation Determination Guide



support

REPEAL- EO 23-02

What is Differential Response?

Differential Response (DR) is another way of responding to allegations of child maltreatment. DR is different from DCFS's traditional investigation process. It allows some allegations that meet the criteria of maltreatment to be diverted from the investigative pathway and serviced through the Differential Response track. DR is designed to engage low to moderate risk families in the services needed to address the allegation and prevent the occurrence of future maltreatment.

How to Obtain a Copy of Your DR Case

If you are the parent (custodial or non-custodial), guardian, or legal custodian of the child you can request a copy of the DR Case (after it is closed) by sending a written notarized request with your name and child's name, Social Security Numbers, and a \$10 check or money order (no cash or temporary checks) made payable to the Department of Human Services. The request should be mailed to:

Central Registry
P.O. Box 1437, (Slot S 566)
Little Rock, AR 72203-1437

Family Service Worker	Telephone
Family Service Worker Supervisor	Telephone

Cherisse Cashaw	501-682-6807
DR Coordinator	Telephone



The Division of Children
and Family Services



**Differential
Response:**
**a family-centered
approach to
strengthen
and support
families**

the Big Picture:

Partnering with community providers to support families

How Does DR Work?

1. A report of alleged maltreatment is made to the Child Abuse Hotline.
2. An initial screening of the report is conducted by the hotline worker to determine if the allegations meet the legal criteria for maltreatment.
3. Reports are either "screened-in" or "screened-out" based upon state maltreatment criteria (the child's age and any disabilities will further determine whether these allegations will go to the DR or investigative track.
4. If a report is "screened-in", it becomes eligible to be assigned to either the investigative track or the Differential Response track (if it meets the criteria for DR).
5. DR will be assigned to the local DCFS Office to begin engagement and assessment of needs with the family.



focused solutions can help keep families together

Care * Commit * Connect



What are the Criteria to Qualify for DR?

1. Identifying information for the family members and their current address or a means to locate them is known at the time of the report.
2. The caregivers are parents, birth or adoptive, legal guardians, custodians, or any person standing in place of a parent.
3. The family has no pending investigation or open protective services or supportive services case.
4. The children, siblings, or other household members are not currently in the care and custody of DCFS or wards of the court.
5. Protective Custody of the children has not been taken or required in the current investigation.
6. The reported allegations shall only include those allegations listed on the next page under "What Allegations are Accepted to DR?".

What Allegations are Accepted to DR?

- Inadequate Food
- Inadequate Clothing
- Inadequate Shelter
- Inadequate Supervision
- Educational Neglect
- Environmental Neglect
- Medical Neglect
- Lock Out

The allegations below will also be sent to the DR track if they allegedly occurred more than one year ago and/or if the hotline caller cannot verify an injury through physical signs (e.g., scarring), medical information, dated photographs, etc.:

- Striking a child age 7 or older on the face
- Striking a child with a closed fist
- Human Bites
- Sprains/Dislocations
- Throwing a child

*If any of these five allegations allegedly occurred less than one year and/or if the caller can verify an injury through physical signs, medical information, dated photographs, etc., then the allegations will be sent to the investigative track.

Arkansas Department of Human Services
Division of Children and Family Services

REPEAL-EO 23-02

~~Child
Maltreatment
Investigation
Determination
Guide~~

~~PUB-357 R. July 2020~~

Table of Contents

Introduction	3
Glossary	3
Section 1: Categories and Types and Maltreatment	4
1.1 Abandonment	5
Abandonment for an indefinite period:	5
Abandonment without just cause:	5
Abandonment by articulated intent:	6
1.2 Abuse	7
Extreme or repeated cruelty:	9
Threat of harm:	9
Mental injury:	10
Injury at variance with explanation given:	10
Nonaccidental physical injury:	11
Abuse with physical injury and without justifiable cause:	11
Abuse with or without physical injury:	12
Abuse involving noxious or poisonous substances that may interfere with normal physiological functions:	12
Abuse involving substances that may alter the mood of a child:	13
Abuse involving opoids or a chemical that may interfere with normal physiological functions:	13
Abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness:	14
Human trafficking:	15
Female genital mutilation:	15
1.3 Neglect	17
Failure to prevent abuse:	18
Failure to provide necessary food, clothing, shelter, or medical treatment:	19
Failure to protect from maltreatment or parental unfitness:	19
Failure to provide for essential and necessary needs:	20
Failure to provide for care, maintenance, or support:	20
Failure to assume responsibility for a child:	20
Inadequate supervision by leaving a child alone:	21
Inadequate supervision by placing child in a dangerous situation:	21
Educational neglect by failing to enroll a child in school:	22
Educational neglect due to absence from school:	22
Presence of illegal substance in a child when a child is born:	22
Presence of illegal substance in a mother when a child is born:	23
1.4 Sexual Abuse	24

<i>Sexual intercourse:</i>	25
<i>Deviate sexual activity:</i>	28
<i>Sexual contact:</i>	32
<i>Indecent exposure:</i>	37
<i>Pornography:</i>	37
<i>Live Sexual Activity:</i>	39
<i>Phone Sex Line:</i>	40
<i>Voyeurism:</i>	41
<i>Sex Trafficking:</i>	41
1.5 Sexual Exploitation	42
<i>Sexual exploitation:</i>	42
Section 2: Index of All Child Maltreatment Types Within Each Maltreatment Category (types listed alphabetically within each category)	43

~~REPEAL EO 23 02~~

Introduction

~~This publication outlines the legal elements required to make a true finding for child maltreatment at the conclusion of a child maltreatment investigation as per the Child Maltreatment Act. This publication is promulgated under the authority of § 12-18-105 of the Arkansas Code to carry out the Child Maltreatment Act. The information within this publication, therefore, has the force and effect of law.~~

~~This publication is designed to help investigators identify the elements that must be established before an allegation of child maltreatment can be determined true under the Child Maltreatment Act, which defines child maltreatment as conduct that falls under one (1) or more of five (5) categories: (1) Abandonment, (2) Abuse, (3) Neglect, (4) Sexual Abuse, and (5) Sexual Exploitation.~~

~~To do this, Section 1 sets out the statutory definition and exceptions for each category of child maltreatment. Section 1 then explains the elements required to make a true finding for each category of child maltreatment and each type of child maltreatment that may occur under each category of child maltreatment. Section 2 provides an index of all thirty-eight (38) types of child maltreatment.~~

~~An investigator can only make a true finding as to one (1) or more of the five (5) categories of child maltreatment and only then if the investigator finds that each of the elements for the applicable child maltreatment category type are established by a preponderance of the evidence. "Preponderance of the evidence" is a legal standard of proof that means that it is "more likely than not" that child maltreatment occurred based on all the evidence that the investigator is able to collect during the given investigation.~~

~~A true finding cannot be made based solely on the examples given in this publication; a true finding must be based on the investigator's determination that each element of the given category type of child maltreatment is supported by a preponderance of the evidence. The examples do not change the elements required to constitute child maltreatment, but rather merely provide possible ways in which a given category type of child maltreatment could occur.~~

Glossary

~~A/O. Alleged Offender: The person alleged to have committed child maltreatment.~~

~~A/V. Alleged Victim: The person who is the alleged victim of child maltreatment.~~

~~Investigator: An employee of the Department of Human Services (DHS) or the Arkansas State Police who investigates allegations of child maltreatment.~~

~~Section 1: Categories and Types and Maltreatment~~

- ~~1.1 Abandonment.~~
- ~~1.2 Abuse.~~
- ~~1.3 Neglect.~~
- ~~1.4 Sexual Abuse.~~
- ~~1.5 Sexual Exploitation.~~

~~REPEAL EO 23 02~~

1.1 Abandonment

Definition

~~Abandonment means the failure of a parent to provide reasonable support and to maintain regular contact with a child 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 or the failure of a parent to support or maintain regular contact with a child without just cause. Abandonment also means an articulated intent to forego parental responsibility.~~

Exceptions

~~*Married Minor Exception.* Abandonment does not include acts or omissions of a parent towards a married minor.~~

~~*Disrupted Adoption Exception.* Abandonment does not include situations in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources.~~

Making a True Determination

~~Based on the definition above and unless an exception applies, an investigator may determine that an allegation of abandonment is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of abandonment:~~

Abandonment for an indefinite period:

- ~~1) A/O is a parent of the A/V;~~
- ~~2) A/V was under eighteen (18) years old when the alleged abandonment occurred;~~
- ~~3) A/O did not provide reasonable support for the A/V and maintain regular contact with the A/V through statement or contact; and~~
- ~~4) A/O intends to continue the lack of reasonable support and regular contact for an indefinite period in the future.~~

Abandonment without just cause:

- ~~1) A/O is a parent of the A/V;~~
- ~~2) A/V was under eighteen (18) years old when the alleged abandonment occurred;~~
- ~~3) A/O did not provide reasonable support for the A/V or maintain regular contact with the A/V through statement or contact; and~~

- 4) ~~A/O did not have just cause in failing to support or maintain regular contact with the A/V.~~

~~Abandonment by articulated intent:~~

- 1) ~~A/O is a parent of the A/V;~~
- 2) ~~A/V was under eighteen (18) years old when the alleged abandonment occurred; and~~
- 3) ~~A/O articulated an intent to forego parental responsibility of the A/V.~~

~~REPEAL EO 23 02~~

1.2 Abuse

Definition

~~Abuse means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the 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, a significant other of the child's parent, or any person legally responsible for the child's welfare, but excluding the spouse of a minor:~~

- ~~• Extreme or repeated cruelty to a child;~~
- ~~• Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;~~
- ~~• Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;~~
- ~~• Any injury that is at variance with the history given;~~
- ~~• Any nonaccidental physical injury;~~
- ~~• Any of the following intentional or knowing acts, with physical injury and without justifiable cause: throwing, kicking, burning, biting, or cutting a child; striking a child with a closed fist; shaking a child; or striking a child on the face or head;~~
- ~~• Any of the following intentional or knowing acts, with or without physical injury: striking a child six (6) years of age or younger on the face or head; shaking a child three (3) years of age or younger; interfering with a child's breathing; pinching, biting, or striking a child in the genital area; tying a child to a fixed or heavy object or binding or tying a child's limbs together;~~
- ~~• Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;~~

REPEAL EO 23 02

- Any of the following intentional or knowing acts, with or without physical injury: giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to marijuana, alcohol (excluding alcohol given to a child during a recognized and established religious ceremony or service), a narcotic, or an over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;
- Any of the following intentional or knowing acts, with or without physical injury: exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine;
- Any of the following intentional or knowing acts, with or without physical injury: subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel;
- Recruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or
- Female genital mutilation.

REPEAL EO 23 02

This list is illustrative of unreasonable action and is not intended to be exclusive. No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse. This means that other acts or omission can constitute abuse if the action is unreasonable and the A/O is a parent, guardian, custodian, person eighteen (18) years of age or older who lives in the home with the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare. However, if the act or omission could fall within the definition of one (1) of the types of abuse, then the act or omission must meet the elements of that type of abuse to constitute child maltreatment.

Exceptions

Physical Discipline Exception. Abuse does 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. Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause, and which does cause, injury more serious than transient pain or minor temporary marks. 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.~~

~~*Appropriate Restraint Exception.* Abuse does not include when a child suffers transient pain or minor temporary marks as a result of an appropriate restraint if: the person exercising the restraint is an employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act; the person exercising the restraint is acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act; the child welfare agency has policy and procedures regarding restraints; no other alternative exists to control the child except for a restraint; the child is in danger or hurting himself or herself or others; the person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; the restraint is for a reasonable period of time; and the restraint is in conformity with training and child welfare agency's policies and procedures.~~

~~Making a True Determination~~

~~Based on the definition above and unless an exception applies, an investigator may determine that an allegation of abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of abuse.~~

Extreme or repeated cruelty:

- ~~1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~
- ~~2) A/V was under eighteen (18) years old when the alleged abuse occurred; and~~
- ~~3) At least one (1) act or omission of the A/O towards the child was extremely cruel or more than (1) one act or omission of the A/O towards the child was cruel.~~

Threat of harm:

- ~~1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related~~

~~or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~

- 2) ~~A/V was under eighteen (18) years old when the alleged abuse occurred; and~~
- 3) ~~A/O's acts or omissions created a realistic and serious threat to the A/V of death, permanent or temporary disfigurement, or impairment of a bodily organ.~~

~~NOTE: True findings for abuse involving the threat of harm can be made even if the A/V was not injured; this type only requires that the A/O created a realistic and serious threat to the A/V of death, disfigurement, or impairment of a bodily organ.~~

Mental injury:

- 1) ~~A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~
- 2) ~~A/V was under eighteen (18) years old when the alleged abuse occurred; and~~
- 3) ~~A/O's acts or omissions caused injury to A/V's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the A/V's ability to function within the A/V's normal range of performance and behavior related to intellectual, emotional, or psychological development.~~

Injury at variance with explanation given:

- 1) ~~A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's~~

- parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
 - 3) A/V's injury is not consistent with the history given by the A/O or given by anyone else related to the A/O's care of the A/V.

Nonaccidental physical injury:

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred; and
- 3) A/O's act or omission caused any nonaccidental physical injury to the A/V.

REPEAL EO 23 02

~~NOTE: True findings for nonaccidental physical injuries can be made regardless of whether the A/O intended to cause the physical injury that the A/V suffered; the relevant and culpable act or omission is the act or omission that caused the nonaccidental physical injury.~~

Abuse with physical injury and without justifiable cause:

- 1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;
- 2) A/V was under eighteen (18) years old when the alleged abuse occurred;
- 3) A/O threw the A/V, kicked the A/V, burned the A/V, bit the A/V, cut the A/V, struck the A/V with a closed fist, shook the A/V, or struck the A/V's face or head;
- 4) A/O intentionally or knowingly committed the act in 3);
- 5) A/O did not have a justifiable cause in committing the act or omission; and

- 6) ~~A/O's act or omission caused any physical injury to the A/V.~~

~~Abuse with or without physical injury:~~

- 1) ~~A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~
- 2) ~~A/V was under eighteen (18) years old when the alleged abuse occurred;~~
- 3) ~~A/O struck the A/V who was six (6) years of age or younger on the face or head, shook the A/V who was three (3) years of age or younger, interfered with the A/V's breathing, pinched the A/V in the genital area, bit the A/V in the genital area, struck the A/V in the genital area, tied the A/V to a fixed or heavy object, or bound or tied the A/V's limbs together; and~~
- 4) ~~A/O intentionally or knowingly committed the act in 3).~~

~~NOTE: True findings for abuse with or without physical injuries can be made regardless of whether the act caused A/V any physical injuries.~~

REPEAL EO 23-02

~~Abuse involving noxious or poisonous substances that may interfere with normal physiological functions:~~

- 1) ~~A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~
- 2) ~~A/V was under eighteen (18) years old when the alleged abuse occurred;~~
- 3) ~~A/O gave or permitted the A/V to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions; and~~
- 4) ~~A/O intentionally or knowingly committed the act in 3).~~

~~NOTE: True findings for abuse involving substances that may interfere with normal physiological functions can be made regardless of whether the act caused A/V any physical injuries or whether the substance~~

~~interfered with the A/V's normal physiological functions.~~

~~NOTE: Normal physiological functions are the functions of the body and include without limitation metabolism, responsiveness, cognition, movement, reproduction, growth, respiration, digestion, and excretion. Staff are encouraged to consult with a physician as needed for any questions related to what may constitute normal physiological function.~~

~~Abuse involving substances that may alter the mood of a child:~~

- ~~1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~
- ~~2) A/V was under eighteen (18) years old when the alleged abuse occurred;~~
- ~~3) A/O gave, or permitted the A/V to consume or inhale, a substance not prescribed by a physician that has the capacity to alter the mood of the child, including without limitation:~~

~~REPEAL EO 23 02~~

- ~~A. Marijuana;~~
- ~~B. Alcohol unless it is given to the A/V during a recognized and established religious ceremony or service;~~
- ~~C. A narcotic; or~~
- ~~D. An over-the-counter drug, but only if:~~
 - ~~1. A/O purposely administers an overdose to the A/V or purposely gives an inappropriate over-the-counter drug to the A/V; and~~
 - ~~2. A/V is detrimentally impacted by the overdose or the inappropriate over-the-counter drug; and~~
- ~~4) A/O intentionally or knowingly committed the act in 3).~~

~~NOTE: True findings for abuse with or without physical injuries can be made regardless of whether the act caused A/V any physical injuries.~~

~~Abuse involving exposure to a chemical that may interfere with normal physiological functions:~~

- ~~1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~

- ~~2) A/V was under eighteen (18) years old when the alleged abuse occurred;~~
- ~~3) A/O exposed A/V to a chemical that has the capacity to interfere with normal physiological functions, including without limitation, a chemical used or generated during the manufacture of methamphetamine; and~~
- ~~4) A/O intentionally or knowingly committed the act in 3).~~

~~NOTE: True findings for abuse involving exposure to a chemical that may interfere with normal physiological functions can be made regardless of whether the act caused A/V any physical injuries or whether the substance actually interfered with the A/V's physiological functions.~~

~~NOTE: Normal physiological functions are the functions of the body and include without limitation metabolism, responsiveness, cognition, movement, reproduction, growth, respiration, digestion, and excretion.~~

~~Abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness:~~

- ~~1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V, whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~
- ~~2) A/V was under eighteen (18) years old when the alleged abuse occurred;~~
- ~~3) A/O subjected the A/V to Munchausen syndrome by proxy or a factitious illness by proxy;~~
- ~~4) Medical personnel confirmed that A/O subjected the A/V to Munchausen syndrome by proxy or a factitious illness by proxy; and~~
- ~~5) A/O intentionally or knowingly committed Munchausen syndrome by proxy or a factitious illness by proxy.~~

~~NOTE: True findings for abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness can be made regardless of whether the act caused A/V any physical injuries.~~

~~NOTE: Munchausen syndrome by proxy and factitious illness by proxy are~~

~~often diagnosed with newer terms such as factitious disorder imposed on another, pediatric condition falsification, or medical child abuse. If the A/O sought treatment for a fabricated medical condition, then these other diagnoses are each sufficient to establish Munchausen syndrome by proxy or factitious illness by proxy.~~

~~Human trafficking:~~

- ~~1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~
- ~~2) A/V was under eighteen (18) years old when the alleged abuse occurred;~~
- ~~3) A/O recruited, harbored, transported, or obtained the A/V for labor or services;~~
- ~~4) A/O committed the act in 3) through force, fraud, or coercion;~~
- ~~5) A/O committed the act in 3) for the purpose of subjecting the A/V to involuntary servitude, peonage, debt bondage, or slavery.~~

REPEAL EO 23 02

~~Female genital mutilation:~~

- ~~1) A/O is a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older who lives in the home with the A/V whether related or unrelated to the A/V, or any person entrusted with the A/V'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, a significant other of the A/V's parent, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor;~~
- ~~2) A/V was a female under eighteen (18) years old when the alleged abuse occurred; and~~
- ~~3) A/O removed all or part of the A/V's external female genitalia or otherwise harmed the A/V's female genitalia unless
 - ~~A. The conduct is performed by a licensed medical professional;~~
 - ~~B. The conduct occurs in the furtherance of a surgical or other lawful medical procedure; and~~
 - ~~C. The procedure is:
 - ~~1. Necessary to preserve or protect the physical health of the A/V; or~~~~~~

- ~~2. Part of a sex reassignment procedure requested by the A/V.~~

~~NOTE: Female genital mutilation includes without limitation procedures such as a clitoridectomy; the partial or total removal of the clitoris or the prepuce; the excision or the partial or total removal of the clitoris and the labia minora (with or without the excision of the labia majora); the infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting or appositioning the labia minora or the labia majora (with or without the excision of the clitoris); pricking, piercing, incising, scraping, or cauterizing the genital area; or any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.~~

~~REPEAL EO 23 02~~

1.3 Neglect

Definition

~~Neglect means acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of a married minor, that constitute one (1) of the following:~~

- ~~• Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;~~
- ~~• Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child'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;~~
- ~~• Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;~~
- ~~• Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;~~
- ~~• Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;~~
- ~~• Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility;~~
- ~~• Failure to appropriately supervise the child that results in the child's being left alone at an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm, or, in inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm;~~

- ~~Failure to appropriately supervise the child that results in the child's being placed in inappropriate circumstances creating a dangerous situation, or a situation that puts the child at risk of harm;~~
- ~~Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home schooled;~~
- ~~An act or omission by the child's parent, custodian, or guardian resulting in the child being habitually and without justification absent from school;~~
- ~~Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child; or~~
- ~~At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the child.~~

Exceptions

None.

REPEAL EO 23 02

Making a True Determination

~~Based on the definition above, an investigator may determine that an allegation of neglect is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of neglect:~~

Failure to prevent abuse:

- 1) ~~A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;~~
- 2) ~~A/V was under eighteen (18) years old when the alleged neglect occurred;~~
- 3) ~~A/O failed or refused to prevent the abuse of the A/V; and~~
- 4) ~~A/O knew or had reasonable cause to know the A/V was being abused or had been abused.~~

~~NOTE: True findings for neglect involving the failure to prevent abuse can be made only if the A/V was abused. If the A/V did not suffer abuse, the separate type of neglect involving the failure to protect from maltreatment or parental unfitness may be applicable because that type does not require that the A/V be maltreated.~~

~~**Failure to provide necessary food, clothing, shelter, or medical treatment:**~~

- ~~1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;~~
- ~~2) A/V was under eighteen (18) years old when the alleged neglect occurred; and~~
- ~~3) A/O failed or refused to provide necessary food, clothing, shelter, or medical treatment necessary for the A/V's well-being unless~~
 - ~~A. The failure or refusal is caused primarily by the financial inability of the person legally responsible for the A/V, and~~
 - ~~B. No services for relief have been offered.~~

~~**Failure to protect from maltreatment or parental unfitness:**~~

- ~~1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the A/V'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, A/V care facility, public or private school, or any person legally responsible for the A/V's welfare, but excluding the spouse of a minor and the parents of a married minor;~~
- ~~2) A/V was under eighteen (18) years old when the alleged neglect occurred;~~
- ~~3) A/O failed to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness; and~~
- ~~4) A/O knew or should have known about the condition that posed a risk of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness to the A/V.~~

~~NOTE: True findings for neglect involving the failure to protect from child maltreatment or parental unfitness can be made even if the A/V was not maltreated or subjected to parental unfitness; this type only requires that the A/O failed to take reasonable action to protect the A/V from the risk of child maltreatment or parental unfitness.~~

Failure to provide for essential and necessary needs:

- 1) ~~A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;~~
- 2) ~~A/V was under eighteen (18) years old when the alleged neglect occurred; and~~
- 3) ~~A/O failed to provide, or is irremediably unable to provide, for the essential physical, mental, or emotional needs of the A/V, including without limitation the failure to provide a shelter that does not pose a risk to the health or safety of the A/V.~~

Failure to provide for care, maintenance, or support:

- 1) ~~A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;~~
- 2) ~~A/V was under eighteen (18) years old when the alleged neglect occurred; and~~
- 3) ~~A/O failed to provide for the A/V's~~
 - A. ~~Care and maintenance,~~
 - B. ~~Proper and necessary support, or~~
 - C. ~~Medical, surgical, or other necessary care.~~

Failure to assume responsibility for a child:

- 1) ~~A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;~~
- 2) ~~A/V was under eighteen (18) years old when the alleged neglect occurred; and~~
- 3) ~~A/O failed to assume responsibility for the care and custody of the A/V even though the A/O was able to do so, or to participate in a plan to assume responsibility for the care and custody of the A/V even though the A/O was able to do so.~~

Inadequate supervision by leaving a child alone:

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred;
- 3) A/O failed to appropriately supervise the A/V and left the A/V alone at an inappropriate age or in inappropriate circumstances; and
- 4) The A/O's act or omission created a dangerous situation or a situation that put the A/V at risk of harm.

NOTE: The foreseeability of harm and the A/O's awareness of dangerous circumstances are two (2) factors relevant to whether neglect by inadequate supervision has occurred. Specifically, the foreseeability of harm and the awareness of dangerous circumstances are relevant to the appropriateness of the circumstances in which the A/O placed the A/V and the foreseeability of harm if the A/V was left alone in those circumstances.

REPEAL EO 23 02

Inadequate supervision by placing child in a dangerous situation:

- 1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;
- 2) A/V was under eighteen (18) years old when the alleged neglect occurred; and
- 3) A/O failed to appropriately supervise the A/V and placed the A/V in:
 - A. Inappropriate circumstances that created a dangerous situation, or
 - B. A situation that put the A/V at risk of harm.

NOTE: The foreseeability of harm and the A/O's awareness of dangerous circumstances are two factors relevant to whether neglect by inadequate supervision has occurred. Specifically, the foreseeability of harm and the awareness of dangerous circumstances are relevant to the appropriateness of the circumstances in which the A/O placed the A/V.

~~Educational neglect by failing to enroll a child in school:~~

- ~~1) A/O is a parent, guardian, custodian, foster parent, or any person who is entrusted with the 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 legally responsible for the child's welfare, but excluding the spouse of a minor and the parents of a married minor;~~
- ~~2) A/V was between six (6) years of age and seventeen (17) years of age when the alleged neglect occurred; and~~
- ~~3) A/O failed to ensure that A/V was enrolled in school or was being legally homeschooled.~~

~~NOTE: A home school is a school provided by a parent or legal guardian for his or her own child.~~

~~NOTE: Staff must determine if a child is legally home-schooled as per A.C.A. 6-15-503. Please consult with local Office of Chief Counsel (OCC) attorney to determine if a child is legally home-schooled.~~

~~Educational neglect due to absence from school:~~

- ~~1) A/O is a parent, custodian, or guardian;~~
- ~~2) A/V was under eighteen (18) years old when the alleged neglect occurred;~~
- ~~3) A/O's act or omission caused the A/V to be habitually absent from school; and~~
- ~~4) A/V's absences were not justified.~~

~~Presence of illegal substance in a child when a child is born:~~

- ~~1) A/O is the A/V's mother;~~
- ~~2) A/V was under eighteen (18) years old when the alleged neglect occurred;~~
- ~~3) A/O knowingly used an illegal substance before the birth of the A/V and during the pendency of the A/O pregnancy with A/V; and~~
- ~~4) A/V had the illegal substance in the A/V's bodily fluids or bodily substances at the time of the A/V's birth.~~

~~NOTE: An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code.~~

~~NOTE: A test of the A/V's bodily fluids or substances may be used as evidence to establish neglect by presence of an illegal substance in the~~

~~A/V at birth.~~

~~**Presence of illegal substance in a mother when a child is born:**~~

- ~~1) A/O is the A/V's mother;~~
- ~~2) A/V was under eighteen (18) years old when the alleged neglect occurred;~~
- ~~3) A/O knowingly used an illegal substance before the birth of the A/V and during the pendency of the A/O pregnancy with A/V; and~~
- ~~4) A/O had the illegal substance in the A/O's bodily fluids or bodily substances at the time of the A/V's birth.~~

~~NOTE: An illegal substance means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code.~~

~~NOTE: A test of the A/O's bodily fluids or substances may be used as evidence to establish neglect by presence of an illegal substance in the A/O when the A/V is born.~~

~~REPEAL EO 23 02~~

1.4 Sexual Abuse

Definition

Sexual abuse means:

- ~~By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; indecent exposure; or forcing the watching of pornography or live sexual activity;~~
- ~~By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than fifteen (15) years of age: Actual or attempt sexual intercourse, deviate sexual activity, or sexual contact; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;~~
- ~~By a person twenty (20) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age: Actual or attempt sexual intercourse, deviate sexual activity, or sexual contact; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;~~
- ~~By a caretaker to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact; forcing or encouraging the watching of pornography; forcing, permitting, or encouraging the watching of live sexual activity; forcing the listening to a phone sex line; an act of voyeurism; or the solicitation of sexual intercourse, deviate sexual activity, or sexual contact;~~
- ~~By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age: Actual or attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or~~
- ~~By a person eighteen (18) years of age or older to a person who is younger than (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.~~

Exceptions

~~Defense and Affirmative Defense Exceptions.~~

~~Pursuant to 12-18-804, for any act or omission of child maltreatment that would be a criminal~~

~~offense or an act of delinquency, any defense or affirmative defense, including the burden of proof regarding the affirmative defense, that would apply to the criminal offense or delinquent act is also cognizable in a child maltreatment proceeding with the exception of: a statute of limitation; lack of capacity as a result of mental disease or defect under § 5-2-312; and affirmative defenses under §§ 5-1-112 — 5-1-114.~~

~~For example, if a teacher and a student have a sexual relationship, an affirmative defense may apply. If the teacher engages in sexual intercourse or deviate sexual activity with a student less than 21 years of age and the teacher uses his or her position of trust or authority over the victim, then the conduct would fall under the definition of sexual abuse. However, if the teacher was no more than 3 years older than the student, then the affirmative defense would apply.~~

~~Staff must consult with local OCC attorney regarding possible defense and affirmative defense exceptions.~~

~~Making a True Determination~~

~~Based on the definition above and unless an exception applies, an investigator may determine that an allegation of sexual abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of sexual abuse:~~

~~Sexual intercourse:~~

- ~~1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:~~
 - ~~1. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;~~
 - ~~2. A/V was less than sixteen (16) years old when the alleged sexual abuse occurred; and~~
 - ~~3. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or~~

~~*NOTE:* This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual intercourse described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.~~

- ~~2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:~~

- ~~A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;~~
- ~~B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred; and~~
- ~~C. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or~~

~~NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual intercourse described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.~~

- ~~3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:~~

- ~~A. The A/O was the A/V's caretaker where the following facts are established:~~

- ~~1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~

~~2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who~~

~~was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;~~

- ~~3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and~~

- ~~4. A/O engaged in sexual intercourse with the A/V, attempted to engage in sexual intercourse with the A/V, or solicited the A/V to engage in sexual intercourse; or~~

~~NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.~~

- ~~B. The A/O was not the A/V's caretaker where the following facts are established:~~

- ~~1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~

- ~~2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;~~
- ~~3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V;~~

~~NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.~~

~~NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.~~

REPEAL EO 23 02

- ~~4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.
 - ~~A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;~~
 - ~~B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
 - ~~C. A/O engaged in sexual intercourse, or attempted to engage in sexual intercourse, with the A/V; and~~
 - ~~D. A/O used forcible compulsion to engage in the sexual intercourse or attempted sexual intercourse, which is where either A/V did not want to engage in the sexual intercourse or attempted sexual intercourse, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual intercourse or attempted sexual intercourse.~~~~

~~NOTE: The age, developmental stage, and stature of the A/V and~~

~~the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.~~

~~NOTE: The exception to sexual abuse may apply to this type of sexual abuse.~~

~~**Deviate sexual activity:**~~

- 1) ~~If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:~~
 - A. ~~A/O was twenty (20) years old or older when the alleged sexual abuse occurred;~~
 - B. ~~A/V was less sixteen (16) years old when the alleged sexual abuse occurred;~~
 - C. ~~A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and~~
 - D. ~~Where deviate sexual activity is:~~
 1. ~~An act of sexual gratification; and~~
 2. ~~Involves either~~
 - a. ~~The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or~~
 - b. ~~The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or~~

~~NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

- 2) ~~If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:~~

- ~~A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;~~
- ~~B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred;~~
- ~~C. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and~~
- ~~D. Where deviate sexual activity is:~~
 - ~~1. An act of sexual gratification; and~~
 - ~~2. Involves either~~
 - ~~a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or~~
 - ~~b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or~~

~~NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

- ~~3) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:~~
 - ~~A. The A/O was the A/V's caretaker where the following facts are established:~~
 - ~~1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
 - ~~2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private~~

- ~~school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;~~
- ~~3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
 - ~~4. A/O engaged in deviate sexual activity with the A/V, attempted to engage in deviate sexual activity with the A/V, or solicited the A/V to engage in deviate sexual activity; and~~
 - ~~5. Where deviate sexual activity is:~~
 - ~~a. An act of sexual gratification; and~~
 - ~~b. Involves either~~
 - ~~(1) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or~~
 - ~~(2) The penetration, however, slight of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or~~

~~NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.~~

~~REPEAL EO 23 02~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

- ~~B. The A/O was not the A/V's caretaker where the following facts are established:~~
- ~~1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
 - ~~2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;~~
 - ~~3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
 - ~~4. A/O engaged in deviate sexual activity, or attempted to engage in deviate sexual activity, with the A/V;~~

5. ~~A/O used forcible compulsion to engage in the deviate sexual activity or attempted deviate sexual activity, which is where either A/V did not want to engage in the deviate sexual activity or attempted deviate sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the deviate sexual activity or attempted deviate sexual activity; and~~
6. ~~Where deviate sexual activity is:~~
- ~~a. An act of sexual gratification; and~~
 - ~~b. Involves either~~
 - ~~(1) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or~~
 - ~~(2) The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person; or~~

~~NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.~~

REPEALED 23 02

~~NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

- 4) ~~A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.~~
- ~~A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;~~
 - ~~B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~

- ~~C. A/O engaged in deviate sexual activity, or attempted to engage in deviate sexual activity, with the A/V; and~~
- ~~D. A/O used forcible compulsion to engage in the deviate sexual activity or deviate sexual activity, which is where either A/V did not want to engage in the deviate sexual activity or attempted deviate sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the deviate sexual activity or attempted deviate sexual activity.~~
- ~~E. Where deviate sexual activity is:~~
- ~~1. An act of sexual gratification; and~~
 - ~~2. Involves either~~
 - ~~a. The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or~~
 - ~~b. The penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person.~~

~~NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

~~NOTE: The exception to sexual abuse may apply to this form of sexual abuse.~~

~~Sexual contact:~~

- ~~1) If the A/O was twenty (20) years old or older and the A/V was less than sixteen (16) years old, a true finding for sexual abuse can be made if:~~
 - ~~A. A/O was twenty (20) years old or older when the alleged sexual abuse occurred;~~
 - ~~B. A/V was less than sixteen (16) years old when the alleged sexual abuse occurred;~~
 - ~~C. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and~~

- ~~D. Where sexual contact is:~~
- ~~1. An act of sexual gratification; and~~
 - ~~2. Involves~~
 - ~~a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;~~
 - ~~b. The encouraging of the A/V to touch the offender in a sexual manner; or~~
 - ~~c. The offender requesting to touch the A/V in a sexual manner; or~~

~~NOTE: This type of sexual abuse provides that if the A/O is twenty (20) years old or older and the A/V is sixteen (16) years old or older, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by sexual contact described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

~~REPEAL EO 23 02~~

~~NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.~~

- ~~2) If the A/O was eighteen (18) years old or older and the A/V was less than fifteen (15) years old, a true finding for sexual abuse can be made if:~~
- ~~A. A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;~~
 - ~~B. A/V was less than fifteen (15) years old when the alleged sexual abuse occurred;~~
 - ~~C. A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and~~
 - ~~D. Where sexual contact is:~~
 - ~~1. An act of sexual gratification; and~~
 - ~~2. Involves~~
 - ~~a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;~~
 - ~~b. The encouraging of the A/V to touch the offender in a sexual manner; or~~

- c. ~~The offender requesting to touch the A/V in a sexual manner; or~~

~~NOTE: This type of sexual abuse provides that if the A/O is eighteen (18) to nineteen (19) years old and the A/V is fifteen (15) or sixteen (16) years old, a true finding for sexual abuse cannot be made unless the circumstances satisfy a type of sexual abuse by deviate sexual activity described below that require that the A/O either was the A/V's caretaker or used forcible compulsion.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

~~NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.~~

- 3) ~~If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:~~

- A. ~~The A/O was the A/V's caretaker where the following facts are established:~~

REPEALED 03-02

- 1. ~~A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
- 2. ~~The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;~~
- 3. ~~A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
- 4. ~~A/O engaged in sexual contact with the A/V, attempted to engage in sexual contact with the A/V, or solicited the A/V to engage in sexual contact; and~~
- 5. ~~Where sexual contact is:~~
 - a. ~~An act of sexual gratification; and~~
 - b. ~~Involves~~
 - (1) ~~The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;~~

- ~~(2) The encouraging of the A/V to touch the offender in a sexual manner; or~~
- ~~(3) The offender requesting to touch the A/V in a sexual manner; or~~

~~NOTE: No forcible compulsion is required to establish sexual abuse by a caretaker.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

~~NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.~~

~~B. The A/O was not the A/V's caretaker where the following facts are established:~~

- ~~1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
- ~~2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V;~~
- ~~3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
- ~~4. A/O engaged in sexual contact, or attempted to engage in sexual contact, with the A/V;~~
- ~~5. A/O used forcible compulsion to engage in the sexual contact or attempted sexual contact, which is where either A/V did not want to engage in the sexual contact or attempted sexual contact, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual contact or attempted sexual contact; and~~
- ~~6. Where sexual contact is:
 - ~~a. An act of sexual gratification; and~~
 - ~~b. Involves~~~~

REPEALED EO 23-02

- ~~(1) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;~~
- ~~(2) The encouraging of the A/V to touch the offender in a sexual manner; or~~
- ~~(3) The offender requesting to touch the A/V in a sexual manner; or~~

~~NOTE: This type of sexual abuse provides that if the A/O is fourteen (14) years old to seventeen (17) years old, a true finding for this type of sexual abuse cannot be made unless the A/O used forcible compulsion.~~

~~NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

REPEAL EO 23-02

~~NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.~~

- ~~4) A/O was less than fourteen (14) years old and the A/V was eighteen (18) years old or younger.~~
 - ~~A. A/O was less than fourteen (14) years old when the alleged sexual abuse occurred;~~
 - ~~B. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
 - ~~C. A/O engaged in sexual contact, or attempted to engage in sexual contact, with the A/V; and~~
 - ~~D. A/O used forcible compulsion to engage in the sexual contact or sexual contact, which is where either A/V did not want to engage in the sexual contact or attempted sexual contact, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to engage in the sexual contact or attempted sexual contact.~~

~~E. Where sexual contact is:~~

- ~~1. An act of sexual gratification; and~~
- ~~2. Involves~~
 - ~~a. The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;~~
 - ~~b. The encouraging of the A/V to touch the offender in a sexual manner; or~~
 - ~~c. The offender requesting to touch the A/V in a sexual manner.~~

~~NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

~~REPEALED EO 23-02~~

~~NOTE: Sexual contact does not include contact incidental to normal affectionate hugging.~~

~~Indecent exposure:~~

- ~~1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
- ~~2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
- ~~3) A/O exposed his or her sexual organs to the A/V;~~
- ~~4) A/O intended to arouse or gratify the sexual desire of the A/O or some other person; and~~
- ~~5) A/O knew that exposing his or her sexual organs was likely to cause affront or alarm.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

~~Pornography:~~

- ~~1) If the A/O was fourteen (14) years old or older and A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:~~

~~REPEALED~~ EO 23 02

A. ~~The A/O was the A/V's caretaker where the following facts are established:~~

- ~~1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
- ~~2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;~~
- ~~3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and~~
- ~~4. A/O forced or encouraged A/V to watch pornography, which is:~~
 - ~~a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;~~
 - ~~b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or~~
 - ~~c. Obscene or licentious material; or~~

~~NOTE: No force is required to establish sexual abuse by a caretaker; it is sufficient that the A/O encouraged or directed the A/V to watch pornography.~~

B. ~~The A/O was not the A/V's caretaker where the following facts are established:~~

- ~~1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
- ~~2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private~~

- school, or any other person responsible for A/V's welfare, or the spouse of the A/V;
3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;
 4. A/O forced A/V to watch pornography, which is
 - a. Any picture, movie, or video that lacks serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;
 - b. Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or
 - c. Obscene or licentious material; and
 5. A/O forced A/V where either A/V did not want to watch the pornography, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch pornography.

~~REPEAL EO 23 02~~

~~NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.~~

Live Sexual Activity:

- 1) If the A/O was fourteen (14) years old or older and the A/V was less than eighteen (18) years old, a true finding for sexual abuse can be made if:
 - A. The A/O was the A/V's caretaker where the following facts are established:
 1. The A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;
 2. The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private

- ~~school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;~~
- ~~3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and~~
 - ~~4. A/O forced, encouraged, or permitted the A/V to watch live sexual activity; or~~

~~NOTE: No force is required to establish sexual abuse by a caretaker; it is sufficient that the A/O encouraged or even permitted the A/V to watch live sexual activity.~~

~~B. The A/O was not the A/V's caretaker where the following facts are established:~~

- ~~1. A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
- ~~2. A/O was not the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for A/V's welfare, or the spouse of the A/V,~~
- ~~3. A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
- ~~4. A/O forced A/V to watch live sexual activity; and~~
- ~~5. A/O forced A/V where either A/V did not want to watch the live sexual activity, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to watch live sexual activity.~~

~~NOTE: The age, developmental stage, and stature of the A/V and the relationship of the A/V to the A/O, as well as the threat of deprivation of affection, rights, and privileges from the A/V by the A/O, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion.~~

~~Phone Sex Line:~~

- ~~1) A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~

- 2) ~~The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;~~
- 3) ~~A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
- 4) ~~A/O forced A/V to listen to a phone sex line; and~~
- 5) ~~A/O forced A/V where either A/V did not want to listen to the phone sex line, or the A/O used physical force, intimidation, or a threat, express or implied, of physical injury, death, rape, sexual abuse, or kidnapping of any person to force the A/V to listen to the phone sex line.~~

Voyeurism:

- 1) ~~A/O was fourteen (14) years old or older when the alleged sexual abuse occurred;~~
- 2) ~~The A/O was the A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school, or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;~~
- 3) ~~A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
- 4) ~~A/O looked at the A/V in a private location or place in which a child may reasonably be expected to be nude or partially nude; and~~
- 5) ~~A/O's purpose in looking was for sexual arousal or gratification.~~

~~NOTE: Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.~~

Sex Trafficking:

- 1) ~~A/O was eighteen (18) years old or older when the alleged sexual abuse occurred;~~
- 2) ~~A/V was less than eighteen (18) years old when the alleged sexual abuse occurred;~~
- 3) ~~A/O recruited, harbored, transported, obtained, patronized, or solicited A/V; and~~
- 4) ~~A/O's purpose was to facilitate a commercial sex act.~~

1.5 Sexual Exploitation

Definition

~~Sexual exploitation means:~~

- ~~• By a person eighteen (18) years of age or older to a child who is not his or her spouse: Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, or obscene filming; or obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose.~~
- ~~• By a caretaker to a child: Allowing, permitting, or encouraging participation or depiction of the child in prostitution, obscene photography, or obscene filming; or obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose.~~

Exceptions

~~None.~~

Making a True Determination

~~Based on the definition above, an investigator may determine that an allegation of sexual abuse is true if a preponderance of the evidence establishes each of the elements for at least one (1) type of sexual exploitation:~~

Sexual exploitation:

- ~~1) A/O was, when the alleged sexual abuse occurred:
 - ~~A. Eighteen (18) years old or older and not A/V's spouse; or~~
 - ~~B. A/V's parent, guardian, custodian, foster parent, or any person fourteen (14) years old or older who was entrusted with the A/V's care by the A/V's parent, guardian, custodian, or foster parent, including without limitation an agent or employee of a public or private residential home, child care facility, public or private school or any other person responsible for the A/V's welfare, but excluding a spouse of the A/V;~~~~
- ~~2) A/V was less than eighteen (18) years old when the alleged sexual abuse occurred; and~~
- ~~3) A/O:~~

- ~~A. Allowed, permitted, or encouraged A/V to participate or be depicted in prostitution, obscene photography, or obscene filming; or~~
- ~~B. Obscenely depicted, obscenely posed, or obscenely postured the A/V for any use or purpose.~~

~~**Section 2: Index of All Child Maltreatment Types Within Each Maltreatment Category (types listed alphabetically within each category)**~~

~~***Abandonment:***~~

~~Abandonment for an indefinite period~~

~~Abandonment without just cause~~

~~Abandonment by articulated intent~~

~~***Abuse:***~~

~~Abuse involving exposure to a chemical that may interfere with normal physiological functions~~

~~Abuse involving subjection of a child to Munchausen syndrome by proxy or factitious illness~~

~~Abuse involving substances that may alter the mood of a child~~

~~Abuse involving noxious or poisonous substances that may interfere with normal physiological functions~~

~~Abuse with physical injury and without justifiable cause~~

~~Abuse with or without physical injury~~

~~Extreme or repeated cruelty~~

~~Female genital mutilation~~

~~Human trafficking~~

~~Injury at variance with explanation given~~

~~Mental injury~~

~~Nonaccidental physical injury~~

~~Threat of Harm~~

~~Neglect:~~

~~Educational neglect by failing to enroll a child in school~~

~~Educational neglect due to absence from school~~

~~Failure to assume responsibility for a child~~

~~Failure to prevent abuse~~

~~Failure to protect from maltreatment or parental unfitness~~

~~Failure to provide necessary food, clothing, shelter, or medical treatment~~

~~Failure to provide for care, maintenance, or support~~

~~Failure to provide for essential and necessary needs~~

~~Inadequate supervision by leaving a child alone~~

~~Inadequate supervision by placing child in a dangerous situation~~

~~Presence of illegal substance in a child when a child is born~~

~~Presence of illegal substance in a mother when a child is born~~

~~Sexual Abuse:~~

~~Deviate sexual activity~~

~~Indecent exposure~~

~~Live sexual activity~~

REPEAL EO 23 02

~~Phone sex line~~

~~Pornography~~

~~Sex trafficking~~

~~Sexual contact~~

~~Sexual intercourse~~

~~Voyeurism~~

~~**Sexual Exploitation:**~~

~~Sexual exploitation~~

REPEAL-EO 23-02

|