ARKANSAS REGISTER

Proposed Rule Cover Sheet

Secretary of State
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Name of Department Department of Human Services

Agency or Division Name Division of Medical Services

Other Subdivision or Department, If Applicable N/A

Previous Agency Name, If Applicable N/A

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Name of Rule Coordinated Triage, Treatment and Transport to Alternative Destination

Newspaper Name Arkansas Democrat Gazette

Date of Publishing October 14th, 15th and 16th, 2023

Final Date for Public Comment November 12, 2023

Location and Time of Public Meeting https://us02web.zoom.us/j/84850865309 Nov.8@10am

23. Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary.

a. Transportation

(1) A. Ground Ambulance Services

Payment will be made for ambulance services, provided the conditions below are met and the services are provided in accordance with laws, regulations and guidelines governing ambulance services under Part B of Medicare. These services are equally available to all beneficiaries. The use of medical transportation must be for health-related purposes and reimbursement will not be made directly to Title XIX beneficiaries.

I. For transportation of ~~recipient~~ **beneficiaries** when medically necessary as certified by a physician to a hospital, to a nursing home from the hospital or ~~patient's~~ **beneficiary's** home, to the ~~patient~~**beneficiary**'s home from the hospital or nursing home, from a hospital (after receiving emergency outpatient treatment) to a nursing home if a ~~patient~~ **beneficiary** is bedridden, and from a nursing home to another nursing home if determined necessary by the Office of Long Term Care. Emergency service is covered only through licensed emergency ambulance companies. Services not allowed by Title XVIII but covered under Medicaid will be ~~paid~~ **reimbursed** for Medicare/Medicaid ~~recipients~~**beneficiaries**.

~~These services will be equally available to all recipients.~~

II. If transportation of the beneficiary described in (I) is found not medically necessary through an established telemedicine assessment at the time of service, ground ambulance services at the alternative location or transport to an alternative destination may be covered. The ambulance service may triage and transport a beneficiary to an alternative destination or treat at the dispatched location if the ambulance service is coordinating the care of the beneficiary through telemedicine with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint. The use of audio-only electronic technology is not allowed for the services. An encounter between an ambulance service and a beneficiary that results in no transport of the enrollee is allowable if the beneficiary declines to be transported against medical advice of the physician for a medical-based complaint and the ambulance service is coordinating the care of the beneficiary through telemedicine with a physician or a behavioral health specialist.

Alternative location is the location to which an ambulance is dispatched, and the ambulance service treatment is initiated from a 911 call that is documented in the records of the ambulance service. Alternative destination means a lower-acuity facility that provides medical services, including:

- **A federally qualified health center;**

- **An urgent care center;**
- **A physician's office or medical clinic, as chosen by the beneficiary;**
- **A behavioral or mental healthcare facility**

Excluded alternative destinations are facilities that provide a higher-acuity medical service or medical services for a routine chronic condition, such that they would be considered as destinations for which transportation under (1) above would occur:

- **Emergency Room;**
- **Critical Access Hospital;**
- **Rural Emergency Hospital;**
- **Dialysis center;**
- **Hospital;**
- **Private residence;**
- **Skilled nursing facility**

B. Air Ambulance Services

Air ambulance services are provided to Arkansas Medicaid beneficiaries only in emergencies.

Air ambulance providers must be licensed by the Arkansas Ambulance Boards and enrolled as a Title XVIII, Medicare Provider.

(2) Early Intervention Day Treatment (EIDT) and Adult Developmental Day Treatment (ADDT) Transportation

EIDT and ADDT providers may provide transportation to and from their facility. The Medicaid transportation broker must provide transportation to and from the nearest qualified medical provider for the purpose of obtaining medical treatment.

23. Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary.

a. Transportation

(1) A. Ground Ambulance Services

Payment will be made for ambulance services, provided the conditions below are met and the services are provided in accordance with laws, regulations and guidelines governing ambulance services under Part B of Medicare. These services are equally available to all beneficiaries. The use of medical transportation must be for health-related purposes and reimbursement will not be made directly to Title XIX beneficiaries.

I. For transportation of ~~recipients~~ **beneficiaries** when medically necessary as certified by a physician to a hospital, to a nursing home from the hospital or ~~patient's~~ **beneficiary's** home, to the ~~patient's~~ **beneficiary's** home from the hospital or nursing home, from a hospital (after receiving emergency outpatient treatment) to a nursing home if a ~~patient~~ **beneficiary** is bedridden and from a nursing home to another nursing home if determined necessary by the Office of Long Term Care. Emergency service is covered only through licensed emergency ambulance companies. Services not allowed by Title XVIII but covered under Medicaid will be ~~paid~~ **reimbursed** for Medicare/Medicaid ~~recipients~~**beneficiaries**.

II. If transportation of the beneficiary described in (I) is found not medically necessary through an established telemedicine assessment at the time of service, ground ambulance services at the alternative location or transport to an alternative destination may be covered. The responding ambulance company must be licensed and an enrolled provider in the Arkansas Medicaid Program. The ambulance service may triage and transport a beneficiary to an alternative destination or treat at the dispatched location if the ambulance service is coordinating the care of the patient through telemedicine with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint. The use of audio-only electronic technology is not allowed for the services. An encounter between an ambulance service and a beneficiary that results in no transport of the enrollee is allowable if the beneficiary declines to be transported against medical advice of the physician for a medical-based complaint and the ambulance service is coordinating the care of the beneficiary through telemedicine with a physician or a behavioral health specialist..

Alternative location is the location to which an ambulance is dispatched, and the ambulance service treatment is initiated from a 911 call that is documented in the records of the ambulance service. Alternative

destination means a lower-acuity facility that provides medical services, including:

- **A federally qualified health center;**
- **An urgent care center;**
- **A physician's office or medical clinic, as chosen by the beneficiary;**
- **A behavioral or mental healthcare facility**

Excluded alternative destinations are facilities that provide a higher-acuity medical service or medical services for a routine chronic condition, such that they would be considered as destinations for which transportation under (1) above would occur:

- **Emergency Room;**
- **Critical Access Hospital;**
- **Rural Emergency Hospital;**
- **Dialysis center;**
- **Hospital;**
- **Private residence;**
- **Skilled nursing facility**

~~These services will be equally available to all recipients.~~

B. Air Ambulance Services

Air ambulance services are provided to Arkansas Medicaid beneficiaries only in emergencies.

Air ambulance providers must be licensed by the Arkansas Ambulance Boards and enrolled as a Title XVIII, Medicare Provider.

(2) Early Intervention Day Treatment (EIDT) and Adult Developmental Day Treatment (ADDT) Transportation

EIDT and ADDT providers may provide transportation to and from their facility. The Medicaid transportation broker must provide transportation to and from the nearest qualified medical provider for the purpose of obtaining medical treatment.

TOC required

213.200 Exclusions

~~8-3-20~~1-1-24

Ambulance service to a doctor's office or clinic is not covered, except as described in Sections 204.000 and 214.100.

214.100 Covered Ground Ambulance Triage, Treat, and Transport to Alternative Location/Destination Services

1-1-24

Ground ambulance triage, treat, and transport to alternative location/destination services (T3AL) may be covered only when provided by an ambulance company that is licensed and is an enrolled provider in the Arkansas Medicaid Program. An ambulance service may triage and transport a beneficiary to an alternative destination or treat in place if the ambulance service is coordinating the care of the beneficiary through telemedicine with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint. Telemedicine rules are described in Section 105.190 and must be followed unless instructions are given within Section II of the prevailing Medicaid manual. The use of audio-only electronic technology is not allowed for T3AL services.

For the purposes of T3AL, a behavioral health specialist is a board-certified psychiatrist or an Independently Licensed Practitioner who can provide counseling services to Medicaid beneficiaries in the Outpatient Behavioral Health program.

214.110 Scope

1-1-24

An ambulance service may:

A. Treat a beneficiary in alternative location if the ambulance service is coordinating the care of the beneficiary through telemedicine with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint; or

B. Triage or triage and transport a beneficiary to an alternative destination if the ambulance service is coordinating the care of the beneficiary through telemedicine with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint.

An encounter between an ambulance service and a beneficiary that results in no transport of the enrollee is allowable if the beneficiary declines to be transported against medical advice and the ambulance service is coordinating the care of the beneficiary through telemedicine with a physician for a medical-based complaint.

214.120 Alternative Location and Alternative Destination

1-1-24

Alternative location is the location to which an ambulance is dispatched, and ambulance service treatment is initiated as a result of a 911 call that is documented in the records of the ambulance service.

Alternative destination means a lower-acuity facility that provides medical services, including:

A. A federally qualified health center;

B. An urgent care center;

C. A physician's office or medical clinic, as chosen by the patient;

D. A behavioral or mental healthcare facility

Excluded alternative destinations are facilities that provide a higher-acuity medical service or medical services for routine chronic conditions including:

A. Emergency Room

B. Critical Access Hospital;

C. Rural Emergency Hospital;

D. Dialysis center;

E. Hospital;

F. Private residence;

G. Skilled nursing facility

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Department of Human Services
BOARD/COMMISSION Division of Medical Services
PERSON COMPLETING THIS STATEMENT Jason Callan
TELEPHONE NO. (501) 320-6540 **EMAIL** Jason.Callan@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Emergency Triage, Treat and Transport

1. Does this proposed, amended, or repealed rule have a financial impact?
   Yes ☑ No ☐

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
   Yes ☑ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☑ No ☐

   If no, please explain:

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

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

   (c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

   (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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

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

Current Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total_____

Next Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total_____

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

Current Fiscal Year

General Revenue ($65,741)
Federal Funds ($169,047)
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total -$ 234,788.00

Next Fiscal Year

General Revenue ($131,481)
Federal Funds ($338,094)
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total -$ 469,575.00

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

Current Fiscal Year
$_____

Next Fiscal Year
$_____

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

Current Fiscal Year
$ -65,741.00

Next Fiscal Year
$ -131,481.00

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

Yes ☐ No ☑

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule; and
(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
(a) the rule is achieving the statutory objectives;
(b) the benefits of the rule continue to justify its costs; and
(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Statement of Necessity and Rule Summary
Coordinated Triage, Treatment and Transport to Alternative Destination

Statement of Necessity

Medicaid is seeking a state plan amendment to implement Arkansas Act 480 of 2023. Act 480 provides for Medicaid coverage and reimbursement for licensed and enrolled ground ambulances to triage, treat, and transport a beneficiary to an alternative destination when a medically necessary service is coordinated by telemedicine with a physician or a behavioral health specialist. Act 480 also allows for the licensed and enrolled Emergency Medical Personnel to treat the individual at the scene after consultation with a physician or behavioral health specialist. The service must be the result of the ambulance being dispatched to respond to a 9-1-1 call and assessment must not warrant an immediate need for transport to a hospital or emergency room. These updates require new language be added to the Medicaid Transportation Manual.

Rule Summary

To implement the required coverage, the Division of Medical Services (DMS) revises the relevant state plan pages and Transportation Manual to provide coverage and reimbursement for licensed and enrolled ground ambulances to triage, treat, and transport a beneficiary pursuant to the dictates and requirements of Act 480. DMS also made changes to ensure consistent terminology and updated effective dates in the state plan. New sections (214.100, 214.110, and 214.120) are added to the transportation manual.

Repeals pursuant to the Governor's Executive Order 23-02:

1. DDS Policy 3010 – Human Rights Committee, and
2. DDS Policy 3011 – Behavior Management.

NOTICE OF RULE MAKING

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

The Director of the Division of Medical Services (DMS) amends the Medicaid State Plan and Transportation Manual to implement Arkansas Act 480 of 2023. Act 480 provides for Medicaid coverage and reimbursement for licensed and enrolled ground ambulances to triage, treat, and transport a beneficiary to an alternative destination when a medically necessary service is coordinated by telemedicine with a physician or a behavioral health specialist as appropriate. Act 480 also allows for the licensed and enrolled Emergency Medical Personnel to treat the individual at the scene after consultation with a physician or behavioral health specialist. The service must be the result of the ambulance being dispatched to respond to a 9-1-1 call and assessment must not warrant an immediate need for transport to a hospital or emergency room. DMS shall request implementation of the coverage from the Centers for Medicare and Medicaid Services effective January 1, 2024. New sections were added to the Transportation Manual. The proposed rule estimates a financial cost savings of $(234,788.00) ($(169,047) of which is federal funds) for state fiscal year 2024, and $(469,575.00) ($(338,094) of which is federal funds) for state fiscal year 2025.

Pursuant to the Governor's Executive Order 23-02, DHS repeals the following two rules as part of this promulgation: (1) DDS Policy 3010 – Human Rights Committee, and (2) DDS Policy 3011 – Behavior Management.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule at ar.gov/dhs-proposed-rules. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than November 12, 2023. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

A public hearing by remote access only through a Zoom webinar will be held on November 8th at 10:00am and public comments may be submitted at the hearing. Individuals can access this public hearing at https://us02web.zoom.us/j/84850865309. The webinar ID is 848 5086 5309. If you would like the electronic link, "one-tap" mobile information, listening only dial-in phone numbers, or international phone numbers, please contact ORP at ORP@dhs.arkansas.gov.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6428.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. 4502172997

Elizabeth Pitman, Director
Division of Medical Services

RULES SUBMITTED FOR REPEAL

Rule #1: DDS Policy 3010 – Human Rights Committee

Rule #2: DDS Policy 3011 – Behavior Management

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

Policy Type	Subject of Policy	Policy No.
Service	Behavior Management	3011-D

1. **Purpose**. This policy is intended to provide guidelines for managing challenging behaviors of individuals residing in DDS operated programs (Human Development Centers).

2. **Scope**. This policy applies to all DDS operated programs (Human Development Centers) and their employees/volunteers. All such programs will include a review of this policy as part of the employee orientation process.

3. **Definition of Terms**

Behavior management, as covered by this policy, serves as a guide to ensure that an individual's actions that are aggressive, disruptive and/or present a danger to the individual or to others are managed with the least restrictive method. Behavior management is not a substitute for other forms of active treatment and is incorporated into program plans, based on individual needs.

Qualified Mental Retardation Professional (QMRP) or QMRP designee is used in this policy as a person designated to monitor, supervise, and make decisions regarding specific behavioral situations. QMRP/designee will be assigned by the administrator of the DDS program in which he/she works. Criteria for selection will involve prior training, experience, and demonstrated ability in the area of behavioral management. The QMRP designee must be in a position that is on a level involving supervisory or decision-making responsibilities. The QMRP designee is authorized to perform any of the duties of the QMRP as outlined by regulations or policy.

Interdisciplinary Team (IDT) is defined as a group of persons (professionals, paraprofessionals and non-professionals) who develop an individual's program plan and whose participation is required in order to identify the needs of the individual and to devise ways to meet those needs. The IDT includes the individual and may also include those persons who have worked or will work most closely with the individual, those persons who provide needed assessments or services, and the individual's family, guardian, or advocate. In general, the IDT includes persons professionally qualified in such fields as health care, education, psychology, and social work.

Licensed nurse is defined as a registered nurse or licensed practical nurse. The agency may use a physician, in lieu of a licensed nurse, but this is not required.

Replacement: This policy replaces DDS Commissioner's Policy 3011-D, dated January 28, 1981, March 13, 1981, and DDS Director's Policy dated October 1, 1991; December 1, 1993; and January 30, 1998.

Reviewed: Arkansas Legislative Council Rules and Regulations Subcommittee _____, 2003

4. **Policy**

NOTE: It is the philosophy of the agency to utilize all positive approaches to behavior management prior to and in conjunction with more restrictive programmatic techniques. Positive approaches may include, but are not limited to: positive reinforcement, gentle teaching, redirection, graduated guidance, and modeling of appropriate behaviors. Measures to address positive behavior should be incorporated into formal program efforts to the extent feasible.

Efforts at positive programming prove to be successful with the majority of maladaptive behaviors. All Human Development Centers will maintain policies and procedures for positive programming. The use of behavioral programming other than positive is designed for the individuals who repetitively engage in dangerously aggressive behavior and for whom other interventions have not been effective. All behavior programs developed in accordance with this policy will be designed to reduce or eliminate the target behavior(s) within a specified time frame, will be supported by documentation that positive, less restrictive methods have been systematically attempted and failed, will be monitored regularly by the individual's QMRP and Interdisciplinary Team (IDT), and will be revised if proved to be ineffective. The potential harmful effects of each procedure will be weighed carefully against the harmful effects of the targeted behavior and the IDT will determine if the harmful effects of the behavior outweigh the potentially harmful effects of the procedure.

Category I:

Category I procedures are those which may be used without prior approval of the Human Rights Committee or psychology staff. To ensure consistency, they should be addressed by the IDT. Frequent use (as determined by IDT) of these procedures with an individual indicates the need for consideration of the development of a behavior plan by the individual's IDT.

The individual must be supervised during these procedures. With the exception of verbal intervention, any use of Category I procedures, whether part of a formal behavior program or not, requires documentation on a Behavior Incident Report, Data Sheet, or other locally used behavior documentation system.

A. Verbal Intervention: Verbal intervention is utilized to stop an inappropriate behavior in progress and involves telling the individual "no" or "stop", identifying the behavior, and redirecting to an appropriate activity. The command is given in a firm but normal tone of voice. Threats, screaming, yelling or issuing repetitive or multiple sets of commands are not considered verbal correction and are inappropriate.

B. Separation From Activity Up to 30 Minutes: The individual is prevented from engaging in a reinforcing activity in which he/she has displayed inappropriate behavior. Separation is maintained within the same room or outdoor area where the activity is conducted. This is considered a Category I procedure if compliance by the individual can be

accomplished through verbal prompting/physical prompting without requiring personal restraint (holding).

C. Separation From Setting Up to 30 Minutes: The individual is removed from the area where the reinforcing activity is taking place. Separation must occur under observation either outdoors or in a living or training area (bathrooms, storage rooms and closets do not constitute living/training area). This is considered a Category I procedure if compliance by the individual can be accomplished through verbal prompting/physical prompting without requiring personal restraint (holding).

Note: Separation to Allow Calming (STAC) – Also available is the positive procedure of STAC whereby the person is encouraged to move to an area away from the person or situation that upset them. At the same time, they are assisted in directing their attention to talking about the problem, listening to music, talking about family, relaxing quietly, going for a walk, etc. The activity should be chosen by the person in need of calming. When sufficiently calm, staff will assist the person in resuming normal activities.

D. Assignment of Additional Chores: The individual is assigned additional chores as a consequence for inappropriate behavior. Additional chores may be assigned only if such chores are already a part of the Individual Program Plan (IPP) and are not designed to replace work assignments of housekeeping personnel.

E. Restitution: The individual is cued to restore any property damaged, stolen or defaced. If appropriate to the individual's level of functioning, he/she may be cued to offer a verbal apology to the offended person. If appropriate to the individual's ability to comprehend, monetary reimbursement for the value of the damaged or stolen property may be required if this is a part of the IPP. In lieu of full value, a symbolic portion of the value may be required. Monetary reimbursement requires Human Rights Committee approval and Guardian consent.

Note: The individual is not degraded nor put on display while restoring damage. The individual is given the same equipment and protection to complete the restitution as would normally be given to a person not responsible for the damage.

F. Withholding Privileges: The individual loses a particular privilege following the occurrence of an inappropriate behavior. Privileges include such things as special planned community activities. However, trips off grounds are special and should only be curtailed if problem behavior is anticipated during that trip. Examples of situations where problem behaviors may be anticipated include a problem behavior having already occurred and the person is not fully calm, or, a problem behavior has not yet occurred, but there are indications that a problem behavior is likely**.** The curtailing of trips off grounds should be done after consultation with psychology staff, or with supervisory staff if psychology staff is not available. Privileges do not include basic living activities, such as meals, habilitation activities, or basic rights afforded all individuals.

G. Personal Property Removal (less than one hour): Removal of an individual's personal item that is being used in an inappropriate or unsafe manner or location. For example, if an individual disturbs others in a common TV room by playing his radio too loudly and will not reduce the volume when instructed, the radio may be removed from that individual for a time not to exceed one hour. The item will be held in a secure area and will be returned to the individual's room or to the individual directly, as appropriate (See Section 6, *Page 8 of 9*).

Category II:

Category II procedures may only be used as part of a formal behavior program designed by the individual's IDT, written by a licensed psychological professional, and approved by a licensed psychologist, physician, Human Rights Committee, and the facility administrator. Behavior program approval will include receipt of a signed consent from the individual and/or guardian.

A. Response Cost: The individual loses reinforcers previously earned in a behavior management system, (i.e. Token Economy Program)

B. Overcorrection - includes the following procedures:
   1) Restitutional Overcorrection: Requires the individual to restore the environment to a state that is better than it was before the occurrence of the inappropriate behavior.

   2) Positive Practice Overcorrection: Requires the individual to engage in an intensive practice period in which the alternative appropriate behavior is practiced.

C. Contingent Personal Property Removal (up to 24 hours maximum): Immediate removal of an individual's personal belongings contingent on the occurrence of a targeted behavior. Confiscated property will be held in a secure area and will be returned to the individual's room or individual directly, as appropriate. This procedure is considered Category II if the individual voluntarily (without duress or coercion) surrenders the property upon request.

Category III:

Category III procedures may only be used as part of a formal behavior program designed by the individual's IDT, written by a licensed psychological professional, and approved by a licensed psychologist, physician, other professionals, as indicated by the nature of the program, Human Rights Committee, and the facility administrator. Behavior program approval will include receipt of a signed consent from the individual and/or guardian. The individual's record documents the IDT's conclusion that the potential harmful effects of each restrictive procedure (restraint, etc.) are clearly outweighed by the harmful effects of the targeted behavior.

A. Separation Time Out (Activity or Setting): Placement of an individual in a quiet area away from reinforcing activities or persons as a result of an inappropriate behavior occurring. The individual will be visually monitored during the time out. Further conditions include ***either:***

1) Separation lasting for over 30 minutes to one (1) hour maximum**.**

2) Separation (any length of time) requiring physical intervention/personal restraint to ensure compliance.

B. Contingent Personal Property Removal (up to 24 hours maximum): Immediate removal of an individual's personal belongings contingent on the occurrence of a targeted behavior. Confiscated property will be held in a secure area and will be returned to the individual's room or to the individual directly, as appropriate. This procedure is considered Category III if the individual does not voluntarily surrender the property upon request, and it must be physically removed.

REPEALED

C. Sensory Deprivation: Involves the temporary impeding of one of the individual's senses for a period of time, contingent upon the occurrence of the target behavior. Most often, this procedure includes only the use of a blindfold or cloth placed over the individual's eyes when it has been shown to facilitate calming. The individual must be visually supervised during the use of this procedure, which may be used in combination with other Category III procedures, as designated in the individual program. It could also include lessening auditory input by covering the individual's ears, or covering a body part (usually the hands) to limit tactile stimulation, hand in mouth, or biting.

D. Restraint: When utilizing restraint as a programmatic option, a hierarchy of lesser restrictive procedures will be attempted prior to restraint, except in limited cases where this is clearly clinically contraindicated. IDT consideration will be given to parent/guardian notification of the use of restraint and address it in the behavior program.

1) Personal Restraint: **In order to prevent personal injury or serious property damage**, the individual or a portion of an individual’s body is immobilized by another person or persons in order to prevent personal injury or serious property damage. Approved methods of intervention must be in the individual's behavior program. This is planned personal restraint, contingent upon occurrence of a target behavior. When available, a licensed nurse should monitor the personal restraint and/or check the individual’s physical condition as soon as possible following restraint**.**

Excluded as <u>personal restraint</u> are: physical assistance, prompting of graduated physical guidance to assist individuals during such procedures as toothbrushing and feeding, or to control random head or arm movements during such procedures

as haircutting, or the use of physical assistance in escorting, redirecting, or in manual guidance techniques are not considered personal restraint and do not require documentation as personal restraint. Also excluded as programmed personal restraint is the use of personal restraint in an emergency situation (Section 6***, Page** 8 of **9***) or during a necessary medical or dental procedure.

In the event of personal restraint, the QMRP/designee of the area must be notified as soon as possible. Programmed personal restraint will occur until the individual is calm and will not exceed fifteen (15) minutes. The IDT will define what constitutes calm behavior for this individual when used in a behavior program.

2) Mechanical Restraint: **In order to prevent personal injury or serious property damage,** the individual or a portion of the individual's body is immobilized until calm by an approved device or devices which may also prevent normal functioning, as described in section C, above. Restraints must be checked for safety and integrity prior to use. The device's use will not exceed 15 minutes without an extension of time approved and documented by the QMRP/designee, preferably, after face to face attention. Unless otherwise determined by the IDT, QMRP/designee extensions will be obtained every 15 minutes until the individual is calm. The IDT should define what constitutes calm behavior for this individual when used in a behavior program. Unless determined clinically contraindicated by the QMRP/designee, should the time in restraint reach 55 minutes, the individual must be released for five minutes for motion, liquid intake, or toileting.

Should time in restraint reach 1 hour and 50 minutes, the individual must be released for at least 10 minutes–for motion, liquid intake, or toileting. If this 10-minute release is judged to be a danger to the individual and/others, additional staff should be called to ensure safety for all concerned. In addition, the individual will be checked, face to face, at least every 15 minutes for safety, well being, and integrity of the restraint. Constant observation is required.

Note: On-site monitoring by the QMRP/designee is recommended. When available, a licensed nurse should monitor the mechanical restraint. If unavailable to monitor, a licensed nurse shall check the individual's physical condition as soon as possible following restraint, but in no case later than thirty minutes after the initiation of the restraint.

Excluded as programmed mechanical restraint is the use of restraints in an emergency situation (Section 6**,** *Page 8 of 9*), during a necessary medical or dental procedure, or to promote healing following a medical procedure or injury. Devices such as a helmet which are not prescribed for the purpose of restricting an individual's movement and/or normal functioning, but rather for their safety and protection are not considered a mechanical restraint.

Note: For medical management, please refer to local site Policy on drugs to manage behavior (Behavior Management/Psychiatric Interventions).

5. **Conditions for Use of Behavior Programs**.

A. A formal behavior program will be developed by the IDT, written by a licensed psychological professional, and approved by a psychologist. It will include the following elements:

1) Description of the behavior to be modified;
2) Functional Analysis;
3) Thorough description of each step of the program to include duration and intensity of specific procedures, the methods of monitoring and analyzing the process, and special precautions that will be taken;
4) Description of any alternatives to the specific procedures;

B. The Individual Program Plan of behavior program will include:
1) Description of all procedures already attempted;
2) Side effects and risks, if any, of the intervention, in comparison with those of allowing the maladaptive behavior to continue; and
3) Behavioral objectives.

C. Behavior Management Procedures should be used in order of least restrictive, unless clinically contraindicated. Exceptions to this order must be fully documented and substantiated as to why more restrictive procedures are advisable before less restrictive ones.

D. All persons administering Category II and III procedures must have been trained in the administration of those specific procedures and have personally experienced those particular procedures, unless medically contraindicated for that person.

E. The Human Rights Committee will review all Category II and III programs at least every 6 months.

F. IDT consideration will be given to seeking consultation from outside expertise when IDT staff resources have been exhausted, as evidenced by the use of Category III procedures for over one (1) year without significant progress. If an outside consultant has been used without success, the agency should continue to access this or other outside expertise until an effective strategy is realized.

An outside consultant is defined as a professional of any discipline and who is not a member of the IDT. For instance, the outside consultant may be a member of the HDC

staff not on the identified IDT, the agency staff, or a professional not affiliated with the agency.

6. **Emergency Procedures**. Nothing in this policy prohibits the use of emergency restraint (mechanical or personal), confiscation of any item used in a threatening manner, or removal from the environment for the purpose of protecting the individual and others around him/her. This includes the use of restraint procedures in the course of an established program, when the individual becomes a danger to him/herself or others, prior to staff being able to implement a lesser restrictive hierarchy. However, it is emphasized that emergency procedures may not be used at frequent intervals, becoming a routine method of intervention. If emergency procedures are utilized three times in a six-month period, the IDT will meet to conduct a functional analysis and develop an appropriate plan of action. The emergency use of restraint must conform to ICF/MR regulations and must be reported immediately to the facility administrator or designee.

7. **Prohibitions**: These activities are expressly prohibited.

A. Corporal punishment. Refers to the application of painful stimuli to the body as a penalty for certain behavior and includes, but is not limited to, hitting, pinching, the use of electrical shock or other infliction of pain, whether or not applied as part of a systematic behavior intervention program.

B. Individuals who receive services from the agency disciplining other individuals unless involved in an organized and approved self-governing program. Individuals will not participate in the actual administration of discipline.

C. Seclusion of an individual alone in a room or other area from which entry/exit is prevented. This does not include placement in a time-out area for brief, programmed time segments, as part of a behavior program that meets all applicable standards.

D. ***Unless specifically requested by family/guardian,*** any procedure that denies visitation or communication with family members.

E. Any procedure that denies sleep, shelter, bedding, food, drink, or use of bathroom facilities.

F. Inappropriate vocalizations, maltreatment, neglect, or forced exercise.

8. **Informed Consent**. The individual served and/or guardian, as appropriate, will be provided a copy of the behavior program which utilizes Category II and III procedures. Informed consent will be obtained PRIOR to the implementation of the program, with the following procedures:

A. Persons 18 years of age or older who have no legally appointed guardian may give informed consent for their behavior program. If there is a question about the individual's ability to give informed consent and no guardian can be located, appropriate legal action must be pursued to have someone appointed who can give consent.

B. Consent by the legal guardian(s) is required if guardianship has been established.

C. The legally adequate consent will:
1) Specify, in terms that are easily understood, the restrictive or intrusive procedure(s) involved;
2) Inform the person(s) giving consent of any potentially harmful effects of the procedure(s);
3) Be time-limited, not to exceed one year; and
4) State that consent may be withdrawn at any time.

9. **Uncategorized Procedures**. In the event a proposed procedure does not readily fit in one of the prescribed categories, it may be utilized on an emergency basis, if necessary, at the discretion of the administrator or designee until the appropriate category is determined.

NOTE*:* Behavior Management Policy 3011-D does not preclude the use of other restrictive/intrusive procedures that would prevent serious bodily harm and/or destruction of property or death. These procedures can only be considered when lesser restrictive procedures have been proven ineffective or their implementation are determined to be clinically contraindicated. Approvals required are the same as those for Category III procedures. Additional approvals may be required as deemed necessary by the facility administrator.

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

Policy	Subject of Policy	Policy No.
Service	Human Rights Committees	3010-I

1. Purpose. This policy is designed to provide guidelines for defining human rights issues for individuals receiving services from DDS and to provide mechanisms by which those issues can be addressed. This policy will help ensure protection of individuals.

2. Scope. This policy applies to all programs operated by DDS. HDCs will include a review of this policy as part of the employee orientation process.

3. Definition of Terms. Operational definitions of terms and phrases related to this policy are found in DDS Director's Office Policies on Behavior Management, 3011-D; Maltreatment Prevention, Reporting and Investigating, 3004-I; and Research Involving Individuals, 3003-I.

4. Human Rights Committee (HRC) Structure. Each program operated by DDS will have an HRC appointed by the on-site administrator. Each Human Rights Committee member is given a statement of and receiving training in the committee's duties and responsibilities.

A. Membership. When meeting on issues germane to human rights of program individuals, the HRC will consist of:

1) Chairman or Vice Chairman (if both are present, only one may vote) selected on the basis of administrative abilities and knowledge of human rights issues;

2) At least one member of the committee who has training or experience with issues and decisions regarding human rights;

3) Direct Care Staff Member (with one year or more on-site experience);

4) Medical or Nursing Staff Person;

Replacement Notation: This Policy replaces DDS Commissioner's Office Policy #3010-I, dated January 28, 1981, and January 8, 1987.

Effective Date: March 15, 1993

References: Accreditation Council

5) Psychology Staff Person (advisory capacity, non-voting);

6) At least one-third of the committee's members are not affiliated with the agency;

7) Individuals served by the facility and/or their representatives.

8) Additional participants may be invited at the discretion of the Chairman, in a non-voting and advisory capacity chosen on the basis of their expertise in relation to the issue under consideration.

B. Membership Terms. Members shall be appointed to specific lengths of service as determined by the on-site administrator at the time of appointment.

C. Quorum. A quorum will consist of at least three voting members.

5. HRC Function. The broad purpose of the HRC is to ensure and protect the human rights of individuals receiving services, keep abreast of current knowledge and issues in the area of human rights, and provide a mechanism for information dissemination of such knowledge and issues to the program staff. Specific functions include but are not limited to the following:

A. As determined by policy, reviewing proposals involving the use of behavior management (DDS Director's Office Policy on Behavior Management, 3011-D).

B. Monitoring and evaluating all uses of behavior management programs requiring HRC approval.

C. Reviewing documented evidence of alleged cases referred to the committee of maltreatment/other situations as covered by DDS policy (as in Director's Office Policy 3004-I) to determine the appropriateness and adequacy of the investigation.

D. Reviewing and/or gathering documented evidence of alleged cases of denial of individual's rights referred to the HDC.

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E. Maintaining a complete and up-to-date record of its work.

F. Reviewing all human rights issues in research proposals to be carried out on-site, and to make recommendations to the DDS Research Review Board through the on-site administrator.

G. Setting up procedures to carry out the above and to file those with the Office of the DDS Director.

H. Establishing procedures for committee operations which include the following components:

1) Schedule of meetings;
2) Rules of order;
3) Rules of record keeping;
4) Removal of committee members.

6. Reporting of Complaints. Complaints or questions regarding aspects of individual's rights may be made directly to any Human Rights Committee member, as well as to the on-site administrator. The Human Rights Committee must immediately inform the on-site administrator of any question or complaint brought to it directly. The on-site administrator shall be given an opportunity to solve whatever problems exist. The on-site administrator must report back to the Human Rights Committee on the final outcome of any complaint or question regardless of its origin within five (5) working days.

7. Conflict of Interest. Personal or professional interest which influences or can influence the ability to make fair objective decisions. In cases where conflict of interest arises, the on-site Administrator retains the right to intervene.

8. Removal of Committee Members. Committee members may be dismissed from committee membership for unethical conduct such as, but not limited to violation of confidentiality, repeated failure to attend and/or participate, and flagrant disregard for individual's rights. Removal shall be accomplished by the on-site administrator and a replacement appointed.

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9. Advocate Office. Nothing in this policy prohibits complaints of denial of rights from being made directly to:

Advocate Office
Department of Human Services
P.O. Box 1437
Little Rock, Arkansas 72203
Phone: 682-8650

REPEALED