

DisabilityRights

ARKANSAS

Tom Masseau, Executive Director

August 11, 2017

Division of Medical Services
Program Development and Quality Assurance
P.O. Box 1437 (Slot S295)
Little Rock, Arkansas 72203-1437

**RE: DDS Community and Employment Supports (CES) Waiver Minimum
Certification Standards
Public Comments**

To Whom It May Concern:

Disability Rights Arkansas, Inc. (DRA) is the federally authorized and funded nonprofit organization serving as the Protection & Advocacy System for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments to the DDS Community and Employment Supports (CES) Waiver Minimum Certification Standards.

Section 103:

This section of the CES Waiver Standards states that DDS Quality Assurance personnel will review provider compliance with the Certification Standards on an annual basis. Language was removed which required this review to be part of an annual on-site visit. DRA requests that this language be added back into the standards, and that an on-site visit be required as an element of oversight of the providers in order to ensure the best care possible for waiver beneficiaries. State oversight, including on-site visits, is important to ensuring safety of beneficiaries.

Section 501(A):

This section deals with the requirements for a beneficiary's Person Centered Service Plan (PCSP). It states that "The beneficiary (or, if applicable, their legal guardian) must be an active participant in the PCSP planning and revision process." DRA would like

this language revised to state "The beneficiary (**and**, if applicable, their legal guardian)..." This will ensure that the beneficiary always is considered a participant, even if they have a guardian. The language as written suggests that a beneficiary with a guardian may not be an active participant. Even a beneficiary with a guardian should have the right and opportunity to be an active participant in this process, which the suggested amended language supports more clearly.

Section 501(C) (3):

This section contains the language: "If the beneficiary or their legal guardian objects to the presence of any individual at the PCSP development meeting, then the individual is not permitted to attend...." DRA recommends that language be included to address situations where the beneficiary and guardian's wishes are in conflict. For example, the following language could be included: "If the wishes of the beneficiary or guardian are in conflict as to persons attending the meeting, the preferences of the beneficiary will be given primary consideration and take precedence where there is no compelling health and safety reason."

Section 507:

This section states that Providers shall not refuse service to beneficiaries unless they cannot ensure the beneficiary's health, safety, or welfare. The stated intent of this policy is "to prevent and prohibit Providers from implementing a selective admission policy based on the perceived 'difficulty' of serving a beneficiary." Determining whether or not a Provider's refusal to serve is legitimate is left to the discretion of DDS. The section contains no mention of consequences for a Provider in the event that it is determined that they are refusing beneficiaries in violation of this policy. DRA requests that this section be amended to contain sanctions against Providers who violate this policy, and addressing what actions will be taken by DDS in the event that a Provider demonstrates a pattern of improperly refusing to serve beneficiaries.

Section 706(C):

This section discusses the required contact by a care coordinator with a beneficiary while their waiver status is in abeyance. We are concerned about the issue of in-person contact with the beneficiary. When a beneficiary is in the community, the standards require that a care coordinator make monthly contact with the beneficiary, with at least one in-person visit per quarter. However, under the standards, during the period of abeyance when a beneficiary is placed in a licensed or certified facility for up to 90 days (with possible renewal), the care coordinator is required to only "have a minimum of one (1) visit or contact each month...." This section does not require any in-person contact as currently written. The language of the abeyance section should be changed to clearly state that even though the beneficiary is institutionalized, the care coordinator

is still required to make quarterly in-person visits.

DRA appreciates the opportunity to provide these comments, and we hope that the State will carefully consider our recommendations and integrate them into the CES Waiver Standards.

Sincerely,

A handwritten signature in black ink that reads "Tom Masseau / dp". The signature is written in a cursive, flowing style.

Tom Masseau
Executive Director

DisabilityRights

ARKANSAS

Tom Masseau, Executive Director

August 11, 2017

Division of Medical Services
Program Development and Quality Assurance
P.O. Box 1437 (Slot S295)
Little Rock, Arkansas 72203-1437

**RE: 1915(b) Waiver Application
Public Comments**

To Whom It May Concern:

Disability Rights Arkansas, Inc. (DRA) is the federally authorized and funded nonprofit organization serving as the Protection & Advocacy System for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments to the 1915(b) Draft Waiver Application submitted by the State.

Pg. 8:

At the top of the page, as part of the program overview, assurances are made that the State will "ensure" that at least two PASSEs will always remain enrolled in order to provide beneficiaries with a choice. DRA would like to see the steps which would be taken by the State in order to ensure that at least two PASSEs are available to beneficiaries. We are concerned that without at least two functioning PASSEs, the Provider-Led Care model will not operate as intended and cause harm to beneficiaries who will be unable to receive care.

Pg. 9:

When discussing the tiers of service for Behavioral Health Clients, the application says that eligibility for Tier III levels of service will be identified by "additional criteria." These additional criteria are not explained any further in the document. While this may refer to information gathered during the independent assessment process, it is unclear in this instance.

P. 20:

On the topics of timely access to services and capacity standards for the PASSEs, the application states that each PASSE must have an adequate referral network and an adequate number of care coordinators for all attributed beneficiaries. No mention is made of ongoing oversight to ensure that these standards are being maintained, or of penalties for failing to meet these standards.

P. 34:

The section on disenrollment from a PASSE states that the good cause reasons for a beneficiary to disenroll from a PASSE during the 12 month lock-in period are "all of the reasons listed in 42 C.F.R. 438.56(d)(2)...." Among the reasons listed in the statute is "poor quality of care," which is not defined in the statute or clarified in the waiver application. We are concerned about situations in there is a conflict between the beneficiary and DDS about quality of care and who decides whether the beneficiary can disenroll from a PASSE. Given that the lock-in period can keep a beneficiary with a PASSE for up to 12 months, the grounds for disenrollment during the lock-in period should be both as clear as possible, especially when there are quality of care issues. To the greatest extent possible, the system should also defer to the choice and judgment of the beneficiary.

P. 35:

On this page a reference is made to an Attribution Methodology Concept Paper attached to the application. There are references made throughout the application to other attached documents which flesh out the various topics of discussion. None of these attachments were provided with the materials released for public comment. All attachments should be provided with material available for public comment, in order to provide stakeholders with the full context for the materials they are meant to discuss.

DRA appreciates the opportunity to provide these comments, and we hope that the State will carefully consider our recommendations and integrate them into the 1915(b) Waiver Application.

Sincerely,

A handwritten signature in black ink that reads "Tom Masseur" followed by a stylized flourish or initials.

Tom Masseur
Executive Director

DisabilityRights

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Tom Masseau, Executive Director

August 11, 2017

Division of Medical Services
Program Development and Quality Assurance
P.O. Box 1437 (Slot S295)
Little Rock, Arkansas 72203-1437

**RE: DDS Policy #1086: Human Development Center Admission and
Discharge Rules
Public Comments**

To Whom It May Concern:

Disability Rights Arkansas, Inc. (DRA) is the federally authorized and funded nonprofit organization serving as the Protection & Advocacy System for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments to the State's changes to DDS Policy #1086: Human Development Center Admission and discharge Rules.

Section II(a)(3)

Section II(a)(3) of the policy discussed the use of an Annual Status review for HDC residents which would, in part, be used to determine continued eligibility for HDC services. There is no mention of what role, if any, the new Independent Assessment will fill as part of the residents' annual review, or if residents will be re-assessed periodically. The Independent Assessment will be used to screen all prospective incoming residents for eligibility, but will not be applied retroactively to the individuals currently residing in the centers. It is unclear if current residents will be assessed moving forward as part of their annual review, or if they will be exempt from the Assessment in perpetuity.

Section II(e)(3)

Under Section II(e)(3) of the policy, which deals with criteria for discharge from the

centers, it states that "(e)ven without a request for discharge, an HDC Superintendent must discharge an individual upon determination by HDC professionals that that individual is no longer eligible for admission or retention." More clarity is needed with regard to how the use of the new Independent Assessment tool will affect HDC eligibility moving forward, and what the process will be for any residents of the Centers who are determined to no longer qualify for Tier 3 services.

There is also no mention of how the Independent Assessment will apply in the case of Emergency Referrals. In circumstances in which an individual is assessed at Tier 2 but requires an emergency admission, it is unclear whether that assessment will disqualify them from receiving those emergency services or whether they will be provided with respite care and not be formally admitted. Again, more clarity in the rules on this issue is needed.

DRA appreciates the opportunity to provide these comments, and we hope that the State will carefully consider our recommendations and integrate them into Policy #1086.

Sincerely,

A handwritten signature in black ink that reads "Tom Masseau" followed by a stylized flourish or initials.

Tom Masseau
Executive Director

DisabilityRights

ARKANSAS

Tom Masseau, Executive Director

August 11, 2017

Division of Medical Services
Program Development and Quality Assurance
P.O. Box 1437, Slot S295
Little Rock, AR 72203

**Re: Child Health Management Services and Developmental Day Treatment
Clinic Services Provider Manual Update
Public Comment**

To Whom It May Concern:

DRA is the federally authorized and funded nonprofit organization serving as the Protection and Advocacy System (P&A) for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments to the State's proposed updates to the provider manuals for Child Health Management Services and Developmental Day Treatment Clinic Services.

Developmental Screen

DHS is proposing the requirement of a developmental screen in order to determine eligibility for Child Health Management Services and Developmental Day Treatment Clinic Services. This developmental screen is in addition to the current prescription/referral by the beneficiary's primary care physician requirement. Though a particular screening tool is mentioned in the Independent Assessment Manual, there is no commitment to using that tool and no other information provided on what the developmental screen would capture that would be different or somehow an

enhancement to the information that is already being provided by a beneficiary's primary care physician.

Our concern regarding a new requirement of a developmental screen before a beneficiary begins to receive services, even though the beneficiary has already received a prescription for services from his or her primary care physician, is that it could lead to a delay in very important intervention services. DRA recommends that DHS provide additional information regarding the specific developmental screening tool and information sought by the screen, as well as timelines for completing, to ensure that the screen does not delay access to services and so that beneficiaries can meaningfully comment on this proposed change.

Provisions related to the Individuals with Disabilities Education Act

The manuals for both the Child Health Management Services and Developmental Day Treatment Clinic Services both have proposed language included for referrals and provision of special education services pursuant to the IDEA. In reviewing, it appears that the information included in the DDTCS manual actually includes the language from the CHMS manual and was not amended to reflect the DDTCS language. DRA recommends that DHS review and revise as necessary.

Otherwise, DRA believes it is important for DHS to add the IDEA requirements to the manuals and to include the very important information regarding identifying children as soon as possible in order to provide access to early intervention services. It is helpful for both CHMS and DDTCS settings to understand their obligations when it comes to these services in addition to the obligations of the Local Educational Agency. Furthermore, the inclusion of timelines for not only providing services while in a CHMS or DDTCS setting but also for referrals in preparation of entry into the public school setting will help to ensure that proper transition planning and continuity of services will occur.

DRA appreciates your attention to our comments and requests consideration and provision of further information so that the public can meaningfully comment on the Child Health Management Services and Developmental Day Treatment Clinic Services Provider Manual Update.

Sincerely,

A handwritten signature in black ink that reads "Tom Masseur" followed by a stylized flourish or initials.

Tom Masseur

Executive Director, Disability Rights Arkansas, Inc.

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Tom Masseau, Executive Director

August 11, 2017

Division of Medical Services
Program Development and Quality Assurance
P.O. Box 1437, Slot S295
Little Rock, AR 72203

**Re: Arkansas Medicaid Independent Assessment for Beneficiaries with
Behavioral Health and Developmental/Intellectual Disabilities Services
Needs
Public Comments**

To Whom It May Concern:

DRA is the federally authorized and funded nonprofit organization serving as the Protection and Advocacy System (P&A) for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments to the State's proposed Arkansas Medicaid Independent Assessment for Beneficiaries with Behavioral Health and Developmental/Intellectual Disabilities Services Needs (Independent Assessment Manual).

DRA understands the State's desire to utilize a single instrument to determine beneficiaries' needs for consistency across programs. However, the information provided by the State regarding the move to the new Independent Assessment is vague. For example, the State has not provided access to the planned instrument it will be using for the assessments, only referencing the MnChoices assessment tool utilized in Minnesota. According to the information provided, the State intends to "build upon" that assessment tool and will "customize an Independent Assessment and algorithms and tiering criteria" for use in Arkansas.

There has been no information regarding the algorithms and no information provided regarding what services are available to a beneficiary once categorized into a tier. The tool itself is not included for review or comment. Additionally, there is not enough information included within the proposed document to know how or if the State intends to consider data provided by beneficiaries or their medical providers in determining a beneficiary's level of need.

Furthermore, the proposed Independent Assessment Manual states it is intended to be used across two divisions within the Arkansas Department of Human Services. Namely, the proposed information states that the Division of Behavioral Health Services and the Division of Developmental Disabilities Services will be utilizing the new Independent Assessment. However, it is our understanding that the current Division of Behavioral Health Services will be merging with the current Division of Adult and Aging Services to form the new Division of Adult and Behavioral Health Services. Therefore, it is unclear whether the Independent Assessment will also be used for the aging and adults with physical disabilities population that is currently being assessed with the ArPath Assessment tool. This needs to be clarified.

DRA appreciates your attention to our comments and requests consideration and provision of further information so that the public can meaningfully comment on the proposed Independent Assessment.

Sincerely,

A handwritten signature in black ink that reads "Tom Masseur" followed by a stylized flourish or initials.

Tom Masseur

Executive Director, Disability Rights Arkansas, Inc.

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Tom Masseau, Executive Director

August 11, 2017

Division of Medical Services
Program Development and Quality Assurance
P.O. Box 1437 (Slot S295)
Little Rock, Arkansas 72203-1437

**RE: Provider Manual Section II: Provider-Led Arkansas Shared Savings
Entity (PASSE) Program
Public Comments**

To Whom It May Concern:

Disability Rights Arkansas, Inc. (DRA) is the federally authorized and funded nonprofit organization serving as the Protection & Advocacy System for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments to Section II of the Provider Manual.

Section 213.200(B)(2)

When discussing the tiers of service for Behavioral Health Clients, the manual says that eligibility for Tier III levels of service will be identified by "additional criteria." These additional criteria are not explained any further in the document. While this may refer to information gathered during the independent assessment process, it is unclear.

Section 214(D)

The section on disenrollment from a PASSE states that the good cause reasons for a beneficiary to disenroll from a PASSE during the 12 month lock-in period are "all of the reasons listed in 42 C.F.R. 438.56(d)(2)...." Among the reasons listed in the statute is "poor quality of care," which is not defined in the statute or clarified in the waiver application. We are concerned about situations in there is a conflict between the beneficiary and DDS about quality of care and who decides whether the beneficiary can disenroll from a PASSE. Given that the lock-in period can keep a beneficiary with a

PASSE for up to 12 months, the grounds for disenrollment during the lock-in period should be both as clear as possible, especially when there are equality of care issues. To the greatest extent possible, the system should also defer to the choice and judgment of the beneficiary.

Section 241(H) and 251(B)

These sections require PASSE care coordinators to make a monthly face-to-face contact with each assigned beneficiary. Section 705 of the CES Waiver Standards requires care coordinators to maintain regular monthly contact with beneficiaries, but only requires face-to-face contact once per quarter. These requirements should be standardized across all programs.

DRA appreciates the opportunity to provide these comments, and we hope that the State will carefully consider our recommendations and integrate them into the Provider Manual.

Sincerely,

A handwritten signature in black ink that reads "Tom Masseau" followed by a stylized flourish or initials.

Tom Masseau
Executive Director

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August 11, 2017

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Program Development and Quality Assurance
P.O. Box 1437, Slot S295
Little Rock, AR 72203

**Re: Independent Assessment for Personal Care and Criminal Background
Check Requirements for Providers
Public Comments**

To Whom It May Concern:

DRA is the federally authorized and funded nonprofit organization serving as the Protection and Advocacy System (P&A) for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments to the State's proposed Independent Assessment for Personal Care and Criminal Background Check Requirements for Providers.

Independent Assessment for Personal Care

As stated in other comments specifically on the proposed Independent Assessment Manual, the information shared by DHS on the Independent Assessment is vague. Therefore, it is difficult to meaningfully comment on any addition to the use of the Independent Assessment for personal care services, which DHS proposes to amend in multiple manuals, without additional information regarding the tool, algorithms, tier system, service allocation, and population impacted by the use of the new Independent Assessment across differing programs. Though many of the proposed changes direct the public to the Independent Assessment Guide for more information, the Independent Assessment Manual, as the only "guide" published by DHS directly discussing the Independent Assessment, does not provide the information needed. Consequently, the

public is left with little information regarding the process and no way to fully comment on the proposed rule changes.

State Plan Amendment-Personal Care

In addition to the lack of information pertaining to the Independent Assessment mentioned above, the State Plan proposed changes continues to use outdated terminology and should be corrected. Intermediate care facilities are no longer referred to as intermediate care facilities for the mentally retarded but instead are now known as intermediate care facilities for individuals with intellectual disabilities. The State Plan should be amended to reflect the current terminology.

DRA appreciates your attention to our comments and requests consideration and provision of further information so that the public can meaningfully comment on the proposed Independent Assessment for Personal Care and Criminal Background Check Requirements for Providers.

Sincerely,

A handwritten signature in black ink that reads "Tom Masseau" followed by a stylized monogram or initials.

Tom Masseau

Executive Director, Disability Rights Arkansas, Inc.

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Tom Masseau, Executive Director

August 11, 2017

Division of Medical Services
Program Development and Quality Assurance
P.O. Box 1437, Slot S295
Little Rock, AR 72203

**Re: DDS Policy 1076- Appeals
Public Comments**

To Whom It May Concern:

DRA is the federally authorized and funded nonprofit organization serving as the Protection and Advocacy System (P&A) for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. I am writing on behalf of DRA to submit this letter with our comments to the State's proposed changes to the Division of Developmental Disabilities Services Policy 1076-Appeals.

DRA appreciates that the Division of Developmental Disabilities Services (DDS) is seeking to streamline the appeals process for all DDS adverse actions through the changes it is proposing to Policy 1076. Those changes, however, take away critical information that beneficiaries need access to in order to successfully challenge adverse actions by the State.

The existing policy includes very specific information regarding timelines for appeals, how to file appeals, and the appeals process for various DDS Programs. The proposed policy eliminates that information. Unless the information is shared with consumers in another format, beneficiaries will have difficulty accessing information necessary to challenge the State action. DRA recommends that DDS provide clear information to beneficiaries on their rights to challenge adverse actions in an easily accessible format if it will not be included in Policy 1076.

In addition, the changes to Policy 1076 make it seem as if an appeal to the DDS Director or designee for reconsideration is the first step in the appeals process, which is vastly different than a beneficiary's rights under the existing policy. DRA recommends clarification on this issue so that beneficiaries are aware of their rights to appeal adverse decisions and to requests hearings, when and if appropriate.

DRA appreciates your attention to our comments and requests consideration and implementation of these recommendations in the proposed changes to DDS Policy 1076.

Sincerely,

A handwritten signature in black ink that reads "Tom Masseur". The signature is written in a cursive, flowing style. The first letter "T" is large and loops around the "o". The last letter "r" has a small, sharp hook at the end.

Tom Masseur

Executive Director, Disability Rights Arkansas, Inc.