

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DDS DIRECTOR'S OFFICE POLICY
DDS POLICY 1090
LICENSING POLICY FOR CENTER-BASED COMMUNITY SERVICES

1. **Purpose.** This policy has been prepared to implement Ark. Code Ann. 20-48-201 et. seq.
2. **Scope.** This policy is applicable to all Division of Developmental Disabilities Services (DDS) staff charged with implementation of licensure standards and to the nonprofit community programs and components of nonprofit community programs required to be licensed by DDS.

- A. A nonprofit community program or program component that provides center-based, nonresidential services to individuals with developmental disabilities is required to be licensed by DDS.
- B. Providers of Vocational Maintenance and Supported Employment Services must be currently licensed as a supported employment vendor by Arkansas Rehabilitation Services (ARS) and have certified Job Coaches. Continued licensure and job coach certification is a qualification requirement for the period the nonprofit community program is licensed to provide Vocational Maintenance and Supported Employment Services.

Further, if a Sheltered Workshop or other adult development service of a nonprofit community program or program component is paying a commensurate wage, the nonprofit community program or program component must maintain current wage and hour certification from the U.S. Department of Labor.

- C. A nonprofit community program or program component that provides preschool must maintain current licensure in accordance with the Child Care Facility Licensing Act, Ark. Code Ann. 20-78-201 et. seq.
- D. All educational services provided by a nonprofit community program or program component for school-age children must be approved by the Special Education Section of the Arkansas Department of Education and monitored and regulated by the applicable Local Education Agency in accordance with P.L. 94-142 and rules established by the Special Education Section of the Arkansas Department of Education.

3. **License.**

A. DDS shall license each qualified nonprofit community program or qualified program component.

B. A license is valid and effective only for the physical locations reviewed by DDS and the nonprofit community program or program component to which the license is issued.

C. A license is not transferable to another entity.

D. A copy of the license for a nonprofit community program and for each program component must be readily accessible and posted in a conspicuous place at the physical location of the nonprofit community program or program component to which the license is issued.

E. The validity of a license is contingent on continued substantial compliance with applicable licensure standards. A license is subject to corrective action or interim adverse action which may be imposed by DDS at any time upon a finding of substantial noncompliance.

F. A nonprofit community program or program component may not contract with a nonlicensed entity so that the nonlicensed entity may provide services under the authority of the programs's or program component's license unless:

- 1) The nonlicensed entity is directed by the same governing body that directs the nonprofit community program or program component holding the license in which case the nonlicensed entity is considered part of the nonprofit community program or program component and is subject to review by DDS, or
- 2) The nonlicensed entity is providing contract services for the nonprofit community program or program component over which the nonprofit community program or program component has direction. For example, a contract between nonprofit community program or program component for speech therapy services to be provided on behalf of the nonprofit community program or program component and for which the nonprofit community program or program component submits the billing; or
- 3) The contract between the nonprofit community program or program component and the entity providing services under the license was in existence on October 1, 2007 and is recognized by DDS.

4. **Licensure Team Composition.** DDS is responsible for evaluating a nonprofit community program's or program components' compliance with licensure standards. A DDS Licensure Team may include without limitation representatives of any relevant professional entities.

5. **Access.** DDS shall have access to the premises, staff, individuals served and their families, and all records of a licensed nonprofit community program or program component at all times for the purpose of conducting Abbreviated Reviews, Licensure Reviews, Service Concern Investigations, or Surveys concerning compliance with applicable licensure standards.

6. **Definitions.**

- A. "Abbreviated Review" means a targeted on-site evaluation of an accredited nonprofit entity or nonprofit community program or program component for the purpose of determining compliance with specific licensure standards, providing technical assistance, or conducting brief unscheduled or unannounced visits to provide consultation and assistance in support of continued compliance with licensure standards.
- B. "Licensure Review" means the on-site formal evaluation process of an accredited nonprofit entity or nonprofit community program or program component by DDS to ensure program quality and compliance with applicable licensure standards.
- C. "Direct Care Staff" means staff employed by the certified organization who are responsible for implementing an individual's plan of care and providing day to day direct services in accordance with the plan of care and state and federal regulations.
- D. "National Accrediting Organization" means a national accrediting organization with acknowledged expertise and experience in the field of developmental disabilities, such as the Commission for the Accreditation of Rehabilitation Facilities (CARF) or the Council on Accreditation (COA), recognized by DDS. In order to qualify a licensed provider as accredited for purposes of renewing a Regular License based on deemed status, the specific program standards of a National Accrediting Organization shall be consistent with the configuration of services to persons with developmental disabilities in Arkansas.
- E. "Non-Profit Community Program" means a program that provides nonresidential services to persons with developmental disabilities or nonresidential and residential services to persons with developmental disabilities and is licensed by DDS.
- F. "Accredited Non-Profit Entity" means a nonprofit entity that has successfully completed an ongoing accreditation process that is related to the delivery of services to persons with developmental disabilities offered by a national accrediting organization and satisfies the appropriate licensure criteria established by, and is positioned to provide nonresidential services to persons with developmental disabilities upon licensure by DDS because no existing nonprofit

- community provider is interested in providing the specific category of non-residential services to persons with developmental disabilities that has been identified by DDS as underserved.
- G. "Provisional License" – The status of a Regular License when DDS finds that a nonprofit community program or program component has failed to complete appropriate corrective action under the Regular License with Requirements and continues to be substantially out of compliance with applicable licensure standards or when warranted by the scope and severity level of noncompliance.
 - H. "Regular License" – A license granted to an accredited nonprofit entity or renewed annually for a nonprofit community program or program component when the new provider or nonprofit community program or program component demonstrates compliance with applicable licensure standards.
 - I. "Regular License with Requirements" – The status of a Regular License when DDS finds that a nonprofit community program or program component has been substantially out of compliance with applicable licensure standards for more than thirty (30) calendar days.
 - J. "Service Concern Investigation" means a specific inspection of a nonprofit community program or program component by DDS with regard to a complaint or complaints.
 - K. "Survey" means the on-site formal evaluation process of a nonprofit entity or nonprofit community program or program component by a national accrediting organization at regular intervals to ensure program quality and compliance with applicable policies and rules.
 - L. "Temporary License" – A license granted for a term of ninety (90) calendar days with the possibility of one (1) ninety-day extension to allow time for the start-up of a new nonprofit community program or for an existing nonprofit community program to start-up a new program component.

7. Procedural Guidelines: Licensure Application Process.

- A. Temporary License. Applications for a Temporary License to serve as a nonprofit community provider are only accepted in the order of priority established under Ark. Code Ann. 20-48-201 as amended by Act 645 of 2007 and after DDS determines that a county is underserved under DDS Director's Office Policy #1089.
DDS does not consider an application submitted at any other time or under any other circumstances.

DDS considers only completed applications. If an application is incomplete, DDS promptly notifies the applicant that the application is incomplete and will not be considered. DDS identifies in the notice the items missing from the application.

1) Existing provider in underserved county.

a) *Existing DDS-approved site for current service of existing nonprofit community provider.* A nonprofit community program that is currently providing service at an existing DDS-approved site does not apply to DDS to expand the current services at the existing DDS-approved site.

b) *New site for current service of existing nonprofit community provider.* A nonprofit community program that is currently providing services in a county and wants to expand delivery of the current service to a new site is subject to DDS approval of the physical plant of the new site. The program or program component submits to DDS for review architectural drawings with dimensions of interior walls and identification of direct care areas in the facility to be used by the nonprofit community program for service delivery. DDS conducts an onsite visit and approves the site if it is in substantial compliance with Physical Plant, Accessibility, and Safety Section of the licensure standards.

2) Nonprofit community program that is not an existing provider in the underserved county.

a) *Nonprofit community program provides services in the underserved county but is not providing the category of services for which the county has been declared underserved.* If eligible under the established order of priority and DDS Director's Office Policy #1089, a nonprofit community program that is currently providing services in an underserved county but is not providing the service for which the county has been declared underserved may apply to DDS for a Temporary License to provide the service for which the county has been declared underserved at a new site in the county. The application includes:

- A description of how the program plans to address the applicable Service Provision Standards, and
- Architectural drawings with dimensions of interior walls and identification of direct care areas in the new facility to be used for service delivery.

DDS evaluates the completed application and all supporting documentation for compliance with licensure standards. If DDS determines that the application and supporting documentation satisfy licensure standards, a DDS Licensure Team conducts the following two (2) onsite Abbreviated Reviews:

- An Abbreviated Review of the new facility to be used for service delivery for compliance with the Physical Plant, Accessibility, and Safety Section of the licensure standards.
- An Abbreviated Review of program records pertaining to existing services for compliance with the Individual/Parent/Guardian Rights and Service Provision Sections of the licensure standards.

If the DDS Licensure Team determines that the new facility and existing records satisfy licensure standards, DDS issues a Temporary License to the nonprofit community program to provide the new services at the new site in the underserved county.

b) Nonprofit community program or program component does not provide any services in the underserved county. If eligible under the established order of priority and DDS Director's Office Policy #1089, a nonprofit community program or program component that is not currently providing any services in an underserved county may apply to DDS for a Temporary License to provide the service for which the county has been declared underserved. The application includes:

- A description of how the program will address the applicable service provision standards, and
- Architectural drawings with dimensions of interior walls and identification of direct care areas in the new facility to be used for service delivery.

DDS evaluates the completed application and all supporting documentation for compliance with licensure standards. If DDS determines that the application and supporting documentation satisfy licensure standards, a DDS Licensure Team conducts the following two (2) onsite Abbreviated Reviews:

- An Abbreviated Review of the new facility to be used for service delivery for compliance with the Physical Plant, Accessibility, and Safety Section of the licensure standards.
- An Abbreviated Review of program records pertaining to existing services for compliance with the Individual/Parent/Guardian Rights and Service Provision Sections of the licensure standards.

If the DDS Licensure Team determines that the new facility and existing records satisfy licensure standards, DDS issues a Temporary License to the nonprofit community program to provide the new services at the new site in the underserved county.

3) Accredited nonprofit entity. If eligible under the established order of priority and DDS Director's Office Policy #1089, an accredited nonprofit entity may apply to DDS for a Temporary License to provide the service for which the county has been declared underserved. The application includes:

- documentation of required qualifications,
- copies of written policies and procedures for implementation of the DDS Licensure Standards concerning Board of Directors, Personnel Procedures and Records, Staff Training and Individual/Parent/Guardian Rights,
- a description of how the program or program component will address the DDS Licensure Standards concerning Service Provision, Food Services, Transportation and Physical Plant, Accessibility, and Safety, and
- architectural drawings with dimensions of interior walls and identification of direct care areas in the facility to be used for service delivery.

DDS evaluates the completed application and all supporting documentation for compliance with the DDS Licensure Standards for Center-Based Community Programs. If DDS determines that the application and supporting documentation satisfy licensure standards, a DDS Licensure Team conducts an onsite Abbreviated Review of the facility to be used for service delivery for compliance with the Physical Plant, Accessibility, and Safety Section of the licensure standards. If the DDS Licensure Team determines that the premises of the accredited nonprofit entity satisfy the Physical Plant, Accessibility, and Safety Section of the licensure standards, DDS issues a Temporary License as a nonprofit community program to the accredited nonprofit entity.

B. Licensure Review under Temporary Licensure.

During the term of a Temporary License, a DDS Licensure Team conducts a Licensure Review in accordance with Section 8 of this policy. If the DDS Licensure Team determines that the nonprofit community program or program component is in substantial compliance with applicable Licensure Standards, DDS issues a Regular License. If the DDS Licensure Team determines that the nonprofit community program or program component is not in substantial compliance with applicable licensure standards, DDS imposes corrective actions or sanctions or both in accordance with Section 9 of this policy.

If the nonprofit community program or program component is unable to achieve substantial compliance with applicable Licensure Standards during the term of the Temporary License, DDS denies issuance of a Regular License to the nonprofit community program or program component.

C. Regular License.

1) Regular License Renewal based on Licensure Review.

A nonprofit community program or program component applies annually to DDS to renew a Regular License which requires a Licensure Review by a DDS Licensure Review Team in accordance with Section 8 of this policy. If the DDS Licensure Review Team determines after conducting a Licensure Review that the program or program component is in substantial compliance with applicable

Licensure Standards, DDS renews the program's or program component's Regular License. If the DDS Licensure Review Team determines after conducting a Licensure Review that the program or program component is not in substantial compliance with applicable licensure standards, DDS imposes corrective actions or sanctions or both in accordance with Section 9 of this policy.

2) Regular License Renewal based on Deemed Status.

a) *Deemed Status.* A nonprofit community program or program component may apply for renewal of a Regular License based on current accreditation from a National Accrediting Organization by providing DDS with a copy of the most recent complete report issued by the national accrediting organization concerning the program or program component and the official accreditation certificate.

(i) If already accredited prior to the nonprofit community program's or program components' Licensure Review month, the program or program component shall submit the report and certificate to DDS at least ninety (90) calendar days prior to the beginning of the program's or program component's Licensure Review month.

(ii) If a nonprofit community program or program component is requesting Regular Licensure Based on Deemed Status to begin with the issuance or renewal of the program or program component's most recent Regular License and the program or program component receives national accreditation within eight (8) months after completion of its most recent Licensure Review, the program or program component shall submit the report and certificate to DDS within fourteen (14) calendar days of program's or program component's receipt of the report and certificate.

If the current accreditation indicates that that the nonprofit community program or program component is in substantial compliance with licensure standards and a review of other pertinent information does not indicate a pattern of noncompliance or pervasive noncompliance at Level 2 or above, DDS renews the Regular License of the program or program component without any further formal review. Pertinent information may include consumer satisfaction surveys, incident reports and results of service concern investigations.

b) *Required communications with DDS.*

(i) A nonprofit community program or program component shall notify DDS immediately after receipt of notification of a change in accreditation status.

(ii) A nonprofit community program or program component shall notify DDS within fourteen (14) calendar days of the program's or program

component's receipt of notice of a pending Survey by the National Accrediting Organization

(iii) A nonprofit community program or program component shall submit contemporaneously to DDS its quality improvement plan and any other document submitted to its National Accrediting Organization.

(iv) A nonprofit community program or program component shall authorize its National Accrediting Organization to release information to DDS upon DDS's request.

c) DDS Access.

(i) Nothing in this section shall affect the right of an authorized representative of DDS to have access to the premises, staff, individuals served and their families, and all records of a nonprofit community program or program component at all times for the purpose of conducting Abbreviated Reviews, Licensure Reviews, Service Concern Investigations, or Surveys concerning compliance with applicable Licensure Standards.

(ii) DDS reports findings of Abbreviated Reviews, Licensure Reviews, Service Concern Investigations, or Surveys and actions taken to the National Accrediting Organization of the nonprofit community program or program component.

(iii) A DDS staff member may participate in the entrance conference and exit conference during any survey conducted by the National Accrediting Organization of the nonprofit community program or program component.

d) Withdrawal of Regular License Based on Deemed Status. DDS may withdraw a Regular Licensure Based on Deemed Status under the following circumstances:

(i) When a complaint concerning substantial noncompliance, as designated in Levels 3 and 4 of the Sanctions Matrix, with a health or safety standard is founded;

(ii) When an Abbreviated Review, Licensure Review, Service Concern Investigation, or Survey find instances of noncompliance with DDS licensure standards; or

(iii) When the national accreditation status of the nonprofit community program or program component has expired, is downgraded, or withdrawn by the National Accrediting Organization.

e) National Accreditation Not Required. DDS does not require any nonprofit community program or program component to seek or submit to accreditation by a National Accrediting Organization.

When a nonprofit community program or program component is not accredited by a national accrediting organization, DDS conducts a Licensure Review of the program or program component as required by this rule.

8. **Procedural Guidelines: Licensure Review Process.**

A. Notice of Licensure Review.

Within ninety (90) calendar days before a Licensure Review, DDS sends notice of the Licensure Review to the Director or Executive Officer and Board President of the nonprofit community program and identifies any information that DDS requires the nonprofit community program or program component to submit prior to the Licensure Review. For example, DDS may request a letter of assurances signed by the Director or Executive Office of the nonprofit community program or designee and the President of the Board of Directors of the nonprofit community program or designee stating that the program's or program component's written policies and procedures are in compliance with the applicable licensure standards.

After receipt of notice of a Licensure Review, the director nonprofit community program or program component shall post a sign announcing in advance the approximate date range during which DDS expects to perform a Licensure Review of the program or program component. The notice should be posted in areas easily observable by individuals served and their families and should include DDS contact information.

B. Offsite Preparation.

The objective of offsite preparation is to analyze various sources of information available about the nonprofit community program or program component to identify any potential areas of concern, to ascertain any special features of the program or program component, and to focus the efforts of the DDS Licensure Review Team during the onsite tour and with regard to onsite information gathering.

The DDS Licensure Review Team Leader or designee is responsible for obtaining all available sources of information about the program or program component for review by the Team including without limitation:

- Documentation from the program or program component requested in advance,
- The prior year's Licensure Review report,
- Incident reports submitted during the prior year, and
- The results of any complaint investigations during the prior year.

The Team Leader is responsible for presenting the information obtained to the Team for review at an offsite team meeting prior to the Licensure Review. At this meeting, the Team Leader should establish preliminary review assignments, and the Team should identify potential areas of concern and note any special features of the program or program component.

C. Entrance Conference.

The Team Leader or designee conducts the entrance conference with the director of the nonprofit community program or program component and any program staff designated by the director. During the entrance conference, the Team Leader or designee:

- Introduces team members,
- Explains the Licensure Review process,
- Informs program staff that the team will be communicating with them through the Licensure Review and will ask for assistance when needed,
- Advises program staff that they will have the opportunity to provide the Team with any information that would clarify an issue brought to their attention, and
- Answers any questions from program staff.

It is recommended that after their introduction to director of the program or program component, the other team members proceed to the initial tour and make general observations of the nonprofit community program or program component.

D. Onsite Preparation.

The Team Leader asks director of the nonprofit community program or program component to provide access to information determined by the Team as necessary to complete the Licensure Review.

In areas easily observable by individuals served and their families, the Team Leader or designee shall post a sign or arrange for the director of the program or program component to post a sign announcing that DDS is performing a Licensure Review and that DDS team members are available to meet in private with individuals served or their families or both.

Throughout the Licensure Review process, the Team should discuss among themselves, on a daily basis, observations made and information obtained in order to focus on the concerns of each team member, to facilitate information gathering and to facilitate decision making at the completion of the Licensure Review.

E. Initial Tour:

The initial tour is designed to provide team members with an initial assessment of the nonprofit community program or program component, the individuals served and their families, and program staff. During the initial tour, team members should:

- Make an initial evaluation of the environment of the program or program component,
- Identify areas of concern to be investigated during the Licensure Review,

- Confirm or invalidate pre-review information about potential areas of concern, and
- Document their findings.

F. Onsite Information Gathering.

The DDS Licensure Review Team gathers information for the Licensure Review from three (3) primary sources: review of records, interviews, and observations. Each team member should verify information and observations in terms of credibility and reliability. All findings must be documented. The Team should maintain an open and ongoing dialogue the program staff throughout the Licensure Review process.

The Team should meet on a daily basis to share information, such as findings to date, areas of concern, any changes needed in the focus of the Licensure Review. These meetings include discussions of concerns observed, possible requirements to which those concerns relate, and strategies for gathering additional information to determine whether the program or program component is meeting licensure standards.

Immediate jeopardy. At any time during the Licensure Review, if one or more team members identify possible immediate jeopardy, the Team should meet immediately to confer. The team must determine whether there is immediate jeopardy during the information gathering task.

Immediate jeopardy is defined as a situation in which the program's or program component's failure to meet one or more licensure standards has caused, or is likely to cause, serious injury, harm, impairment, or death of an individual served. The guiding principles for determining the scope and severity of noncompliance make it clear that immediate jeopardy can be related to mental or psychosocial well-being as well as physical well-being and that the situation in question need not be a widespread problem.

If the team concurs that there is immediate jeopardy, the team leader immediately consults his or her supervisor. If the supervisor concurs, that the situation constitutes immediate jeopardy, the team lead informs the director of the program or program component or designee that DDS is invoking the immediate jeopardy license revocation procedures. The team leader explains the nature of the immediate jeopardy to the director of the program or program component or designee who must submit a statement while the team is on-site asserting that the immediate jeopardy has been removed and including a plan of sufficient detail to demonstrate how and when the immediate jeopardy was removed.

The Team will provide the director of the program or program component with a written report concerning the nature of the immediate jeopardy within ten (10) days of the date of the exit conference.

Substandard Quality of Care. At any time during the Licensure Review, if a team member identifies possible substandard quality of care, the team member should notify other members of the team as soon as possible. The team may make a finding of substandard quality of care during the information gathering task or the information analysis and decision-making task.

If there is a deficiency(ies) related to noncompliance with Licensure Standards concerning Individual/Parent/Guardian Rights or Service Provision and the team member classifies the deficiency as an isolated incidence of severity level 3 or as a pattern of severity level 2, the team member determines if there is sufficient evidence to support a decision that there is substandard quality of care. If the evidence is not sufficient to confirm or refute a finding of substandard quality of care, the team member may expand the Licensure Review to include additional evaluation of the program or program component's compliance with the licensure standard at issue. To determine whether or not there is substandard quality of care, the Team should assess additional information related to the licensure standard at issue, such as written policies and procedures, staff qualifications and functional responsibilities, and specific agreements and contracts that may have contributed to the outcome. It may also be appropriate to conduct a more detailed review of related service delivery.

If the determination of substandard quality of care is made prior to the exit conference, the Team will provide the director of the program or program component with information concerning the nature of the substandard quality of care.

If the determination of substandard quality of care is made after the exit conference, the Team will provide the director of the program or program component with a written report concerning the nature of the substandard quality of care within fifteen (15) days of the date of the completion of the review.

G. Information Analysis and Decision-Making.

The objective of information analysis for deficiency determination is to review and analyze all information collected and to determine whether or not the nonprofit community program or program component has failed to meet one or more of the applicable licensure standards. Information analysis and decision making builds on discussions of the DDS Licensure Review Team during daily meetings, which should include discussions of observed problems, area of concern, and possible failure to meet licensure standards. The team leader or designee collates all information and records the substance of the decision-making discussions on the Licensure Review report.

Deficiency Criteria: The Team bases all deficiency determinations on documented observations, statements by individuals served, statement by the

families of individual serviced, statements by program staff, and available written documents.

Evidence Evaluation: The Team evaluates the evidence documented during the Licensure Review to determine if a deficiency exists due to a failure to meet a licensure standard and if there are any negative outcomes for individuals served due to the failure. The Team should evaluate all evidence in terms of credibility and reliability.

F. Exit Conference.

The DDS Licensure Review Team will conduct an exit conference with nonprofit community program or program component staff immediately following the completion of the Licensure Review. The general objective of the exit conference is to inform the program or program component of the Team's observations and preliminary findings.

During the exit conference, the Team describes the deficiencies that have been identified and the findings that substantiate these deficiencies. The Team provides the program staff with an opportunity to discuss and supply additional information that the program staff believe is pertinent to the identified findings.

G. Writing the Report.

The report of the Licensure Review should be written in terms specific enough to allow a reasonably knowledgeable person to understand the aspect(s) of the licensure standard(s) that is (are) not met. The report should identify the specific licensure standards not met and reflect the content of each licensure standard identified. The report should include a summary of the evidence and supporting observations for each deficiency. The report shall identify the sources of evidence (e.g., interview, observation, or records review) and identify the impact or potential impact of the noncompliance on the individual served, and how it prevents the individual served from reaching his or her highest practicable physical, mental or psychosocial well-being. The levels of severity and scope of deficiencies should be clearly identifiable.

In order to select the appropriate remedy(ies) for noncompliance, the seriousness of the deficiency(ies) is first assessed because specific levels of seriousness correlate with specific remedies. The assessment factors described below are also presented on the matrix in Appendix A.

Guidance on Severity Levels: There are four (4) severity levels:

- Level 1 – No actual harm with potential for minimal harm – is a deficiency that has the potential for causing no more than a minor negative impact of the individual served.
- Level 2 – No actual harm with potential for more than minimal harm that is not immediate jeopardy – is a noncompliance that results in minimal

physical, mental or psychosocial discomfort to the individual served or has the potential to compromise the individual served's ability to maintain or reach his or her highest practicable physical, mental or psychosocial well-being as defined by a plan of care and provision of services.

- Level 3 – actual harm that is not immediate jeopardy – is noncompliance that results in a negative outcome that has compromised the individual served's ability to maintain or reach his or her highest practicable physical, mental or psychosocial well-being as defined by an accurate and comprehensive assessment, plan of care, and provision of services. This *does not include* a deficient practice that only has limited consequence for the individual served and would be included in Level 2 or Level 1.
- Level 4 – immediate jeopardy to the health or safety of an individual served – is a situation in which immediate corrective action is necessary because the program's or program component's noncompliance with one or more licensure standards has caused, or is likely to cause, serious injury, harm, impairment, or death to an individual served.

Guidance on Scope Levels: There are three (3) scope levels:

- Isolated – when one or a very limited number of individuals served are affected, when one or a very limited number of staff are involved, or when the situation has occurred only occasionally or in a very limited number of locations.
- Pattern – when more than a very limited number of individuals served are affected, when more than a very limited number of staff are involved, when the situation has occurred in several locations, or when the same individual served has been affected by reported occurrences of the same deficient practice. A pattern of deficient practices is not found to be pervasive through the program or program component. If the program or program component has a system or policy in place but the system or policy is being inadequately implemented in certain instances or if there is inadequate system with the potential to impact only a subset of individuals served, then the deficient practice is likely a pattern.
- Pervasive – when the problems causing the deficiencies are pervasive in the program or program component or represent systemic failure that affected or has the potential to affect a large portion or all of the individuals served by the program or program component. If the program or program component lacks a system or policy or has an inadequate system or policy to meet the licensure standard and this failure has the potential to affect a large number of individuals served, then the deficient practice is likely widespread.

H. Issuing the Report

DDS provides the nonprofit community program or program component with a written report documenting the findings made during the Licensure Review within thirty (30) calendar days of the date of the exit conference.

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If the Licensure Review Report contains a deficiency that is classified as substandard quality of care, DDS provides the program or program component with a written report concerning the nature of the substandard quality of care within fifteen (15) days of the date of the exit conference.

If the Licensure Review Report contains a deficiency that is classified as immediate jeopardy, DDS provides the program or program component with a written report concerning the nature of the immediate jeopardy within ten (10) days of the date of the exit conference.

I. Plan of Correction

In General. A plan of correction is a plan that the nonprofit community program develops in order to achieve compliance with licensure standards after a finding of substantial noncompliance. Substantial noncompliance refers to a deficiency(ies) that is (are) categorized as no actual harm with potential for more than minimal harm that is (are) not immediate jeopardy and is (are) not substandard quality of care.

In order for a plan of correction to be acceptable, it must:

- Contain elements detailing how the nonprofit community program or program component will correct the deficiency as it relates to the individual served;
- Indicate how the program or program component will act to protect individual service in similar situations;
- Include the measures the program or program component will take or the systems it will alter to ensure that the problem does not recur,
- Indicate how is plans to monitor its performance to make sure that solutions are sustained; and
- Provide dates when corrective action will be completed. Completion dates will be determined in conjunction with DDS.

DDS approves the plan of correction if it satisfies the elements described above. If DDS does not approve the plan of correction, DDS shall provide the nonprofit program or program component with a written explanation stating the reasons the plan of correction does not satisfy the elements described above. The program or program component shall revise the plan of correction until it is approved by DDS. All revisions must be completed within the time frame designated below for submission of the plan of correction.

Substantial compliance: Substantial compliance means a level of compliance with Licensure Standards such that any identified deficiencies pose no greater risk to the health or safety of individuals served than the potential for causing minimal harm. Substantial compliance constitutes compliance with Licensure Standards.

When DDS finds that a nonprofit community program or program component is in substantial compliance but has deficiencies that are isolated with no actual harm and potential for only minimal harm, a plan of correction is not required but the program or program component is expected to correct all deficiencies.

When DDS finds that a nonprofit community program or program component is in substantial compliance but has deficiencies that constitute a pattern or widespread with no actual harm and potential for only minimal harm, a plan of correction is required. While a program or program component is expected to correct deficiencies at this level, these deficiencies are within the substantial compliance range and do not need to be reviewed for correction during subsequent follow-up reviews within the same Licensure Review cycle.

Not in substantial compliance: Within fifteen (15) calendar days of receipt of a licensure report with deficiencies that are categorized as no actual harm with potential for more than minimal harm that is not immediate jeopardy and are not substandard quality of care, the nonprofit community program or program component develops and submits to DDS a written plan of correction.

Not in substantial compliance with substandard quality of care or actual harm that is not immediate jeopardy. Within ten calendar (10) days of receipt of a licensure report with deficiencies that are categorized as substandard quality of care or actual harm that is not immediate jeopardy, the nonprofit community program or program component develops and submits to DDS a written plan of correction.

Not in substantial compliance with immediate jeopardy. Within two calendar (2) days of receipt of a licensure report with deficiencies that categorized as immediate jeopardy, the nonprofit community program or program component develops and submits to DDS a written plan of correction.

J. Post Licensure Review Revisits.

DDS conducts a follow-up Abbreviated Review to confirm that the nonprofit program or program component is in compliance with licensure standards and has the ability to remain in compliance with licensure standards. The purpose of the follow-up Abbreviated Review is to re-evaluate the specific care and services that were cited as noncompliant during the Licensure Review, Service Concern Investigation, or other onsite Survey.

If DDS accepts program's or program component's plan of correction, DDS conducts a follow-up Abbreviated Review within thirty (30) calendar days of acceptance of the plan of correction but not before the latest date of corrective action proposed by the program or program component. At the follow-up Abbreviated Review, the Team should focus on the actions taken by the program or program component since the correction dates listed on the plan of correction.

Within fifteen (15) calendar days of the follow-up Abbreviated Review, DDS sends a written report documenting the findings made during the follow-up Abbreviated Review.

9. **Enforcement Remedies.**

DDS may impose any of the Enforcement Remedies described below alone or in combination with any other Enforcement Remedy or Remedies to encourage quick compliance with licensure standards.

A. License downgrade

1) *Regular License with Requirements.* If a nonprofit community program or program component is not in substantial compliance with applicable licensure standards within thirty (30) calendar days after receiving notice of noncompliance in a Licensure Review Report, the status of the program's or program component's Regular License will be downgraded to a Regular License with Requirements. In order to achieve restoration of its Regular License, the program or program component must correct all identified deficiencies and demonstrate substantial compliance with licensure standards within sixty (60) calendar days of being downgraded to a Regular License with Requirement. DDS may pass over Regular License with Requirements and immediately impose a Provisional License when warranted by the scope and severity level of the noncompliance.

2) *Provisional License:* If a nonprofit community program or program component continues to be out of compliance with applicable licensure standards at the end of the period allowed for a Regular License with Requirements or when warranted by the scope and severity level of the noncompliance, the program's or program component's license is downgraded to a Provisional License for a maximum term of one hundred and eighty calendar days (180) and Moratorium on New Admissions is imposed. During the term of a Provisional License, the program or program component submits weekly progress reports regarding compliance efforts until all deficiencies have been corrected. The failure of a program or program component to substantially comply with licensure standards after sixty (60) calendar days of Provisional Licensure results in the imposition of a Moratorium on Expansion and an underserved determination in accordance with DDS Director's Office Policy #1089.

B. Directed Plan of Correction: A directed plan of correction is an Enforcement Remedy in which DDS develops a plan to require a nonprofit community program or program component to take action within a specified timeframe. Achieving substantial compliance is the responsibility of the program or program component whether or not a directed plan of correction is followed. If a program or program component fails to achieve substantial compliance after complying with a directed

plan of correction, DDS may impose another Enforcement Remedy until the program or program component achieves substantial compliance or loses its license.

DDS may impose a directed plan of correction fifteen (15) calendar days after the program or program component receives notice in non-immediate jeopardy situations and two (2) calendar days after the program or program component receives notice in immediate jeopardy situations.

The date a directed plan of correction is imposed does not mean that all corrections must be completed by that date.

- C. Directed In-Service Training: Directed in-service training is an Enforcement Remedy that DDS imposes when it believes that education is likely to correct the deficiencies and help the nonprofit community program or program component achieve substantial compliance. This remedy requires program staff to attend an in-service training program.

DDS may provide special consultative services for obtaining this type of training. At a minimum, DDS should compile a list of resources that can provide directed in-service training and make this list available to programs and program components and other interested parties.

The program or program component bears the expense of directed in-service training.

If a program or program component fails to achieve substantial compliance after completing directed in-service training, DDS may impose another Enforcement Remedy until the program or program component achieves substantial compliance or loses its license.

- D. Referral to Audit for Investigation. Referral to Audit for Investigation is an Enforcement Remedy that DDS imposes in response to identifying specific information that a nonprofit community program or program component has received inappropriate payment for services.

If an audit reveals that a program or program or program component has not complied with billing requirements in a reckless or intentional manner, DDS may impose additional Enforcement Remedies, including without limitation, license revocation, exclusion and debarment.

- E. State Monitoring: State Monitoring is an Enforcement Remedy that DDS impose when DDS determines that oversight of the nonprofit community program's or program component's efforts to correct cited deficiencies is necessary as a

safeguard against further harm to individuals served when harm or a situation with the potential for harm has occurred.

A State Monitor is an appropriate professional who:

- Is an employee or contractor of DDS,
- Is not an employee or contractor of the monitored program or program component,
- Does not have an immediate family member who is served by the monitored program or program component, and
- Does not have any other conflict of interest with the monitored program or program component.

When State Monitoring is imposed, DDS selects the State Monitor. Monitoring may occur anytime in a program or program component. State Monitors have complete access to the premises, staff, individuals served and their families, and all records of the program or program component at all times and in all instances for performance of the monitoring task.

Some situations in which State Monitoring may be appropriate include without limitation:

- Poor compliance history, i.e. a pattern of poor quality of care, many complaints,
- DDS concern that the situation has the potential to significantly worsen, or
- Substandard quality of care or immediate jeopardy exists and the program or program component seems unable or unwilling to take corrective action.

The Enforcement Remedy of State Monitoring is discontinued when the program or program component demonstrates that it is in substantial compliance with licensure standards and that it will remain in substantial compliance. A program or program component can demonstrate continued compliance by adherence to a plan of correction that delineates what systemic changes will be made to ensure that the deficient practice will not recur and how the program or program component will monitor its corrective actions to ensure it does not recur.

- F. Moratorium on New Admissions. Moratorium on New Admissions is an Enforcement Remedy that DDS may impose any time DDS finds a nonprofit community program or program component to be out of substantial compliance as long as the program or program component is given written notice at least two (2) calendar days before the effective date in immediate jeopardy cases and at least fifteen calendar (15) days before the effective date in non-immediate jeopardy cases.

DDS imposes a Moratorium New Admissions when DDS finds that the program or program component is not in substantial compliance ninety (90) calendar days after the last day of the Licensure Review identifying the deficiency, or when a

program or program component has been found to have furnished substandard quality of care during its last three (3) consecutive Licensure Reviews.

An individual admitted to a program or program component on or after the effective date of the remedy is considered a new admission. An individual admitted to a program or program component on or after the effective date of the remedy who is discharged from the program or program component or takes a temporary leave from the program or program component is still considered new admission upon readmission or return.

An individual admitted to a program or program component before and discharged on or after the effective date of the remedy is not considered a new admission if the individual is subsequently readmitted to the program or program component. An individual admitted to a program or program component before the effective date of the remedy who takes temporary leave before or after the effective date is not consider a new admission upon return.

Generally, if the program or program component achieves substantial compliance and it is verified through a follow-up Abbreviated Review or credible written evidence, DDS lifts the Moratorium on New Admissions. However, when a Moratorium on New Admissions is imposed for repeated instances of substandard quality of care, DDS may impose the remedy until the program or program component is in substantial compliance and DDS believes the program or program component will remain in substantial compliance.

- G. Moratorium on Expansion. Moratorium on Expansion is an Enforcement Remedy that DDS may impose when DDS finds a nonprofit community program or program component to be out of substantial compliance with licensure standards after sixty (60) calendar days of Provisional Licensure. A Moratorium on Expansion may include expanding capacity for current service delivery in existing service areas and expanding to offer current or new services in new service areas.

The failure of a program or program component to substantially comply with licensure standards after sixty calendar (60) days of Provisional Licensure indicates that the program or program component is unable or unwilling to take necessary corrective action and that individuals with developmental disabilities are in danger of losing services. A Moratorium on Expansion continues until the nonprofit community program or program component is in substantial compliance with applicable licensure standards, and DDS believes the program or program component is willing and able to remain in substantial compliance.

If the nonprofit community program or program component has made considerable progress toward substantial compliance with applicable licensure standards during the period of Provisional Licensure, the DDS Director or designee may grant an extension before a Moratorium on Expansion is imposed.

- H. License Revocation. When considering whether to revoke the license of a nonprofit community program or program component, DDS considers many factors, particularly the program's or program component's noncompliance history (e.g., it is consistently in and out of noncompliance), the effectiveness of alternative Enforcement Remedies when previously imposed, and whether the program or program component has failed to follow through on an alternative Enforcement Remedy (e.g. directed plan of correction or directed in-service training). These considerations are not all inclusive but factors to consider when determining whether License Revocation is appropriate in a given case.

Provisional Licensure. If the license of a nonprofit a nonprofit community program or program component is downgraded to Provisional License more than one (1) time in a three-year period, the program or program component is subject to License Revocation.

Immediate Jeopardy. When there is immediate jeopardy to the health or safety of an individual served, DDS revokes the license of a nonprofit community program or program component to be effective within thirty (30) calendar days of the last day of the Licensure Review that found the immediate jeopardy if the immediate jeopardy is not removed before then. If the program or program component provides a written and timely credible allegation that the immediate jeopardy has been removed, DDS will conduct a follow-up Abbreviated Survey prior to revocation if possible. In order for a License Revocation to be reversed, the immediate jeopardy must be removed even if the underlying deficiencies have not been fully corrected.

No Immediate Jeopardy. License Revocation is always an option that may be imposed for the noncompliance of any nonprofit community program or program component regardless of whether or not immediate jeopardy is present. When there is not immediate jeopardy, DDS revokes the Regular License of a nonprofit community program or program component if the program or program component fails to achieve substantial compliance after one hundred and eighty (180) calendar days of Provisional Licensure.

- I. Voluntary Surrender of License. If a nonprofit community program or program component intends to voluntarily surrender its license, the director of the program or program component notifies DDS immediately. As a condition of licensure, the program or program component agrees to assist DDS with transitioning consumers
- J. Transitioning Consumers. DDS has the ultimate responsibility for transitioning consumers when a license is revoked or surrendered. In some instances, the program or program component may assume responsibility for the safe and orderly transition of consumers. However, this does not relieve DDS of its

ultimate responsibility to transition consumers. The goal of transitioning consumers is to minimize disruption in service and the period of time during which consumers receive less than adequate care.

K. Exclusion. Exclusion from contracting with all DHHS divisions and enrolling in the Arkansas Medicaid Program for a specific term is an Enforcement Remedy that may be imposed upon recommendation of DDS and approval by the DHHS Director.

L. Debarment. Recommendation to appropriate federal regulatory agency for Permanent Debarment is an Enforcement Remedy that may be imposed upon recommendation of DDS and approval by the DHHS Director.

10. Solicitation.

A. "Solicitation" means an attempt to unduly influence an individual served by a nonprofit community program or program component or his or her family to transfer from one program to another program. Solicitation is prohibited by the all of the following:

- 1) A nonprofit community program and any program component or any individual acting on behalf of the program or program component,
- 2) Any staff member of a nonprofit community program or program component or any individual acting on behalf of the staff member, and
- 3) Any individual who provides or has provided professional or direct care services for a nonprofit community program or program component or any individual acting on his or her behalf.

B. The following methods of solicitation are prohibited and will compel a DDS investigation:

1) Hiring an individual who has been previously employed by or contracted with another nonprofit community program or program component who subsequently contacts consumers on the individual's caseload with the previous program or program component with the intent of inducing the consumer to transfer to the nonprofit community program or program component with which the individual is currently employed or contracted.

a) Protected Health Information (PHI), such as consumer addresses and telephone numbers, are considered confidential and the property of the nonprofit community program or program component with which the individual was employed or contracted. An individual formerly employed or contracted with a nonprofit community program or program component may not disclose PHI without a signed release from the consumer according to HIPPA regulations.

b) When a consumer transitions between two (2) nonprofit community programs or program components, the receiving program or program component shall indicate on the transition plan if the receiving program or

program component has hired or contracted with an individual who previously served the transferring individual through the sending nonprofit community program or program component.

c) If five (5) or more individuals transfer under the circumstances described immediately above, DDS contacts the individuals or their family members or guardians to determine if solicitation occurred,

- 2) Offering cash or gift incentives to an individual served or his or family or guardian to induce the individual served or his or her family or guardian to change programs,
 - 3) Offering an individual served or his or her family or guardian free goods or services that are not available to other similarly stationed consumers to induce the individual served or his or her family or guardian to change programs,
 - 4) Refusing to provide an individual served access to entitlement services for which the individual is eligible if the individual served or his or her family or guardian selects another nonprofit community program or program component to provide waiver services to the individual,
 - 5) Making negative comments to a potential individual served, his or her family or guardian, or an advocate regarding the quality of services provided by another nonprofit community program or program component other than for the purpose of monitoring or official advocacy,
 - 6) Promise to provide services in excess of those necessary to induce an individual served or his or her family or guardian to change programs, and
 - 7) Directly or indirectly giving an individual served or his or her family or guardian the impression that the nonprofit community program or program component is the only agency that can provide the services desired by the individual served or his or her family.
- C. Only an authorized DDS representative may offer an individual or his or her family provider choice.
- D. Enforcement Remedies for solicitation may include Regular Licensure with Requirements, Provisional Licensure, Moratorium on New Admissions, Moratorium on Expansion, and if a pattern of solicitation occurs, Licensure Revocation.
- E. Marketing is distinguishable from solicitation and is considered an allowable practice. Examples of acceptable marketing practices include without limitation:
- 1) General advertisement using typical media,
 - 2) Distribution of brochures and other informational materials regarding the services provided by a nonprofit community program or program component if the brochures and materials are factual and honestly presented,
 - 3) Providing tours of a nonprofit community program or program component to interested individuals,
 - 4) Mentioning other services provided by the nonprofit community program or program component in which a consumer might have an interest, and

5) Hosting informational gatherings during which the services provided by a nonprofit community program or program component are honestly described.

11. **Procedural Guidelines: Change in Director.**

- A. A nonprofit community program or program component shall provide DDS with written notification of a change in the director of the nonprofit community program or program component immediately upon resignation, discharge, or death of the director.
- B. Within ninety (90) calendar days after the effective date of a change in the director of a nonprofit community program or program component, DDS staff will conduct an Abbreviated Review of the nonprofit community program or program component to provide onsite technical assistance.

12. **Procedural Guidelines: Change in Location of Physical Plant.**

- A. A nonprofit community program or program component shall provide DDS with written notification of a relocation of any part of the program's or program component's physical plant at least sixty (60) calendar days prior to the proposed relocation.
- B. If the relocation is the result of new construction, the nonprofit community program or program component shall provide DDS with copies of architectural drawings that include dimensions of interior walls and identification of direct care areas in the new facility and information regarding any changes made during the course of construction that deviate from the architectural drawings as soon as practicable but in no event later than sixty (60) calendar days prior to the proposed relocation.
- C. Before the nonprofit community program or program component provides services at a new site or moves individuals to a new site, DDS conducts an Abbreviated Review of the new physical plant location for compliance with the Physical Plant, Accessibility, and Safety Section of the licensure standards.

If the relocation is the result of an act of God or violence, DDS staff will be onsite as soon as possible to provide technical assistance with temporary relocation and licensure standards regarding Physical Plant, Accessibility, and Safety.

- 13. **Codes.** A nonprofit community program is responsible for compliance with all applicable building codes, ordinances, rules, statutes and similar regulations that are required by city, county, state, or federal jurisdictions. Where such codes are not in effect, it is the responsibility of the nonprofit community program or program component to consult one of the national building codes generally used in the area for all components of the building type being used or constructed.

Nothing in this policy relieves a nonprofit community program or program component of these responsibilities.

14. **Appeals**. An appeal of any decision made under this policy may be filed according to procedures outlined in DDS Director's Office Policy #1076.

DDS Licensure Sanctions Matrix
Appendix A

Severity of Noncompliance	Scope of Noncompliance		
	Isolated	Pattern	Pervasive
Level 4	“J”	“K”	“L”
	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Transition Consumers Exclusion Debarment	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Transition Consumers License Revocation Exclusion Debarment	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Transition Consumers License Revocation Exclusion Debarment
Level 3	“G”	“H”	“I”
	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Transition Consumers License Revocation Exclusion	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Transition Consumers License Revocation Exclusion Debarment
Level 2	“D”	“E”	“F”
	Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation	Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion
Level 1	“A”	“B”	“C”
	No Plan of Correction No Remedies Commitment to Correct	Plan of Correction	Plan of Correction

The DDS Licensure Sanctions Matrix is used to promote consistent practices in imposing Enforcement Remedies. Deviations based on particular circumstances are appropriate and expected.

**Substandard Quality of Care:*

Substandard Quality of Care is any noncompliance with Individual/Parent/Guardian Rights and Service Provision Standards that constitutes immediate jeopardy to the health or safety of an individual served, or a pattern of or widespread actual harm that is not immediate jeopardy, or a widespread potential for more than minimal harm that is not immediate jeopardy with no actual harm.

State Monitoring is imposed when a nonprofit community program or program component has been found to have provided substandard quality of care on three (3) consecutive Licensure Reviews.

Factors Considered When Selecting Enforcement Remedies: In order to select the appropriate Enforcement Remedy(ies) for noncompliance, the seriousness of the deficiency(ies) is first assessed because specific levels of seriousness correlate with specific remedies. These factors are listed below. They relate to whether the deficiencies constitute:

- No actual harm with a potential for minimal harm,
- No actual harm with a potential for more than minimal harm but not immediate jeopardy,
- Actual Harm that is not immediate jeopardy, or
- Immediate jeopardy to the health or safety of an individual served,

AND whether deficiencies

- Are Isolated
- Constitute a pattern, or
- Are Widespread.

Additional Factors that may be considered in selecting Enforcement Remedy(ies) include without limitation:

- The relationship of one deficiency to other deficiencies,
- The nonprofit community program's or program component's prior history of noncompliance in general, and specifically with reference to the cited deficiency(ies), and
- The likelihood that the selected remedy(ies) will achieve correction and continued compliance.