

ARKANSAS DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS DIRECTOR'S OFFICE POLICY  
DDS POLICY 1091  
CERTIFICATION POLICY FOR NON-CENTERBASED 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 certification standards and to individuals and organizations that are required to be certified by DDS in order to provide services designated in this policy to individuals with developmental disabilities.
  - A. An individual or organization that provides any of the following Early Intervention Services is required to be certified by DDS:
    - 1) Service Coordination,
    - 2) Developmental Therapy/Therapy Assistant Services,
    - 3) Speech Therapy Services,
    - 4) Physical Therapy Services,
    - 5) Occupational Therapy Services,
    - 6) Consultation Services, and
    - 7) Assistive Technology/Adaptive Equipment.
  
  - B. An individual or organization that provides any of the following services under the Alternative Community Services (ACS) Waiver is required to be certified by DDS:
    - 1) Case Management Services,
    - 2) Supportive Living Services,
    - 3) Community Experiences,
    - 4) Respite Care,
    - 5) Non-Medical Transportation,
    - 6) Supported Employment Services,
    - 7) Crisis Intervention Services,
    - 8) Crisis Center Services,
    - 9) Consultation,
    - 10) Specialized Medical Services,
    - 11) Adaptive Equipment, and
    - 12) Environmental Modifications.
  
  - C. A certified provider that offers Supported Employment Services must maintain a current license as a vendor with the Arkansas Rehabilitation Services of the Department of Workforce Education and staff who are certified Job Coaches.



D. Any individual or organization certified to provide Supportive Living Services or Case Management Services under the ACS Waiver may request DDS for approval to serve as an Organized Health Care Delivery System (OHCDS).

3. **Certification.**

A. DDS shall certify each qualified individual or organization that applies to provide a service designated in this policy.

B. A certification is valid and effective only for the individual or organization to which the certification is issued.

C. A certification is not transferable to another entity.

D. A copy of the certification for each service offered must be readily accessible by the individual or organization to which the certification is issued.

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

4. **Certification Team Composition.** DDS is responsible for evaluating a certified provider's compliance with certification standards. A DDS Certification 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 certified provider at all times for the purpose of conducting Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys concerning compliance with applicable Certification Standards.

6. **Certification Definitions.**

A. "Abbreviated Review" means a targeted onsite evaluation of a new provider or certified provider for the purpose of determining compliance with specific certification standards, providing technical assistance, or conducting brief unscheduled or unannounced visits to provide consultation and assistance in support of continued compliance with certification standards.

B. "Certification Review" means an onsite formal evaluation of a new provider or certified provider by DDS to ensure program quality and compliance with applicable certification standards.

- C. "Death Investigation" means an onsite review of an unexpected death that occurs accidentally, or as a result of an undiagnosed condition while the client is receiving services in accordance with DHS Policy 1106.
- D. "Focused Review" means an onsite targeted evaluation of a certified Early Intervention provider due to non-compliance with state and/or federal regulations based on data submitted to DDS .
- E. "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.
- F. "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 certified provider as accredited for purposes of renewing a Regular Certification 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.
- G. "Provisional Certification" means the status of a Regular Certification when DDS finds that a certified provider has failed to complete appropriate corrective action under the Regular Certification with Requirements and continues to be substantially out of compliance with applicable certification standards or when warranted by the scope and severity level of noncompliance.
- H. "Regular Certification" means a certification granted to a new provider or renewed annually for a certified provider when the new provider or certified provider demonstrates compliance with applicable certification standards.
- I. "Regular Certification with Requirements" means the status of a Regular Certification when DDS finds that a certified provider has been substantially out of compliance with applicable Certification Standards for more than thirty (30) days.
- J. "Service Concern Investigation" means a specific inspection of a certified provider by DDS with regard to a complaint or complaints.
- K. "Survey" means an onsite formal evaluation of a new provider or certified provider by a national accrediting organization to ensure program quality and compliance with specific program standards.

- L. “Temporary Certification” means a certification granted for a term of ninety (90) days with the possibility of one (1) ninety-day extension to allow time for the start-up of a new provider or a new service for an existing certified provider.

7. **Procedural Guidelines: Certification Application Process.**

A. **Temporary Certification.** In order to deliver any of the services designated under this policy, an applicant first applies for Temporary Certification with DDS on forms provided for that purpose. DDS considers only completed applications. If an application is incomplete, DDS promptly notifies the provider that the application is incomplete and will not be considered and identifies the items missing from the application.

1) **Early Intervention Services.**

a) *Applicant is an Organization.* If an applicant to provide Early Intervention Services is an organization, the application includes documentation of required qualifications, copies of written policies and procedures for implementation of the DDS Certification Standards concerning Board of Directors, Personnel Procedures and Records and Individual/Parent/Guardian Rights, a description of the applicant’s plan to address applicable Service Provision Standards, and any other documentation requested by DDS to accompany the application.

b) *Applicant is an Individual.* If an applicant to provide Early Intervention Services is an individual, the application includes documentation of required qualification, documentation related to the DDS Certification Standard concerning Certification of Individuals, a description of the applicant’s plan to address Service Provision Standards, and any other documentation requested by DDS to accompany the application.

c) *Temporary Certification for Early Intervention Services.* DDS evaluates the completed application and all supporting documentation for compliance with the DDS Certification Standards for Early Intervention Services. If DDS determines that the application and supporting documentation satisfy certification standards, DDS issues a Temporary Certification to the applicant in order to initiate services. After services are initiated, DDS will conduct an on-site review or in person interview to determine the provider’s compliance with certification standards concerning Service Provision, Individual/Parent/Guardian Rights, and Record Keeping.

2) **ACS Waiver Services.**

a) *Applicant is an Organization.* If an applicant to provide an ACS Waiver Service is an organization, the application includes documentation of required qualifications, copies of written policies and procedures for implementation of

the DDS Certification Standards concerning Board of Directors, Personnel Procedures and Records, Staff Training and Individual/Parent/Guardian Rights, a description of the applicant's plan intends to address the applicable Service Provision Standards, and any other documentation requested by DDS to accompany the application.

*b) Application is an Individual.* If provider applies to provide an ACS Waiver Service and the provider is an individual, the application shall include documentation of required qualifications, copies of written policies and procedures related to implementation of the DDS Certification Standards concerning Personnel Procedures and Records, Staff Training and Individual/Parent/Guardian Rights, a description of the applicant's plan to address the applicable Service Provision Standards, and any other documentation requested by DDS to accompany the application.

*c) Temporary Certification for ACS Waiver Services.* DDS evaluates the completed application and all supporting documentation for compliance with the applicable DDS Certification Standards for ACS Waiver Services. If the Temporary Certification is for Respite Care, Supportive Living Services in a community or congregate setting, or Crisis Center Services, DDS also conducts an onsite Abbreviated Review of the premises for compliance with Certification Standards concerning Physical Plant, Accessibility, and Safety. If DDS determines that the application, supporting documentation, and if applicable, the Abbreviated Review of the premises satisfy certification standards, DDS issues a Temporary Certification to the applicant in order to initiate services. After services are initiated, DDS will conduct an on-site review or in person interview to determine the provider's compliance with certification standards concerning Service Provision, Individual/Parent/Guardian Rights, and Record Keeping.

*3) Request for Approval as an Organized Health Care Delivery System.* Any individual or organization certified to provide Supportive Living Services or Case Management Services under the ACS Waiver may request DDS for approval to serve as an Organized Health Care Delivery System (OHCDS).

**B. Certification Review under Temporary Certification.** During the term of the Temporary Certification, DDS conducts a Certification Review in accordance with Section 8 of this policy. If DDS determines that the provider is in substantial compliance with applicable Certification Standards, DDS issues a Regular Certification. If DDS determines that the provider is not in substantial compliance with applicable certification standards, DDS imposes corrective actions or sanctions or both in accordance with Section 9 of this policy.

If the provider is unable to achieve substantial compliance with applicable Certification Standards during the term of the Temporary Certification, DDS may

extend the term of the Temporary Certification or deny the issuance of a Regular Certification.

C. Regular Certification.

1) Regular Certification Based on Certification Review.

DDS conducts periodic reviews of certified providers to ensure continued compliance with Certification Standards. A periodic review may be an Abbreviated Review or a Certification Review. If DDS determines after conducting a review that the certified provider is in substantial compliance with applicable Certification Standards, DDS renews the certified provider's Regular Certification. If DDS determines after conducting a review that the certified provider is not in substantial compliance with applicable Certification Standards, DDS imposes corrective actions or sanctions or both in accordance with Section 8 of this policy.

2) Regular Certification Based on Deemed Status.

a) *Deemed Status.* A certified provider may apply for renewal of a Regular Certification 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 provider and the official accreditation certificate.

(i) If already accredited prior to the provider's Certification Review month, the provider submits the report and certificate to DDS at least thirty (30) days prior to the beginning of the provider's Certification Review month.

(ii) If a provider is requesting Regular Certification Based on Deemed Status to begin with the prior year's certification and the provider receives national accreditation within eight (8) months of completion of the prior year's certification process, the provider submits the report and certificate to DDS within thirty (30) days of provider's receipt of the report and certificate.

If the current accreditation indicates that the provider is in substantial compliance with certification standards, DDS issues a Regular Certification to the provider without any further Certification Review.

If the current accreditation indicates that that the certified provider 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 Certification of the certified provider without any further Certification Review. Pertinent

information may include consumer satisfaction surveys, incident reports and results of service concern investigations.

*b) Required Communications.*

(i) A certified provider notifies DDS immediately after receipt of notification of a change in accreditation status.

(ii) A certified provider notifies DDS within fourteen (14) calendar days of the provider's receipt of notice of a pending Survey by the National Accrediting Organization

(iii) A certified provider submits contemporaneously to DDS its quality improvement plan and any other document submitted to its National Accrediting Organization.

(iv) A certified provider authorizes its National Accrediting Organization to release information to DDS upon DDS's request.

*c) DDS Access.*

(i) Nothing in this section affects the right of DDS to have access to the premises, staff, individuals served and their families, and all records of a certified provider at all times for the purpose of conducting Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys concerning compliance with applicable Certification Standards.

(ii) DDS reports findings of Abbreviated Reviews, Certification Reviews, Service Concern Investigations, or Surveys and actions taken to the National Accrediting Organization of the certified provider.

(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 certified provider.

*d) Withdrawal of Regular Certification Based on Deemed Status.* DDS may withdraw a Regular Certification 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, Certification Review, Service Concern Investigation, or Survey find instances of noncompliance with DDS Certification Standards, or



(iii) When the national accreditation status of the certified provider has expired, is downgraded, or withdrawn by the National Accrediting Organization.

e) *National Accreditation Not Required.* DDS does not require any provider to seek or submit to accreditation by a National Accrediting Organization.

When a certified provider is not accredited by a national accrediting organization, DDS conducts a review of the provider as specified in this section.

## 8. **Procedural Guidelines: Certification Review Process.**

### A. Notice of Certification Review.

Within ninety (90) days before a Certification Review, DDS sends notice of the Certification Review to the Director and Board President, if applicable, of the certified provider and identifies any information that DDS requires certified provider to submit prior to the Certification Review. For example, DDS may request a letter of assurances signed by the Director of the certified provider or designee and the President of the Board of Directors of the certified provider or designee stating that the certified provider's written policies and procedures are in compliance with the applicable certification standards.

After receipt of notice of a Certification Review, the director of the certified provider shall distribute a notice announcing in advance the approximate date range during which DDS expects to perform a Certification Review of the certified provider. The notice should be made available to all 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 certified provider to identify any potential areas of concern, to ascertain any special features of the provider, and to focus the efforts of the DDS Certification Review Team during the onsite tour and with regard to onsite information gathering.

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

- Documentation from the provider requested in advance,
- The prior year's Certification 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 Certification 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 certified provider.

C. Entrance Conference.

The Team Leader or designee conducts the entrance conference with the director of the certified provider and any staff designated by the director. During the entrance conference, the Team Leader or designee:

- Introduces team members,
- Explains the Certification Review process,
- Informs the director and any staff that the Team will be communicating with them through the Certification Review and will ask for assistance when needed,
- Advises the director and any 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 the director or any staff.

If services are provided on-site, it is recommended that after their introduction to director of the certified provider, the other team members proceed to the initial tour and make general observations of the certified provider.

D. Onsite Preparation.

The Team Leader asks director of the certified provider to provide access to information determined by the Team as necessary to complete the Certification Review.

If applicable, the Team Leader shall post a sign or arrange for the director of the certified provider to post a sign in areas easily observable by individuals served and their families announcing that DDS is performing a Certification Review and that DDS team members are available to meet in private with individuals served or their families or both.

Throughout the Certification 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 Certification Review.

#### E. Initial Tour.

The initial tour of the provider's administrative facility(ies) and agency owned/operated/controlled sites is designed to provide team members with an initial assessment of the certified provider, the individuals served and their families, and any staff. During the initial tour, team members should:

- Make an initial evaluation of the environment of the certified provider,
- Identify areas of concern to be investigated during the Certification Review,
- Confirm or invalidate pre-review information about potential areas of concern, and
- Document their findings.

#### F. Onsite Information Gathering.

The DDS Certification Review Team gathers information for the Certification 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 with the director and any staff throughout the Certification 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 Certification 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 certified provider is meeting certification standards.

*Immediate jeopardy:* Immediate jeopardy is defined as a situation in which the certified provider's failure to meet one or more certification 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.

NOTE: *See Section 8.1 and the Certification Sanctions Matrix in Appendix A to this policy for more information on classifying the scope and severity of deficient practices.*

At any time during the Certification 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. 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 certified provider or designee that DDS is invoking the immediate jeopardy certification revocation procedures. The team leader explains the nature of the immediate jeopardy to the director of the certified provider 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 certified provider 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:* Substandard quality of care is defined as a deficient practice related to Certification Standards concerning Individual/Parent/Guardian Rights or Service Provision classified as an isolated incident at severity level 3 or as a pattern of deficient practices at severity level 2.

*NOTE: See Section 8.1 and the Certification Sanctions Matrix in Appendix A to this policy for more information on classifying the scope and severity of deficient practices.*

At any time during the Certification 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 Certification 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 Certification Review to include additional evaluation of the certified provider'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 Certification 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 certified provider 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 certified provider 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 for Deficiency Determination.

The objective of information analysis for deficiency determination is to review and analyze all information collected and to determine whether or not the certified provider has failed to meet one or more of the applicable certification standards. Information analysis and decision making builds on discussions of the DDS Certification Review Team during daily meetings, which should include discussions of observed problems, area of concern, and possible failure to meet certification standards. The team leader or designee collates all information and records the substance of the decision-making discussions on the Certification 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 the director and staff, and available written documents.

*Evidence Evaluation:* The Team evaluates the evidence documented during the Certification Review to determine if a deficiency exists due to a failure to meet a certification 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.

H. Exit Conference.

The DDS Certification Review Team will conduct an exit conference with the certified provider immediately following the completion of the Certification Review. The general objective of the exit conference is to inform the certified provider 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 director and any staff with an opportunity to discuss and supply additional information that he or she believes is pertinent to the identified findings.

I. Writing the Report.

The report of the Certification Review should be written in terms specific enough to allow a reasonably knowledgeable person to understand the aspect(s) of the certification standard(s) that is (are) not met. The report should identify the specific certification standards not met and reflect the content of each certification 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.

*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 certified provider’s noncompliance with one or more certification 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 throughout the operations of the certified provider. If the certified provider 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 operations of the certified provider or represent systemic failure that affected or has the potential to affect a large portion or all of the individuals served by the certified provider. If the certified provider lacks a system or policy or has an inadequate system or policy to meet the certification standard and this failure has the potential to affect a large number of individuals served, then the deficient practice is likely widespread.

#### J. Issuing the Report.

DDS provides the certified provider with a written report documenting the findings made during the Certification Review within thirty (30) calendar days of the date of the exit conference.

If the Certification Review Report contains a deficiency that is classified as substandard quality of care, DDS provides the certified provider 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 Certification Review Report contains a deficiency that is classified as immediate jeopardy, DDS provides the certified provider with a written report concerning the nature of the immediate jeopardy within ten (10) days of the date of the exit conference.

#### K. Plan of Correction.

*In General.* A plan of correction (POC) is a written statement developed by a certified provider to guide its efforts in achieving substantial compliance with certification 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 certified provider will correct the deficiency as it relates to the individual served;

- Indicate how the certified provider will act to protect individual service in similar situations;
- Include the measures the certified provider will take or the systems it will alter to ensure that the problem does not recur,
- Indicate how the certified provider 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 certified provider with a written explanation stating the reasons the plan of correction does not satisfy the elements described above. The certified provider 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.

*POC when there is substantial compliance:* Substantial compliance means a level of compliance with Certification 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 Certification Standards.

When DDS finds that a certified provider 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 certified provider is expected to correct all deficiencies.

When DDS finds that a certified provider 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 certified provider 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 Certification Review cycle.

*POC when there is not substantial compliance:* Within fifteen (15) days of receipt of a certification 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 certified provider develops and submits to DDS a written plan of correction.

*POC when there is not substantial compliance and there is also substandard quality of care or actual harm that is not immediate jeopardy.* Within ten (10) days of receipt of a certification report with deficiencies that are categorized as



substandard quality of care or actual harm that is not immediate jeopardy, the certified provider develops and submits to DDS a written plan of correction.

*POC when there is not substantial compliance and there is also with immediate jeopardy:* Within two (2) days of receipt of a certification report with deficiencies that categorized as immediate jeopardy, the certified provider develops and submits to DDS a written plan of correction.

#### L. Post Certification Review Revisits.

DDS conducts a follow-up Abbreviated Review to confirm that the certified provider is in compliance with certification standards and has the ability to remain in compliance with certification 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 Certification Review, Service Concern Investigation, or other onsite Survey.

If DDS accepts the certified provider'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 certified provider. At the follow-up Abbreviated Review, the Team should focus on the actions taken by the certified provider 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 certification standards.

#### A. Certification downgrade.

*1) Regular Certification with Requirements.* If a certified provider is not in substantial compliance with applicable certification standards within thirty (30) calendar days after receiving notice of noncompliance in a Certification Review Report, the status of the certified provider's Regular Certification will be downgraded to a Regular Certification with Requirements. In order to achieve restoration of its Regular Certification, the certified provider corrects all identified deficiencies and demonstrates substantial compliance with certification standards within sixty (60) calendar days of being downgraded to a Regular Certification with Requirements. DDS may pass over Regular Certification with Requirements

and immediately impose Provisional Certification when warranted by the scope and severity level of the noncompliance.

2) Provisional Certification. When a certified provider continues to be out of compliance with applicable certification standards at the end of the period allowed for a Regular Certification with Requirements or when warranted by the scope and severity level of the noncompliance, the certified provider's certification is downgraded to a Provisional Certification 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 Certification, the certified provider submits weekly progress reports regarding compliance efforts until all deficiencies have been corrected. The failure of a certified provider to substantially comply with certification standards after sixty (60) calendar days of Provisional Certification results in the imposition of a Moratorium on Expansion.

B. Directed Plan of Correction.

A directed plan of correction is an Enforcement Remedy in which DDS develops a plan to require a certified provider to take action within a specified timeframe. Achieving substantial compliance is the responsibility of the certified provider whether or not a directed plan of correction is followed. If a certified provider fails to achieve substantial compliance after complying with a directed plan of correction, DDS may impose another Enforcement Remedy until the certified provider achieves substantial compliance or loses its certification.

DDS may impose a directed plan of correction fifteen (15) calendar days after the certified provider receives notice in non-immediate jeopardy situations and two (2) calendar days after the certified provider 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 certified provider achieve substantial compliance. This remedy requires provider 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 certified providers and other interested parties.

The certified provider bears the expense of directed in-service training.

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

D. Referral to Medicaid Audit for Investigation.

Referral to Medicaid Audit for Investigation is an Enforcement Remedy that DDS imposes in response to identifying specific information that a certified provider has received inappropriate payment for services.

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

E. State Monitoring.

State Monitoring is an Enforcement Remedy that DDS impose when DDS determines that oversight of the certified provider'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 provider,
- Does not have an immediate family member who is served by the monitored provider, and
- Does not have any other conflict of interest with the monitored provider.

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 certified provider 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 certified provider seems unable or unwilling to take corrective action.

The Enforcement Remedy of State Monitoring is discontinued when the certified provider demonstrates that it is in substantial compliance with certification standards and that it will remain in substantial compliance. A certified provider 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 certified provider 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 certified provider 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 (15) calendar days before the effective date in non-immediate jeopardy cases.

DDS imposes a Moratorium New Admissions when DDS finds that a certified provider is not in substantial compliance ninety (90) calendar days after the last day of the Certification 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 Certification Reviews.

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

An individual admitted to a certified provider's service 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 service. An individual admitted to a certified provider's service 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 certified provider 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 certified provider is in substantial compliance and DDS believes the certified provider will remain in substantial compliance.

G. Moratorium on Expansion.

Moratorium on Expansion is an Enforcement Remedy that DDS may impose when DDS finds a certified provider to be out of substantial compliance with certification standards after sixty (60) calendar days of Provisional Certification. 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 certified provider to substantially comply with certification standards after sixty (60) calendar days of Provisional Certification indicates that the certified provider 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 certified provider is in substantial compliance with applicable standards, and DDS believes the certified provider is willing and able to remain in substantial compliance.

If the certified provider has made considerable progress toward substantial compliance with applicable certification standards during the period of Provisional Certification, the DDS Director or designee may grant an extension before a Moratorium on Expansion is imposed.

#### H. Specific Service Prohibition.

A Specific Service Prohibition is an Enforcement Remedy that DDS may impose when DDS finds that a certified provider harmed a consumer. DDS may impose the prohibition against serving a specific individual or individuals or against a specific class of individuals. The prohibition may be permanent or for a specific term depending on the circumstances of the case.

#### I. Certification Revocation.

When considering whether to revoke the certification of a certified provider, DDS considers many factors, particularly the provider'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 certified provider 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 Certification Revocation is appropriate in a given case.

*Immediate Jeopardy.* When there is immediate jeopardy to the health or safety of an individual served, DDS revokes the certification of a certified provider to be effective within thirty (30) calendar days of the last day of the Certification Review that found the immediate jeopardy if the immediate jeopardy is not removed before then. If the certified provider 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 Certification Revocation to be reversed, the immediate jeopardy must be removed even if the underlying deficiencies have not been fully corrected.

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

J. Voluntary Surrender of License.

If a certified provider intends to voluntarily surrender its certification, the director of the certified provider notifies DDS immediately. As a condition of certification, the program or program component agrees to assist DDS with transitioning consumers.

K. Transitioning Consumers.

DDS has the ultimate responsibility for transitioning consumers when a certification is revoked. In some instances, the certified provider may assume responsibility for the safe and orderly transition of consumers when the certification of the provider is revoked. However, this does not relieve DDS of its ultimate responsibility to transition consumers. The goal of transitioning consumers is to minimize the period of time during which consumers receive less than adequate care.

L. 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.

M. 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 the use of a method described in Section 10.B of this policy to attempt to unduly influence an individual served by a certified provider or his or

her family or guardian to transfer from one provider to another provider.  
Solicitation is prohibited by the all of the following:

- 1) A certified provider or any individual acting on behalf of the certified provider,
- 2) Any staff member of a certified provider 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 certified provider or any individual acting on his or her behalf.

B. The following methods of solicitation are prohibited:

- 1) With the intent of soliciting consumers, hiring an individual who has been previously employed by or contracted with another certified provider who subsequently contacts consumers on the individual's caseload with the previous provider with the intent of inducing the consumer to transfer to the certified provider with which the individual is currently employed or contracted.

Protected Health Information, such as consumer addresses and telephone numbers, are considered confidential and the property of the certified provider with which the individual was or is employed or contracted. An individual formerly employed or contracted with a certified provider may not disclose Protected Health Information without a signed release from the consumer according to HIPAA. If DDS finds that an individual has released Protected Health Information in a manner contrary to HIPAA, DDS will notify the appropriate licensing or certification entity and the Office of Inspector General of the U.S. Department of Health and Human Services.

When a consumer transitions between two (2) certified providers, the receiving provider shall indicate on the transition plan if the receiving provider has hired or contracted or intends to hire or contract an individual who previously served the transferring individual through the sending provider. If five (5) or more individuals transfer under the circumstances described in this paragraph, 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 providers,
- 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 providers,

- 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 certified provider 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 certified provider other than for the purpose of monitoring or official advocacy,
  - 6) Promising to provide services in excess of those necessary to induce an individual served or his or her family or guardian to change programs,
  - 7) Directly or indirectly giving an individual served or his or her family or guardian the false impression that the certified provider is the only agency that can provide the services desired by the individual served or his or her family or guardian, and
  - 8) Engaging in any activity that DDS determines was intended to be solicitation as defined in Section 10.A of this policy.
- C. Only an authorized DDS representative may offer an individual or his or her family or guardian provider choice.
- D. DDS investigates claims of solicitation that appear to be consistent with the definition of solicitation in Section 10.A of this policy. If DDS makes a finding of prohibited solicitation, DDS imposes enforcement remedies under Section 9 consistent with the scope and severity of the solicitation. If a pattern of solicitation occurs, DDS may impose 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 traditional media,
  - 2) Distribution of brochures and other informational materials regarding the services provided by a certified provider if the brochures and materials are factual and honestly presented,
  - 3) Providing tours of a certified provider to interested individuals,
  - 4) Mentioning other services provided by the certified provider in which a consumer might have an interest, and
  - 5) Hosting informational gatherings during which the services provided by a certified provider are honestly described.



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

- A. A certified provider shall provide DDS with written notification of a change in the director of the certified provider immediately upon resignation, discharge, or death of the director.
- B. Within sixty (60) calendar days after the effective date of a change in the director of a certified provider, DDS staff will conduct an Abbreviated Review of the certified provider to provide onsite technical assistance.

12. **Codes:** A certified provider 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 certified provider 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 certified provider these responsibilities.

13. **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 Certification Sanctions Matrix**  
**Appendix A**

Scope of Noncompliance

Severity of Noncompliance	<b>Isolated</b>	<b>Pattern</b>	<b>Pervasive</b>
	“J”	“K”	“L”
Level 4	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training Refer to Audit for Investigation State Monitoring Specific Service Prohibition 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 Specific Service Prohibition Transition Consumers Certification 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 Specific Service Prohibition Transition Consumers Certification Revocation Exclusion Debarment
	“G”	“H”	“T”
Level 3	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training	<u>*Substandard Quality of Care</u> Plan of Correction Directed Plan of Correction Directed In-Service Training

	Refer to Audit for Investigation State Monitoring Specific Service Prohibition	Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition Transition Consumers Certification Revocation Exclusion	Refer to Audit for Investigation State Monitoring Moratorium on New Admissions Moratorium on Expansion Specific Service Prohibition Transition Consumers Certification Revocation Exclusion Debarment
	<b>“D”</b>	<b>“E”</b>	<b>“F”</b>
Level 2	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
	<b>“A”</b>	<b>“B”</b>	<b>“C”</b>
Level 1	No Plan of Correction No Remedies Commitment to Correct	Plan of Correction	Plan of Correction

The DDS Certification 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 DDS has found a certified provider to have provided substandard quality of care on three (3) consecutive Certification 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 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.