Rules for the Division of Developmental Disabilities Services

Community and Employment Support (CES) Waiver Providers

LAST UPDATED: January 1, 2023

Subchapter 1. General.

101. Authority.

These standards are promulgated under the authority of Ark. Code Ann. § 20-76-201, and Ark. Code Ann. §§ 20-48-101 to 1108.

102. Purpose.

The purpose of these standards is to:

(1) Serve as the minimum standards for community providers delivering services to clients enrolled in the Arkansas 1915(c) home and community-based waiver number AR.0188, which is known as the Community and Employment Support Waiver (CES Waiver); and

(2) Ensure the health and safety of clients who are enrolled in the CES Waiver.

103. Definitions.

(a) "Adverse agency action" means

(1) A denial of an application for CES Waiver Service certification; and

(2) Any enforcement action taken by DDS pursuant to Section 803 to 807.

(b) "Change of ownership" means any fifty percent (50%) or greater change in the financial interests, governing body, operational control, or other operational or ownership interests of a Provider within a twelve (12) month period.

(c) "CES Waiver" means the Arkansas 1915(c) home and community-based waiver number AR.0188, which is known as the Community and Employment Support Waiver.

(d) "CES Waiver Service" means one of the following services each as defined in section 284.000 of the Provider-Led Arkansas Shared Savings Entity (PASSE) Medicaid Manual and the CES Waiver:

(1) Respite;

(2) Supported Employment;

(3) Supportive Living;

(4) Specialized Medical Supplies;

(5) Adaptive Equipment;

(6) Community Transition Services;

(7) Consultation;

(8) Environmental Modifications; and

(9) Supplemental Support.

(e) "Chemical restraint" means the use of medication or any drug that:

(1) Is administered to manage a client's behavior;

(2) Has the temporary effect of restricting the client; and

(3) Is not a standard treatment for the client's medical or psychiatric condition.

(f) "Complex care home" means a home setting where each client residing in the home is diagnosed with an intellectually disability and a significant co-occurring deficit, which includes without limitation individuals with an intellectual disability and significant:

(1) Behavioral health needs; or

(2) Physical health needs.

(g) "DDS" means the Arkansas Department of Human Services, Division of Developmental Disabilities Services, or its delegatee.

(h) "DMS" means the Arkansas Department of Human Services, Division of Medical Services.

(i) "Directed in-service training plan" means a plan of action that:

(1) Provides training to a Provider to correct non-compliance with these standards;

(2) Establishes the topics covered and materials used in the training;

(3) Specifies the length of the training;

(4) Specifies the employees required to attend the training; and

(5) Is approved by DDS.

(j) "Employee" means an employee or other agent of a Provider who has or will have direct contact with a client or their personal property or funds, including without limitation any employee, independent contractor, sub-contractor, intern, volunteer, trainee, or agent.

(k)

(1) "Licensed professional" means a person who holds a professional certificate or license in good standing in Arkansas.

(2) "Licensed professional" includes without limitation the following independently licensed or certified professionals: general contactor, physician, psychiatrist, psychologist, social worker, psychological examiner, parent educator, communication and environmental control specialist, behavior support specialist, professional counselor, behavioral analyst, master social worker, licensed practical nurse, registered nurse, speech-language pathologist, dietician, occupational therapist, physical therapist, and recreational therapist.

(l)

(1) "Market" means the accurate and honest advertisement of a Provider that does not also constitute an attempt to solicit.

(2) "Market" includes without limitation:

(A) Advertising using traditional media;

(B) Distributing brochures or other informational materials regarding the services offered by a Provider;

(C) Conducting tours of a Provider to interested clients and their families;

(D) Mentioning services offered by a Provider in which a client or his or her family might have an interest; and

(E) Hosting informational gatherings during which the services offered by a Provider are described.

(m) "Mechanical restraint" means the use of any device attached or adjacent to a client that:

(1) Cannot be easily removed by the client; and

(2) Restricts the client's freedom of movement.

(n) "Medication error" means any one of the following:

(1) Loss of medication;

(2) Unavailability of medication;

(3) Falsification of medication logs;

(4) Theft of medication;

(5) Missed doses of medication;

(6) Incorrect medications administered;

(7) Incorrect doses of medication;

(8) Incorrect time of administration;

(9) Incorrect method of administration; and

(10) The discovery of an unlocked medication container that is always supposed to be locked.

(o) "PCSP" means a person-centered service plan, which is a written, individualized service and support plan for a client enrolled in the CES Waiver.

(p) "Plan of correction" means a plan of action that:

(1) Provides the steps a Provider must take to correct non-compliance with these standards;

(2) Establishes a timeframe for each specific action included in the plan; and

(3) Is approved by DDS.

(q) "Provider" means an individual, organization, or entity certified to provide one or more CES Waiver Services.

(r)

(1) "Restraint" means the application of force for the purpose of restraining the free movement of a client, which includes without limitation any chemical restraint and mechanical restraint.

(2) "Restraint" does not include:

(A) Briefly holding, without undue force, a client to calm or comfort him or her; or

(B) Holding a client's hand to safely escort him or her from one area to another.

(s) "Risk mitigation plan" means individualized plan developed by a client's PASSE care coordinator that outlines a client's risk factors and the action steps that must be taken to mitigate those risks.

(t) "Seclusion" means the involuntary confinement of a client in an area from which the client is physically prevented from leaving.

(u) "Serious injury" means any injury to a client that:

(1) May cause death;

(2) May result in substantial permanent impairment;

(3) Requires hospitalization; or

(4) Requires the attention of:

(A) An emergency medical technician;

(B) A paramedic; or

(C) An emergency room.

(v)

(1) "Solicit" means when a Provider intentionally initiates contact with a client (or their family) that is currently receiving services from another provider and Provider is attempting to persuade the client or their family to switch to or otherwise use the services of Provider.

(2) "Solicit" includes without limitation the following acts to induce a client or their family by:

(A) Contacting a client or the family of a client that is currently receiving services from another provider;

(B) Offering cash or gift incentives to a client or their family;

(C) Offering free goods or services not available to other similarly situated clients or their families;

(D) Making negative comments to a client or their family regarding the quality of services performed by another provider;

(E) Promising to provide services in excess of those necessary;

(F) Giving a client or his or her family the false impression, directly or indirectly, that Provider is the only provider that can perform the services desired by the client or their family; or

(G) Engaging in any activity that DDS reasonably determines to be "solicitation."

Subchapter 2. Certification.

201. Certification Required.

(a)

(1) An individual, entity, or organization must be certified by DDS to provide a CES Waiver Service.

(2) A separate DDS certification is required for each type of CES Waiver Service.

(b) A Provider that wishes to operate a complex care home must have the residence certified as a complex care home in addition to being certified to provide CES Supportive Living.

(c) A Provider must comply with all applicable requirements in these standards to maintain certification for a CES Waiver Service.

(d) An individual, entity, or organization that is on the Medicaid excluded provider list is prohibited from receiving CES Waiver Service certification.

202. Application for Certification.

(a) To apply for CES Waiver Service or complex care home certification, an applicant must submit a complete application to DDS.

(b) A complete application includes:

(1) Documentation demonstrating the applicant's entire ownership, including without limitation the applicant's governing body and all financial and business interests;

(2) Documentation of the applicant's management, including without limitation the management structure and members of the management team;

(3) Documentation of the employees and the contractors that the applicant intends to use as part of operating as a Provider;

(4) Documentation of all required state and national criminal background checks for employees and contractors;

(5) Documentation of all required drug screens, registry checks and searches for employees and contractors;

(6) Documentation demonstrating compliance with these standards; and

(7) All other documentation or other information requested by DDS.

203. Certification Process.

(a) DDS may issue CES Waiver Service or complex care home certification to an applicant if:

(1) The applicant submits a complete application under section 202;

(2) DDS determines that all employees and contractors have successfully passed all required drug screens and criminal background, maltreatment, and other registry checks and searches; and

(3) DDS determines that the applicant satisfies these standards.

(b) DDS may approve an application involving a change of ownership for an existing Provider if:

(1) The applicant submits a complete application under section 202;

(2) DDS determines that all employees and owners have successfully passed all required criminal background, maltreatment, and other required registry checks and searches; and

(3) DDS determines that the applicant satisfies these standards.

(c) Certification to perform a CES Waiver Service once issued does not expire until terminated under these standards.

Subchapter 3. Administration.

301. Organization and Ownership.

(a) A Provider must be authorized and in good standing to do business under the laws of the state of Arkansas.

(b)

(1) A Provider must appoint a single manager as the point of contact for all DDS and DMS matters and provide DDS and DMS with updated contact information for that manager.

(2) The manager must have authority over Provider and all its employees and be responsible for ensuring that requests, concerns, inquires, and enforcement actions are addressed and resolved to the satisfaction of DDS and DMS.

(c)

(1) A Provider cannot transfer CES Waiver Service certification to any other person or entity.

(2) A Provider cannot complete a change of ownership unless DDS approves the application of the new ownership pursuant to sections 202 and 203.

(3) A Provider cannot change its name or otherwise operate under a different name than the name listed on its certification without notice to DDS.

302. Employee and Staffing Requirements.

(a) A Provider must appropriately supervise all clients based on each client's needs.

(b)

(1) A Provider must meet any minimum staff-to-client ratio included in a client's treatment plan.

(2) A Provider is required to maintain at least a four-to-one (4:1) client to staff ratio in a complex care home at all times.

(c)

(1) Except as provided in subsection (c)(2) of this part, each employee must successfully pass the following:

(A) All criminal history record checks required pursuant to Ark. Code Ann. § 20-38-103, both prior to hiring and at least every five (5) years thereafter;

(B) An Arkansas Child Maltreatment Central Registry check both prior to hiring and at least every two (2) years thereafter;

(C) An Arkansas Adult and Long-term Care Facility Resident Maltreatment Central Registry check both prior to hiring and at least every two (2) years thereafter;

(D) A drug screen that tests for the use of illegal drugs prior to hiring; and

(E) An Arkansas Sex Offender Central Registry search both prior to hiring and at least every two (2) years thereafter.

(2) The drug screens, registry checks, and searches prescribed in subdivision (c)(1) are not required for any licensed professional.

(d)

(1) Employees must be eighteen (18) years of age or older.

(2) Employees must have a high school diploma or a GED.

(3) Employees performing Consultation and Environmental Modification services must be a licensed or certified professional in the appropriate field for the type of service performed.

(e) A Provider must verify an employee meets all requirements under these standards upon the request of DDS or whenever a Provider receives information after hiring that would create a reasonable belief that an employee no longer meets all requirements under these standards.

303. Employee Training and Certifications.

(a)

(1) All employees must receive training on the following topics prior to having any direct contact with clients, and at least once every twelve (12) months thereafter:

(A) Identification and prevention of adult and child abuse, exploitation, neglect, and maltreatment;

(B) Mandated reporter requirements and procedures;

(C) Incident and accident reporting;

(D) Basic health and safety practices;

(E) Infection control practices;

(F) Identification and mitigation of unsafe environmental factors;

(G) Emergency restraint procedures; and

(H) Client financial safeguards under section 308.

(2)

(A) All employees must receive at least twelve (12) hours of training prior to having any direct contact with clients, and at least once every twelve (12) months thereafter.

(B) The twelve (12) hours of training must include training on the following topics:

(i) Care planning for individuals with intellectual and developmental disabilities;

(ii) Care planning for individuals with autism spectrum disorders;

(iii) De-escalation techniques; and

(iv) Behavioral modification or prevention training.

(C) Time spent training on the topics listed in subsection (a)(1) cannot be counted towards the training prescribed in this subsection (a)(2).

(b)

(1) All employees must obtain and maintain in good standing the following credentials when performing services on behalf of Provider:

(A) CPR certification from one of the following:

(i) American Heart Association;

(ii) Medic First Aid, or

(iii) American Red Cross; and

(B) First aid certification from one of the following:

(i) American Heart Association;

(ii) Medic First Aid; or

(iii) American Red Cross.

(2) Employees who have not completed the required certifications cannot be counted towards staffing requirements.

(c)

(1) Employees assigned to a specific client or group of clients must receive client-specific training in the amount necessary to safely meet the individualized needs of those clients prior to providing services to those clients.

(2) Client-specific training must at a minimum include training on the following for each client:

(A) PCSP;

(B) CES Waiver Service treatment plans;

(C) Diagnosis and medical needs;

(D) Medication management plan, if applicable;

(E) Behavioral support needs;

(F) Behavioral prevention and intervention plan;

(G) Permitted interventions, if applicable; and

(H) Setting-specific emergency and evacuation procedures.

(3) Client-specific training pursuant to this subsection (c) may count towards the training requirements of subsection (a)(2).

(4) Client-specific training must be conducted at least once every twelve (12) months.

(d) A licensed professional is not required to receive the trainings or certifications prescribed in this section 303.

304. Employee Records.

(a) A Provider must maintain a personnel record for each employee that includes:

(1) A detailed current job description;

(2) All required criminal background checks;

(3) All required Child Maltreatment Central Registry checks;

(4) All required Adult and Long-term Care Facility Resident Maltreatment Central Registry checks;

(5) All conducted drug screens;

(6) All required sex offender registry searches;

(7) Signed statement that the employee will comply with Provider's drug screen and drug use policies;

(8) Copy of current state or federal identification;

(9) Copy of valid state-issued driver's license, if driving is required in the job description;

(10) Documentation demonstrating that the employee received all required training;

(11) Documentation demonstrating that the employee obtained and maintains in good standing all professional licensures, certifications, or credentials required for the CES Waiver Service the employee is performing.

(b) A Provider must retain all employee personnel records for five (5) years from the date an employee ceases providing services to the Provider or, if longer, the conclusion of all reviews, appeals, investigations, administrative actions, or judicial actions related to that employee that are pending at the end of the five-year period.

305. Client Service Records.

(a)

(1) A Provider must maintain a separate, updated, and complete service record for each client documenting the services provided to the client and any other documentation required under these standards.

(2) A Provider must maintain each client service record in a uniformly organized manner.

(b) A client's service record must include a summary document at the front that includes:

(1) The client's:

(A) Full name;

(B) Address and county of residence;

(C) Telephone number and email address, if available;

(D) Date of birth;

(E) Primary language;

(F) Diagnoses;

(G) Medications, dosage, and frequency, if applicable;

(H) Known allergies;

(I) Social Security Number;

(J) Medicaid number;

(K) Commercial or private health insurance information, if applicable; and

(L) Assigned Provider-Led Arkansas Shared Savings Entity (PASSE);

(2) The date client began receiving each CES Waiver Service from Provider;

(3) The date client ceased receiving each CES Waiver Service from Provider, if applicable;

(4) The name, phone number, and email address of the client's assigned PASSE care coordinator;

(5) The name, address, phone number, email address of the client's legal guardian, if available and applicable; and

(6) The name, address, and phone number of the client's primary care physician.

(c) A client's service record must include at least the following information and documentation:

(1) PSCP;

(2) All CES Waiver Service treatment plans;

(3) CES Waiver Service authorizations;

(4) Behavioral prevention and intervention plan;

(5) Daily activity logs or other documentation for each CES Waiver Service;

(6) Medication management plan, if applicable;

(7) Medication logs, if applicable;

(8) Copies of all completed client assessments and evaluations;

(9) Copies of any court orders that place the client in the custody of another person or entity; and

(10) Copies of any leases or residential agreements related to the client's care.

(d)

(1) A Provider must ensure that each client service record is kept confidential and available only to:

(A) Employees who need to know the information contained in the client's service record;

(B) DDS and any governmental entity with jurisdiction or other authority to access the client's service record;

(C) The client's legal guardian, if applicable; and

(D) Any other individual authorized in writing by the client or legal guardian of the client.

(2)

(A) A Provider must keep client service records in a file cabinet or room that is always locked.

(B)

(i) A Provider may use electronic records in addition to or in place of physical records to comply with these standards.

(ii) A Provider that uses electronic records must take reasonable steps to backup all electronic records and reconstruct a client's service record in the event of a breakdown in the Provider's electronic records system.

(e) A Provider must retain all client service records for five (5) years from the date the client exits from the Provider or, if longer, the conclusion of all reviews, appeals, investigations, administrative actions, or judicial actions related to client that are pending at the end of the five-year period.

306. Marketing and Solicitation.

(a) A Provider can market its services.

(b) A Provider cannot solicit a client or their family.

307. Third-party Service Agreements.

(a) A Provider may enter into written contracts with third-party vendors to provide services or otherwise satisfy requirements under these standards.

(b) A Provider must ensure that all third-party vendors comply with these standards and all other applicable laws, rules, and regulations.

308. Financial Safeguards.

(a)

(1) A client must have full use and access to their own funds or other assets.

(2) A Provider may not limit a client's use or access to their own funds or other assets unless the client or the client's legal guardian provides informed written consent or Provider otherwise has the legal authority.

(3) Limiting of a client's use or access to their own funds and assets includes without limitation the following:

(A) Designating the amount of funds a client may use or access;

(B) Limiting the amount of funds a client may use for a particular purpose; and

(C) Limiting the timeframes during which a client may use or access their funds or other assets.

(b)

(1) A Provider may use, manage, or access a client's funds or other assets only when:

(A) The client or client's legal guardian has provided informed written consent; or

(B) Provider otherwise has the legal authority.

(2) A Provider is deemed to be managing, using, or accessing a client's funds or other assets when:

(A) Serving as a representative payee of a client;

(B) Receiving benefits on behalf of the client; and

(C) Safeguarding funds or personal property for the client.

(3) A Provider may only use, manage, or access a client's funds or other assets for the benefit of the client.

(4) A Provider may only use, manage, or access a client's funds or other assets to the extent permitted by law.

(5) A Provider must safeguard client funds or other assets whenever a Provider manages, uses, or has access to a client's funds or other assets.

(c) A Provider must ensure that a client receives the benefit of the goods and services for which the client's funds or other assets are used.

(d)

(1) A Provider must maintain financial records that document all uses of a client's funds or other assets.

(2) Financial records for client funds must be maintained in accordance with generally accepted accounting practices.

(3) A Provider must make client financial records available to a client or a client's legal guardian upon request.

(e)

(1) A Provider must maintain separate accounts for each client whenever the Provider uses, manages, or accesses client funds or other assets.

(2) All interest derived from a client's funds or other assets shall accrue to the client's account.

309. Emergency Plans and Drills.

(a)

(1) A Provider must have a written emergency plan for all locations in which Provider performs CES Waiver Services, including without limitation client residences.

(2) A written emergency plan must address all foreseeable emergencies, including without limitation:

(A) Fire;

(B) Flood;

(C) Tornado;

(D) Utility disruption;

(E) Bomb threat;

(F) Active shooter; and

(G) Infectious disease outbreak.

(3) A Provider must evaluate and update written emergency plans at least annually.

(b)

(1) Each written emergency plan must at a minimum include:

(A) Designated relocation sites and evacuation routes;

(B) Procedures for notifying legal guardians of relocation;

(C) Procedures for ensuring each client's safe return;

(D) Procedures to address the special needs of each client;

(E) Procedures to address interruptions in the delivery of services;

(F) Procedures for reassigning employee duties in an emergency; and

(G) Procedures for annual training of employees regarding the emergency plan.

(2)

(A) A Provider must conduct emergency fire drills at least once a month at any provider owned or leased residential setting.

(B) A Provider must document all emergency drills which must include:

(i) The date and time of the emergency drill;

(ii) The type of emergency drill;

(iii) The number of clients participating in the emergency drill;

(iv) The length of time taken to complete the emergency drill; and

(v) Notes regarding any aspects of the emergency drill that need improvement.

310. Infection Control.

(a)

(1) A Provider must follow all applicable guidance from the Arkansas Department of Health related to infection control.

(2) A Provider must provide personal protective equipment for all employees and clients as may be required in the circumstances.

(b)

(1) A Provider cannot allow an employee or any other person who has an infectious disease to enter a client's residence unless the employee or other person is also a resident.

(2) A client who becomes ill must be separated from other clients to the extent possible.

(3) A Provider must notify a client's legal guardian if the client becomes ill.

311. Compliance with State and Federal Laws, Rules, and Other Standards.

(a) A Provider must comply with all applicable local, state, or federal laws, rules, codes, or regulations and violation of any applicable local, state, or federal law, rule, code, or regulation constitutes a violation of these standards.

(b)

(1) In the event of a conflict between these standards and another applicable local, state, or federal law, rule, code, or regulation the stricter requirement shall apply.

(2) In the event of an irreconcilable conflict between these standards and another applicable local, state, or federal law, rule, code, or regulation these standards shall govern to the extent not conflicting with local, state, or federal law.

Subchapter 4. Settings Requirements.

401. General Requirements.

(a) A Provider must meet the home and community-based services settings regulations as established by 42 CFR 441.301(c) (4)-(5).

(b) A Provider owned or leased complex care home is limited to no more than eight (8) unrelated adult clients.

402. Complex Care Home Specific Requirements.

(a) Complex care homes must meet the following requirements:

(1) The interior of the complex care home must:

(A) Be maintained at a comfortable temperature;

(B) Have appropriate interior lighting;

(C) Be well-ventilated;

(D) Have a running source of potable water in the kitchen and each bathroom;

(E) Be maintained in a safe, clean, and sanitary condition;

(F) Be free of:

(i) Offensive odors;

(ii) Pests;

(iii) Lead-based paint; and

(iv) Hazardous materials.

(2) The exterior of the complex care home's physical structure must be maintained in good repair, and free of holes, cracks, and leaks, including without limitation the:

(A) Roof;

(B) Foundation;

(C) Doors;

(D) Windows;

(E) Siding;

(F) Porches;

(G) Patios;

(H) Walkways; and

(I) Driveway.

(3) The surrounding grounds of the residential setting must be maintained in a safe, clean, and manicured condition free of trash and other objects.

(4) Broken furniture and appliances on or about the premises of a residential setting must immediately be either repaired or appropriately discarded off premises and replaced.

(b) A complex care home must at a minimum include:

(1) A functioning hot water heater;

(2) A functioning HVAC unit(s) able to heat and cool;

(3) An operable on-site telephone that is available at all hours and reachable with a phone number for outside callers;

(4) All emergency contacts and other necessary contact information related to a client's health, welfare, and safety in a readily available location, including without limitation:

(A) Poison control;

(B) The client's personal care physician; and

(C) Local police;

(5) One (1) or more working flashlights;

(6) A smoke detector;

(7) A carbon monoxide detector;

(8) A first aid kit that includes at least the following:

(A) Adhesive band-aids of various sizes;

(B) Sterile gauze squares;

(C) Adhesive tape;

(D) Antiseptic;

(E) Thermometer;

(F) Scissors;

(G) Disposable gloves; and

(H) Tweezers;

(9) Fire extinguishers in number and location to satisfy all applicable laws and rules, but at least one (1) functioning fire extinguisher is required at each residence;

(10) Screens for all windows and doors used for ventilation;

(11) Screens or guards attached to the floor or wall to protect floor furnaces, heaters, hot radiators, exposed water heaters, air conditioners, and electric fans;

(12) A reasonably furnished living and dining area;

(13) A kitchen with equipment, utensils, and supplies necessary to properly store, prepare, and serve three (3) meals a day;

(14) Have written instructions and diagrams noting emergency evacuation routes to be used in case of fire, severe weather, or other emergency posted at least every twenty-five (25) feet, in all stairwells, in and by all elevators, and in each room used by clients;

(15) Have lighted "exit" signs at all exit locations; and

(16) Lockable storage containers or closets for any chemicals, toxic substances, and flammable substances that must be stored at the residential setting.

(c) A complex care home must provide each client with a bedroom that has:

(1) An individual bed measuring at least thirty-six (36) inches wide with:

(1) A firm mattress that is at least four (4) inches thick and covered with moisture repellant material;

(2) Pillows; and

(3) Linens, which must be cleaned or replaced at least weekly;

(2) Bedroom furnishings, which at a minimum include:

(1) Shelf space;

(2) Storage space for personal items; and

(3) Adequate closet space for clothes and other belongings;

(3) An entrance that can be accessed without going through a bathroom or another person's bedroom;

(4) An entrance with a lockable door; and

(5) One (1) or more windows that can open and provide an outside view.

(d) A complex care home must meet the following bathroom requirements:

(1) Each bathroom must have the following:

(A) Toilet;

(B) Sink with running hot and cold water;

(C) Toilet tissue;

(D) Liquid soap; and

(E) Towels or paper towels;

(2) At least one (1) bathroom in each complex care home must have a shower or bathtub;

(3) All toilets, bathtubs, and showers must provide for individual privacy; and

(4) All toilets, bathtubs, and showers must be designed and installed in an accessible manner for the client.

(e) A complex care home that houses more than one (1) client must provide:

(1) Fifty (50) or more square feet of separate bedroom space for each client;

(2) At least one (1) bathroom with a shower/bathtub, sink, and toilet for every four (4) clients; and

(3) Each client with their own locked storage container for client valuables.

403. Setting Exceptions and Variations.

(a) Any client need or behavior that requires a variation or exception to the setting requirements set out in Sections 401 or 402 must be justified in the client's PCSP.

(b) The justification for a variation or exception to any settings requirement set out in Sections 401 or 402 must at a minimum include:

(1) The specific, individualized need or behavior that requires a variation or exception;

(2) The positive interventions and supports used prior to the implementation of the variation or exception;

(3) The less intrusive methods of meeting the need or managing the behavior that were attempted but did not work;

(4) A clear description of the applicable variation or exception;

(5) The regular data collection and reviews that will be conducted to measure the ongoing effectiveness of the variation or exception;

(6) A schedule of periodic reviews to determine if the variation or exception is still necessary or can be terminated;

(7) The informed consent of the client or legal guardian; and

(8) An assurance that interventions and supports will cause no harm to the client.

Subchapter 5. Entries and Exits.

501. Request to Change Provider.

(a) A client or legal guardian may initiate a request to change Providers at any time by contacting their assigned care coordinator.

(b) A Provider will remain responsible for the delivery of services until such time as the client's transition to the new Provider is complete.

502. Exits and Transitions.

(a) A Provider may exit a client:

(1) If the client becomes ineligible for CES Waiver;

(2) If the client chooses to use another Provider; or

(3) For any other lawful reason.

(b) A Provider must document the exit of all clients regardless of reason.

(c) A Provider must provide reasonable assistance to all exiting clients, which at a minimum includes:

(1) Assisting the client in transitioning to another Provider or other service provider, when applicable;

(2) Submitting all necessary transfer paperwork to the Social Security Administration and any other necessary agency or financial institution, when Provider is serving as the client's representative payee; and

(3)

(A) Providing copies of the client's service records to:

(i) The client;

(ii) The legal guardian; and

(iii) Any new Provider or other service provider to which the client transfers after exiting.

(B) Service records must include:

(i) A treatment summary;

(ii) Current PCSP;

(iii) Medication logs; and

(iv) Any other records requested by the client.

(C) If copies of the exiting client's service record has not been provided within thirty (30) days of a request, it is presumed to be unreasonable delay in violation of these standards.

(d)

(1) A Provider shall remain responsible for the health, safety, and welfare of an exiting client until all transitions to the new service providers are complete.

(2) A Provider shall remain responsible for providing CES Waiver Services to an exiting client until all transitions to the new service providers are complete

503. Refusal to Serve.

(a)

(1) A selected Provider shall not refuse to serve any client unless unable to ensure the client's health, safety, or welfare.

(2) When a Provider is unable to ensure the client's health, safety, or welfare, Provider must immediately notify DDS and the client's assigned PASSE care coordinator.

(b) If a Provider is unable to ensure a client's health, safety, or welfare because qualified personnel are unavailable to deliver a CES Waiver Service included on the client's PCSP, Provider must be able to demonstrate reasonable efforts to recruit and retain qualified personnel and the results of those efforts.

(c)

(1) If a Provider is unable to ensure a client's health, safety, or welfare because adequate housing is not available, Provider must propose alternative housing arrangements and locations within the client's available resources.

(2) If the client is unwilling to accept any of the proposed alternative housing arrangements, Provider shall document that the client has refused available

resources and shall immediately notify the assigned PASSE care coordinator and DDS.

(d) Whether a Provider is refusing to serve based on legitimate client health, safety, or welfare concerns is determined in the sole discretion of DDS.

Subchapter 6. Programs and Services.

601. Medications.

(a)

(1) A client, or, if applicable, legal guardian, can self-administer medication.

(2) The election to self-administer medication must:

(A) Document the medications to be self-administered; and

(B) Be signed and dated by the client, or, if applicable, the client's legal guardian.

(b)

(1) A Provider can administer medication only as:

(A) Provided in the client's PCSP; or

(B) Otherwise ordered by:

(A) A physician; or

(B) Other health care professional authorized to prescribe.

(2) A Provider can administer medication only through:

(A) Licensed nurses; or

(B) Other health care professionals authorized to administer medication.

(c)

(1) A Provider must develop a medication management plan for all clients with prescribed medication or over-the-counter medication that is routinely administered.

(2) A medication management plan must include without limitation:

(A) The name of each medication;

(B) The name of the prescribing physician or other health care professional if the medication is by prescription;

(C) A description of each medication and any symptom or symptoms to be addressed by the medication;

(D) How each medication will be administered, including without limitation times of administration, doses, delivery, and persons who may lawfully administer each medication;

(E) How each medication will be charted;

(F) A list of the potential side effects caused by each medication; and

(G) The consent to the administration of each medication by the client or legal guardian.

(d)

(1) A Provider must maintain a medication log for each client to document the administration of all prescribed and over-the-counter medications.

(2) A medication log must be available at each location a client receives CES Waiver Services and must document the following for each administration of a medication:

(A) The name and dosage of medication administered;

(B) The symptom the medication was used to address;

(C) The method the medication was administered;

(D) The date and time the medication was administered;

(E) The name of each employee who administered the medication or assisted in the administration of the medication;

(F) If an over-the-counter medication for a specific symptom, the effectiveness of the medication;

(G) Any adverse reaction or other side effect caused by the medication;

(H) Any transfer of medication from its original container into individual dosage containers by the client's legal guardian;

(I) Any error in administering the medication and the name of the supervisor to whom the error was reported; and

(J) The prescription and the name of the prescribing physician or other health care professional if the medication was not previously listed in the medication management plan.

(3) All medication errors must be:

(A) Immediately reported to a supervisor;

(B) Documented in the medication log; and

(C) Reported as required under all applicable laws and rules including without limitation the laws and rules governing controlled substances.

(4) A supervisory level employee must review and sign each medication log on at least a monthly basis.

(e) All medications stored for a client by a Provider must be:

(1) Kept in the original medication container unless the legal guardian transfers the medication into individual dosage containers;

(2) Labeled with the client's name; and

(3) Stored in an area, medication cart, or container that is always locked.

(f) If a medication stored by a Provider is no longer to be administered to the client, then the medication must be:

(1) Returned to the client's legal guardian;

(2) Destroyed; or

(3) Otherwise disposed of in accordance with applicable laws and rules.

602. Behavioral Management Plans.

(a) A Provider must develop and implement a written behavioral management plan for clients whose risk mitigation plan indicates a risk of behavioral health need.

(1) A Provider must develop a behavioral prevention and intervention plan if the risk mitigation plan identifies a client as a low risk to display behaviors that can lead to harm to self or others.

(A) A behavioral prevention and intervention plan must address behavior shaping and management to reduce inappropriate behaviors.

(B) A behavioral prevention and intervention plan must address how the client will safely remain in their community residence and avoid an acute placement.

(C) A behavioral prevention and intervention plan must be developed and implemented by an individual who has documented training on the following topics:

(i) Verbal de-escalation;

(ii) Trauma informed care; and

(iii) Verbal intervention training.

(2)

(A) A Provider must develop a positive behavioral support plan if the risk mitigation plan identifies a client as a moderate or high risk to display behaviors that can lead to harm to self or others, which must include:

(B) A positive behavior support plan must include:

(i) each behavior to be decreased or increased:

(ii) Events or other stimuli that may trigger a client's behavior to be decreased or increased;

(iii) What should be provided or avoided in a client's environment to incentivize or disincentivize behaviors to be decreased or increased;

(iv) Specific methods employees should use to manage a client's behaviors;

(v) Interventions or other actions for employees to take if a triggering event occurs; and

(vi) Interventions or other actions for employees to take if a behavior to be decreased or increased occurs.

(C) A positive behavior support plan must be developed and implemented by one of the following licensed or certified professionals:

(i) Psychologist;

(ii) Psychological examiner;

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(iii) Positive behavior support specialist;

(iv) Board certified behavior analyst;

(v) Licensed clinical social worker; or

(vi) Licensed professional counselor.

(b) A Provider must reevaluate behavioral prevention and intervention plans and positive behavior support plans at least quarterly.

(c) A Provider must refer the client to an appropriately licensed professional for reevaluation if the behavioral prevention and intervention plan or positive behavior support plans is not achieving the desired results.

(1) A Provider must regularly collect and review data regarding the use and effectiveness of all behavioral prevention and intervention plans and positive behavior support plans.

(2) The collection and review of data regarding the use and effectiveness of behavioral prevention and intervention plans and positive behavior support plans must include at least:

(A) The date and time any intervention is used;

(B) The duration of each intervention;

(C) The employee(s) involved in each intervention; and

(D) The event or circumstances that triggered the need for the intervention.

(3) Behavioral prevention and intervention plans and positive behavior support plans:

(A) Must involve the fewest and shortest interventions possible; and

(B) Cannot punish or use interventions that:

(i) Are physically or emotionally painful to the client;

(ii) Frighten the client; or

(iii) Put the client at medical risk.

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603. Restraints and Other Restrictive Interventions.

(a)

(1) A Provider cannot use a restraint on a client unless the restraint is required as an emergency safety intervention.

(2) An emergency safety intervention is required when:

(A) An immediate response with a restraint is required to address an unanticipated client behavior; and

(B) The client's behavior places the client or others at serious threat of harm if no intervention occurs.

(3) The use of seclusion for a client is strictly prohibited.

(4) The use of the following types of restraints on a client are strictly prohibited:

(A) Mechanical restraint; and

(B) Chemical restraint.

(b) If a Provider uses a restraint, the Provider must:

(1) Continuously monitor the client during the entire use of the restraint; and

(2) Maintain in-person visual and auditory observation of the client by an employee during the entire use of the restraint.

(c)

(1) A Provider must document each use of a restraint or seclusion whether the use was permitted or not.

(2) The documentation must include at least the following:

(A) The behavior precipitating the use of the restraint;

(B) The length of time the restraint was used;

(C) The name of the individual that authorized the use of the restraint;

(D) The names of all individuals involved in the use of the restraint; and

(E) The outcome of the use of the restraint.

604. Supportive Living.

(a) Supporting living services are individually tailored habilitative services and activities to assist a client in acquiring, retaining, or improving skills that directly enable the client to reside in their own home, with family, or in an alternative living setting.

(1) Supportive living services must be provided in an integrated community setting.

(2) Supportive living must directly relate to goals and objectives in the client's supportive living treatment plan that is included as part of the client's PCSP.

(3) Provider must ensure that a sufficient number of direct care staff are scheduled during the performance of supportive living services to guarantee the health, safety, and welfare of each client.

(4) Providers must have backup plans in place to address contingencies if direct care staff are unable, fail, or refuse to provide scheduled supportive living services.

(b) A Provider must maintain the following documentation in the client's service record for each day the client receives supportive living services:

(1) The name and sign-in/sign-out times for each direct care staff member providing supportive living services;

(2) The specific supportive living services and activities performed;

(3) The date and beginning and ending time for each supportive living service and activity performed;

(4) Name(s) of the direct care staff providing each supportive living service and activity; and

(5) The relationship of each service and activity to the goals and objectives described in the client's supportive living treatment plan that is included as part of the client's PCSP.

(6) Daily progress notes/narrative signed and dated by one of the direct care staff performing the services and activities, describing the client's progress or lack thereof with respect to each of their individualized goals and objectives.

605. Respite.

(a) Respite services are temporary, short-term services provided to relieve a client's primary caregiver(s) or because of a primary caregiver(s) emergency absence.

(1) Receipt of respite services does not preclude a client from receiving other CES Waiver services on the same day.

(2) Respite services cannot supplant the responsibility of a parent or guardian.

(b) A Provider must maintain the following documentation in the client's service record for each day a client receives respite services:

(1) The name and sign-in/sign-out times for each direct care staff member providing respite services;

(2) The specific respite activities performed;

(3) The date and beginning and ending time of each of the activities performed; and

(4) Name(s) of the staff person performing each activity.

606. Supported Employment.

(a) Supported employment services are an array of services offering ongoing support to clients in their goal of working in competitive integrated work settings for at least minimum wage.

(1) Supported employment services may include any combination of the following services:

(A) Job assessment and discovery;

(B) Person centered employment planning;

(C) Job placement;

(D) Job development;

(E) Job coaching;

(F) Transportation to and from a client's home and employment site (when no other transportation is available); and

(G) Other workplace support services not specifically related to job skill training that enable a client to successfully integrate into a job setting.

(2) Supported employment services include services utilized to support clients who are self-employed.

(b) A Provider must maintain the following supported employment services documentation in a client's service record:

(1) Job development or transition plan for job supports;

(2) Client remuneration statements or paycheck stubs; and

(3) Client's work schedule

607. Specialized Medical Supplies.

(a) Specialized medical supplies may include medically necessary:

(1) Items that address a client's physical conditions, along with any ancillary supplies and equipment necessary for the proper functioning of such items;

(2) Durable and non-durable medical equipment necessary to address a client's functional limitations;

(3) Medical Supplies;

(4) Nutritional supplements;

(5) Non-prescription medications; and

(6) Prescription drugs.

(b) Specialized medical supplies does not include:

(1) Medical equipment or medical supplies available under the Arkansas Medicaid state plan;

(2) Items that are not of a direct medical or remedial benefit to a client; and

(3) Alternative medicines that are not approved by the Federal Drug Administration.

(c) A Provider must maintain the following specialized medical supplies documentation in a client's service record:

(1) The date of the specialized medical supplies order;

(2) The name of the care coordinator placing the order;

(3) The quantity and price per item of the specialized medical supplies ordered;

(4) A written description of the client's medical need addressed or the remedial benefit provided by the specialized medical supplies;

(5) The delivery date of the specialized medical supplies; and

(6) If installation is required, the installation date and any instructions that are provided to the client or guardian regarding use of the specialized medical supplies.

608. Adaptive Equipment.

(a) Adaptive equipment is a piece of equipment or product system that is used to increase, maintain, or improve a client's functional ability to perform daily life tasks that would not otherwise be possible. Adaptive equipment specifically includes without limitation the following:

(1) Home enabling technology that allows a client to safely perform activities of daily living without assistance;

(2) The purchase, installation fee, and monthly service fee related to a personal emergency response systems that enables a client to secure help in an emergency;

(3) Computer equipment and software that:

(A) Allows a client increased control of their environment;

(B) Allows a client to gain independence; or

(C) Protects a client's health and safety; and

(4) Modifications to an automobile or van to:

(A) Enable a client to integrate more fully into the community; or

(B) Ensure the client's health, safety, and welfare.

(b) A medical professional must be consulted to ensure adaptive equipment will meet the needs of a client.

(c) Adaptive equipment *does not* include adaptions and modifications to a vehicle that are of general utility and not of direct medical or habilitative benefit to the client, including without limitation:

(1) Any portion of the purchase price or down payment for a vehicle;

(2) Monthly vehicle payments; and

(3) Regular vehicle maintenance.

(d) A Provider must maintain the following documentation in a client's service record for adaptive equipment:

(1) The date of the adaptive equipment order;

(2) The name of the care coordinator placing the order;

(3) The quantity and price per item of the adaptive equipment ordered;

(4) A written description of the client's medical need addressed or the remedial benefit provided by the adaptive equipment;

(5) The delivery date of the adaptive equipment; and

(6) If installation is required, the installation date and any instructions that are provided to the client or guardian regarding use of the adaptive equipment.

609. Community Transition Services.

(a) Community transition services cover non-recurring setup expenses for clients who are transitioning from an institutional or provider-operated living arrangement, such as an intermediate care facility or group home, into a living arrangement in a private residence where the client or their guardian is directly responsible for their own living expenses. Community transition services include without limitation the following:

(1) Security deposits required to obtain a lease on an apartment or home;

(2) Essential household furnishings required to occupy and use a private residence such as:

(A) Furniture;

(B) Window coverings;

(C) Food preparation items; and

(D) Bed and bathroom linens;

(3) Set-up fees and deposits for utility access such as:

(A) Telephone;

(B) Electricity;

(C) Natural gas; and

(D) Water;

(4) Services necessary for the client's health or safety such as one-time pest eradication or cleaning prior to occupying a private residence; and

(5) Moving expenses.

(b) Community transition services do not include:

(1) Monthly rent or mortgage payments;

(2) Food expenses;

(3) Monthly utility bills;

(4) Household appliances; and

(5) Items to be used for recreational purposes.

(c) A Provider must maintain the following documentation in a client's service record for community transition services:

(1) The date the community transition service is paid, and if applicable, delivered or performed;

(2) The name of the care coordinator requesting the community transition service;

(3) The price of the community transition service;

(4) A receipt or invoice related to the community transition service; and

(5) Written description of the community transition service and what client need was met or remedial benefit accomplished.

610. Consultation.

(a) Consultation services are direct clinical or therapeutic specialty services by a professional licensed or certified in the applicable specialty, which assist a client, their parents,

responsible persons, and service providers in carrying out the client's PCSP and any associated plans included within the PCSP. Consulting services include without limitation the following:

(1) Administering psychological and adaptive behavior assessments;

(2) Screening, assessing, and developing CES Waiver Service treatment plans;

(3) Training direct service staff or client family members in carrying out service strategies listed in the client's PCSP;

(4) Participating on the interdisciplinary team;

(5) Providing consulting, training, and technical assistant to service providers, direct care staff, or client family members on carrying out the client's PCSP;

(6) Assisting direct care staff or client family members with necessary PCSP adjustments;

(7) Advising on the appropriateness and assisting with the selection, setup, and use of adaptive equipment;

(8) Training clients and their family members on self-advocacy;

(9) Training direct care staff or client family members on:

(A) Implementing behavior prevention and intervention plans;

(B) Speech-pathology, occupational therapy, and physical therapy treatment modalities;

(C) The administration of medical procedures not previously prescribed but now necessary to allow the client to remain in a private residence;

(10) Rehabilitation counseling;

(11) Screening, assessing, developing, and modifying positive behavior support plans, and assisting direct care staff in positive behavior support plans implementation and monitoring; and

(12) Training and assisting a client, client family members, and direct care staff in proper client nutrition and special dietary needs.

(b) A Provider must use professionals in the applicable specialty holding a current license or certification by the following licensing or certification boards and organizations when providing consulting services:

(1) Psychologist: a licensed psychologist in good standing with the Arkansas Psychology Board;

(2) Psychological examiner: a licensed psychological examiner in good standing with the Arkansas Psychology Board;

(3) Mastered social worker: a licensed LMSW or ACSW in good standing with the Arkansas Social Work Licensing Board;

(4) Professional counselor: a licensed counselor in good standing with the Arkansas Board of Examiners in Counseling;

(5) Speech-language pathologist: a licensed speech-language pathologist in good standing with the Arkansas Board of Audiology and Speech Language Pathology;

(6) Occupational therapist: a licensed occupational therapist in good standing with the Arkansas State Medical Board;

(7) Physical therapist: a licensed physical therapist in good standing with the Arkansas Board of Physical Therapy;

(8) Registered nurse: a licensed registered nurse in good standing with the Arkansas Board of Nursing;

(9) Certified parent educator: meets the qualifications of a Qualified Developmental Disabilities Professional as defined in 42 C.F.R. Subsection 483.430(a);

(10) Communication and environmental control adaptive equipment/aids provider: currently enrolled durable medical equipment provider with Arkansas Medicaid;

(11) Qualified Developmental Disabilities Professional: meet the qualifications defined in 42 C.F.R. Subsection 483.430(a);

(12) Dietician: a degree in nutrition;

(13) Behavior support specialist: certified through the Center of Excellence University of Arkansas Partners for Inclusive Communities;

(14) Rehabilitation counselor: a masters degree in Rehabilitation Counseling; and

(15) Recreational Therapist: a degree in Recreational Therapy.

(16) Behavior Analyst: certified and in good standing with the Behavior Analyst Certification Board as defined in Arkansas Code Annotated § 23-99-418.

(c) A Provider must maintain the following documentation in a client's service record for consultation services:

(1) The date the consultation was provided;

(2) The name of the care coordinator requesting the consultation;

(3) The consultation service provided;

(4) The name and credentials of the professional providing the consultation; and

(5) A detailed narrative regarding the content of each consultation service.

611. Environmental Modifications.

(a) Environmental modification are modifications made to a client's place of residence that:

(1) Are necessary to ensure the health, welfare, and safety of the client; or

(2) Enable the client to function with greater independence and without which the client would require institutionalization.

(b) Environmental modifications include without limitation:

(1) Wheelchair ramps;

(2) Widening doorways;

(3) Modifications relating to a client's access to and use of a bathroom;

(4) Installation of specialized electrical or plumbing systems to accommodate a client's medical equipment;

(5) Installation of sidewalks or pads for clients with mobility deficits; and

(6) Fencing to prevent the elopement and wandering of clients.

(c) Environmental modifications do not include:

(1) Repairs that are of general utility and not for a client's medical or rehabilitative need;

(2) Modification that are of aesthetic value only; and

(3) Modifications that add to the total square footage of the residence.

(d) The individual performing an environmental modification must be licensed and bonded in the state of Arkansas, as required, and possess all appropriate credentials, skills, and experience to perform the job.

(e) A Provider must maintain the following documentation for environmental modifications in a client's service record:

(1) If the residence is rented or leased, the written consent of the property owner to perform the environmental modifications;

(2) An original photo of the site where environmental modifications will be done;

(3) A to-scale sketch plan of the proposed environmental modification project;

(4) Any necessary inspections, inspection reports, and permits required by federal, state and local laws either prior to commencing work or upon completion of each environmental modification to verify that the repair, modification or installation was completed;

(5) The name of the care coordinator ordering the environmental modification;

(6) The date(s) of the environmental modification installation;

(7) The name of the individual/company performing the environmental modification, and copies of their licenses and bonding information, if applicable;

(8) The care coordinator signature at job completion certifying:

(A) The environmental modifications authorized are complete;

(B) The property was left in satisfactory condition; and

(C) Any incidental damages to the property were repaired;

(9) An itemized invoice or statement of all expenses including materials and labor associated with the environmental modification.

612. Supplemental Support.

(a) Supplemental supports are services allow a client to continue living in the community when new and unforeseen problems arise that unless remedied would cause a disruption in the client's residential setting.

(b) A Provider must maintain the following documentation in the client's service record for supplemental support services:

(1) The date of the supplemental support service is paid, and if applicable, delivered or performed;

(2) The name of the care coordinator requesting the supplemental support service;

(3) The price of the supplemental support service;

(4) A receipt or invoice related to the supplemental support service; and

(5) Written description of the supplemental support service and the unforeseen problem that without the supplemental support service would cause a disruption in the client's residential setting.

Subchapter 7. Incident and Accident Reporting.

701. Incidents to be Reported.

A Provider must report all alleged, suspected, observed, or reported occurrences of any of the following events while a client is receiving a paid CES Waiver Service:

(1) Death of a client;

(2) Serious injury to a client;

(3) Maltreatment of a client;

(4) Any event where an employee threatens or strikes a client;

(5) Use of a restrictive intervention on a client, including without limitation seclusion, a restraint, a chemical restraint, or a mechanical restraint;

(6) Any situation the whereabouts of a client are unknown for more than two (2) hours;

(7) Any unscheduled situation where a client's services are interrupted for more than two (2) hours;

(8) Events involving a risk of death, serious physical or psychological injury, or serious illness to a client;

(9) Medication errors that cause or have the potential to cause death, serious injury, or serious illness to a client;

(10) Any act or admission that jeopardizes the health, safety, or quality of life of a client;

(11) Motor vehicle accidents involving a client;

(12) A client or employee testing positive for any infectious disease that is the subject of a public health emergency declared by the Governor, Arkansas Department of Health, the President of the United States, or the United States Department of Health and Human Services; and

(13) Any event that requires notification of the police, fire department, or coroner.

702. Reporting Requirements.

(a) A Provider must:

(1) Submit reports of the following events within one (1) hour of the event:

(A) Death of a client;

(B) Serious injury to a client; and

(C) Any incident that a Provider should reasonably know might be of interest to the public or media.

(2) Submit reports of all other incidents within forty-eight (48) hours of the event.

(b) A Provider must submit all reports to DDS at the following email: DHS.DDS.Central@arkansas.gov.

(c) Reporting under these standards does not relieve a Provider of complying with other applicable reporting or disclosure requirements under state or federal laws, rules, or regulations.

703. Notification to Custodians and Legal Guardians.

(a) A Provider must notify the client's legal guardian of any reportable incident involving a client.

(b) A Provider must maintain documentation evidencing notification as required in subdivision (a).

Subchapter 8. Enforcement.

801. Monitoring.

(a)

(1) DDS shall monitor a Provider to ensure compliance with these standards.

(2)

(A) A Provider must cooperate and comply with all monitoring, enforcement, and any other regulatory or law enforcement activities performed or requested by DDS or law enforcement.

(B) Cooperation required under these standards includes without limitation cooperation and compliance with respect to investigations, surveys, site visits, reviews, and other regulatory actions taken by DDS or any third-party contracted by DHS to monitor, enforce, or take other regulatory action on behalf of DHS, DDS, or its delegatee.

(b) Monitoring includes without limitation:

(1) On-site surveys and other visits including without limitation complaint surveys and initial site visits;

(2) On-site or remote file reviews;

(3) Written requests for documentation and records required under these standards;

(4) Written requests for information; and

(5) Investigations related to complaints received.

(c) DHS may contract with a third party to monitor, enforce, or take other regulatory action on behalf of DHS or DDS.

802. Written Notice of Enforcement Action.

(a) DDS shall provide written notice to a Provider of all enforcement actions taken against a Provider.

(b) DDS shall provide written notice to a Provider by mailing the enforcement action to the manager appointed by the Provider pursuant to Section 301.

803. Enforcement Actions.

(a)

(1) DDS shall not impose an enforcement action unless:

(A) Provider is given written notice pursuant to Section 802 and an opportunity to be heard pursuant to Subchapter 10; or

(B) DDS determines that public health, safety, or welfare imperatively requires emergency action.

(2) If DDS imposes a remedy as an emergency action before a Provider receives written notice and an opportunity to be heard pursuant to (a)(1), DDS shall:

(A) Provide immediate written notice to Provider of the enforcement action; and

(B) Allow Provider an opportunity to be heard pursuant to Subchapter 10.

(b) DDS may impose on a Provider any of the following enforcement actions for a failure to comply with these standards:

(1) Plan of correction;

(2) Directed in-service training plan;

(3) Moratorium on new admissions;

(4) Transfer of clients;

(5) Monetary penalties;

(6) Suspension of certification;

(7) Revocation of certification; and

(8) Any remedy authorized by law or rule including without limitation Arkansas Code § 25-15-217.

(c) DDS shall determine the imposition and severity of these enforcement actions on a case-by-case basis using the following factors:

(1) Frequency of non-compliance;

(2) Number of non-compliance issues;

(3) Impact of non-compliance on a client's health, safety, or well-being;

(4) Responsiveness in correcting non-compliance;

(5) Repeated non-compliance in the same or similar areas;

(6) Non-compliance with previously or currently imposed enforcement actions;

(7) Non-compliance involving intentional fraud or dishonesty; and

(8) Non-compliance involving violation of any law, rule, or other legal requirement.

(d)

(1) DDS shall report any noncompliance, action, or inaction by a Provider to appropriate agencies for investigation and further action.

(2) DDS shall report non-compliance involving Medicaid billing requirements to DMS, the Arkansas Attorney General's Medicaid Fraud Control Unit, and the Office of Medicaid Inspector General.

(e) These enforcement actions are not mutually exclusive and DDS may apply multiple actions simultaneously to a failure to comply with these standards.

(f) The failure to comply with an enforcement action imposed by DDS constitutes a separate violation of these standards.

804. Moratorium.

(a) DDS may prohibit a Provider from accepting new clients.

(b) A Provider prohibited from accepting new admissions may continue to provide services to existing clients.

805. Transfer of Clients.

(a) DDS may require a Provider to transfer a client to another provider if DDS finds that the Provider cannot adequately provide services to the client.

(b) If directed by DDS, a Provider must continue providing services until the client is transferred to their new service provider of choice.

(c) A transfer of a client may be permanent or for a specific term depending on the circumstances.

806. Monetary Penalties.

(a) DDS may impose on a Provider a civil monetary penalty not to exceed five hundred dollars ($500) for each violation of these standards.

(b)

(1) DDS may file suit to collect a civil monetary penalty assessed pursuant to these standards if the Provider does not pay the civil monetary penalty within sixty (60) calendar days from the date DDS provides written notice to the Provider of the imposition of the civil monetary penalty.

(2) DDS may file suit in Pulaski County Circuit Court or the circuit court of any county in which the Provider is located.

807. Suspension and Revocation of Certification.

(a)

(1) DDS may temporarily suspend a Provider's certification if Provider fails to comply with these standards.

(2) If a Provider's certification is suspended, Provider must immediately stop providing the CES Waiver Service until DDS reinstates its certification.

(b)

(1) DDS may permanently revoke a Provider's certification if Provider fails to comply with these standards.

(2) If a Provider's certification is revoked, Provider must immediately stop providing the CES Waiver Service and comply with the permanent closure requirements in Section 901(a).

Subchapter 9. Closure.

901. Closure.

(a)

(1) A CES Waiver Service certification ends if a Provider permanently closes, whether voluntarily or involuntarily, and is effective the date of the permanent closure as determined by DDS.

(2) A Provider that intends to permanently close, or does permanently close without warning, whether voluntarily or involuntarily, must immediately:

(A) Provide the client or legal guardian with written notice of the closure;

(B) Provide the client or legal guardian with written referrals to at least three (3) other appropriate service providers;

(C) Assist each client and their legal guardian in transferring services and copies of client records to any new service providers;

(D) Assist each client and their legal guardian in transitioning to new service providers; and

(E) Arrange for the storage of client service records to satisfy the requirements in Section 305.

(b)

(1) A Provider that intends to voluntarily close temporarily due to natural disaster, pandemic, completion of needed repairs or renovations, or similar circumstances may request to temporarily close while maintaining its CES Waiver Service certification for up to one (1) year from the date of the request.

(2) A Provider must comply with subdivision (a)(2)'s requirements for notice, referrals, assistance, and storage of client records if DDS grants Provider's request for a temporary closure.

(3)

(A) DDS may grant a temporary closure if Provider demonstrates that it is reasonably likely it will be able to reopen after the temporary closure.

(B) DDS shall end a Provider's temporary closure and direct Provider to permanently close if Provider fails to demonstrate that it is reasonably likely that Provider will be able to reopen after the temporary closure.

(4)

(A) DDS may end a Provider's temporary closure if Provider demonstrates that it is in full compliance with these standards.

(B) DDS shall end a Provider's temporary closure and direct Provider to permanently close if Provider fails to become fully compliant with these standards within one (1) year from the date of the request.

Subdivision 10. Appeals.

1001. Reconsideration of Adverse Regulatory Actions.

(a)

(1) A Provider may ask for reconsideration of any adverse regulatory action taken by DDS by submitting a written request for reconsideration in accordance with DDS Policy 1076.

(2) The written request for reconsideration of an adverse regulatory action taken by DDS must be submitted by Provider and received by DDS within thirty (30) calendar days of the date of the written notice of the adverse regulatory action received by Provider.

(3) The written request for reconsideration of an adverse regulatory action must include without limitation the specific adverse regulatory action taken, the date of the adverse regulatory action, the name of Provider against whom the adverse regulatory action was taken, the address and contact information for Provider, and the legal and factual basis for reconsideration of the adverse regulatory action.

(b)

(1) DDS shall review each timely received written request for reconsideration and determine whether to affirm or reverse the adverse regulatory action taken based on these standards.

(2) DDS may request, at its discretion, additional information as needed to review the adverse regulatory action and determine whether the adverse regulatory action taken should be affirmed or reversed based on these standards.

(c)

(1) DDS shall issue in writing its determination on reconsideration within thirty (30) days of receiving the written request for reconsideration or within thirty (30) days of receiving all information requested by DDS under subdivision (b)(2), whichever is later.

(2) DDS shall issue its determination to Provider using the address and contact information provided in the request for reconsideration.

(d) DDS may also decide to reconsider any adverse regulatory action on its own accord any time it determines, in its discretion, that an adverse regulatory action is not consistent with these standards.

1002. Appeal of Regulatory Actions.

(a)

(1) A Provider may administratively appeal any adverse regulatory action to the DHS Office of Appeals and Hearings except for Provider appeals related to the payment of Medicaid service claims covered by the Medicaid Fairness Act, Ark. Code Ann §§ 20-77-1701 to -1718, which shall be governed by that Act.

(2) The DHS Office of Appeals and Hearings shall conduct administrative appeals of adverse regulatory actions pursuant to DHS Policy 1098 and other applicable laws and rules.

(b) A Provider may appeal any adverse regulatory action or other agency action to circuit court as allowed by the Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201 to -220.