

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

As Engrossed: H3/18/19

A Bill

HOUSE BILL 1471

5 By: Representative C. Fite
6 By: Senator Bond
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE MENTAL HEALTH FOR INDIVIDUALS
10 WHO ARE DEAF OR HARD OF HEARING BILL OF RIGHTS ACT;
11 TO ESTABLISH STANDARDS OF CARE FOR MENTAL HEALTH
12 SERVICES FOR INDIVIDUALS WHO ARE DEAF OR HARD OF
13 HEARING; TO PROVIDE CULTURALLY AFFIRMATIVE MENTAL
14 HEALTH SERVICES AND LINGUISTICALLY APPROPRIATE MENTAL
15 HEALTH SERVICES TO INDIVIDUALS WHO ARE DEAF OR HARD
16 OF HEARING; AND FOR OTHER PURPOSES.

Subtitle

18
19 TO CREATE THE MENTAL HEALTH FOR
20 INDIVIDUALS WHO ARE DEAF OR HARD OF
21 HEARING BILL OF RIGHTS ACT.
22
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 20, Chapter 47, is amended to add an
28 additional subchapter to read as follows:

29 Subchapter 10 – Mental Health for Individuals who are Deaf or Hard of Hearing
30 Bill of Rights Act

31
32 20-47-1001. Title.

33 This subchapter shall be known and may be cited as the "Mental Health
34 for Individuals who are Deaf or Hard of Hearing Bill of Rights Act".

35
36 20-47-1002. Legislative findings.



1 The General Assembly finds that:

2 (1) Individuals who are deaf or hard of hearing, as a group,
3 represent an underserved population in many respects, particularly in regard
4 to access to mental health services;

5 (2) Individuals who are deaf or hard of hearing often require
6 highly specialized mental health services due to communication barriers and
7 other complex needs;

8 (3) Research shows that individuals who are deaf or hard of
9 hearing are subject to significantly more risks to their mental health than
10 individuals who are able to hear, due to many factors, including without
11 limitation lack of:

12 (A) Communication access, in general, as well as lack of
13 or impaired communication with family members, educators, and treating
14 healthcare professionals; and

15 (B) Access to:

16 (i) Appropriate educational services; and

17 (ii) Culturally affirmative and linguistically
18 appropriate physical and mental health services;

19 (4)(A) Some individuals who are deaf or hard of hearing may have
20 secondary disabilities that impact the type and manner of mental health
21 services that are needed.

22 (B) Individuals who are deaf and blind often have diverse
23 ways of communicating, including without limitation tactile sign language;

24 (5)(A) Being deaf or hard of hearing affects the most basic
25 human needs, which include the ability to communicate with other human
26 beings.

27 (B)(i) Many individuals who are deaf or hard of hearing
28 use sign language, which may be their primary communication method, while
29 other individuals who are deaf or hard of hearing receive language orally and
30 aurally, with or without visual signs or cues.

31 (ii) However, other individuals who are deaf or hard
32 of hearing lack any significant language skills or suffer from language
33 deprivation, or both;

34 (6)(A) Individuals who are deaf or hard of hearing have highly
35 diverse communication skills and challenges.

36 (B) The nature and timing of a hearing loss, the

1 helpfulness of medical or therapeutic remediation efforts, and the
2 accessibility of sign language or spoken language at home, school, and other
3 settings shape the way that hearing loss impacts individuals who are deaf or
4 hard of hearing.

5 (C)(i) Depending on the circumstances of an individual's
6 hearing loss, his or her innate abilities, and the degree to which he or she
7 has been supported in language acquisition, individuals who are deaf or hard
8 of hearing can range in their communication ability from being multilingual,
9 with fluency in more than one (1) communication method, to being alingual,
10 with fluency in no communication method.

11 (ii) However, poorly developed language skills in
12 both sign language and spoken language are common;

13 (7) It is essential that individuals who are deaf or hard of
14 hearing:

15 (A) Have access to appropriate mental health services that
16 are provided:

17 (i) In the primary communication method of the
18 individual, as determined by the preference of the individual who is deaf or
19 hard of hearing or by an appropriate communication assessment, or both; and

20 (ii) By mental health professionals such as
21 psychiatrists, psychologists, therapists, counselors, social workers, and
22 other personnel who:

23 (a) Are fluent in the primary communication
24 method of the individual who is deaf or hard of hearing;

25 (b) Understand the unique nature of being deaf
26 or hard of hearing; and

27 (c) Possess the knowledge and training to:

28 (1) Work effectively with individuals
29 who are deaf or hard of hearing;

30 (2) Provide culturally affirmative
31 mental health services and linguistically appropriate mental health services
32 to individuals who are deaf or hard of hearing; and

33 (3) Collaborate skillfully with
34 interpreters;

35 (B) Have access to mental health professionals who are
36 familiar with the unique culture and needs of individuals who are deaf or

1 hard of hearing since mental health professionals may misdiagnose individuals
2 who are deaf or hard of hearing if the mental health professionals are
3 unaware of the special needs of individuals who are deaf or hard of hearing
4 or lack training in working with individuals who are deaf or hard of hearing;

5 (C) Are involved in determining the scope, content, and
6 purpose of mental health services tailored for delivery to individuals who
7 are deaf or hard of hearing; and

8 (D) Have access to:

9 (i) Mental health services that provide appropriate
10 one-on-one access to a full continuum of mental health services, including
11 without limitation all modes of therapy and evaluation; and

12 (ii) Specialized mental health services that are
13 recommended as best practice and use appropriate curricula, staff, and
14 outreach to support the unique mental health needs of individuals who are
15 deaf or hard of hearing;

16 (8) Individuals who are deaf or hard of hearing should have
17 access to a resource guide listing the mental health services in this state
18 that offer the best access and provide the most specialized mental health
19 services for clients; and

20 (9) Individuals who are deaf or hard of hearing would benefit
21 from the development and implementation of state and regional services to
22 provide for the mental health needs of individuals who are deaf or hard of
23 hearing.

24
25 20-47-1003. Definitions.

26 As used in this subchapter:

27 (1) "Certified mental health professional" means a psychiatrist,
28 psychologist, advanced practice registered nurse, therapist, counselor, or
29 social worker licensed in this state and certified by the Division of Aging,
30 Adult, and Behavioral Health Services of the Department of Human Services as:

31 (A) Fluent in one (1) or more primary communication
32 methods;

33 (B) A specialist who is trained and experienced in working
34 skillfully with interpreters; and

35 (C) Knowledgeable of the cultural needs of clients;

36 (2) "Client" means an individual who is deaf or hard of hearing

1 and who is in need of mental health services;

2 (3) "Communication method" means any of the following systems of
3 communication used by clients:

4 (A) American Sign Language;

5 (B) An English-based manual or sign system;

6 (C) A highly visually oriented and minimal sign language
7 system to communicate, including without limitation a home-sign-based system,
8 idiosyncratic signs, a sign system or language of another country, or non-
9 linguistic or semi-linguistic communication systems designed to meet the
10 needs of language-deprived or dysfluent individuals; or

11 (D) An oral, aural, or speech-based sign system;

12 (4) "Culturally affirmative mental health services" means the
13 full continuum of mental health services that are sensitive to, and in
14 support of, the diverse cultural affiliations, including the affiliation with
15 the deaf community and culture, and needs of the client that are delivered by
16 certified mental health professionals and ancillary staff;

17 (5) "Deaf" means:

18 (A) The condition of having sustained a hearing loss that
19 is so severe that the individual has difficulty in processing linguistic
20 information through hearing, regardless of amplification or other assistive
21 technology; and

22 (B) The unique culture, community, and identity of an
23 individual who is deaf that has a set of beliefs, values, and traditions;

24 (6) "English-based manual or sign system" means a sign system
25 that uses manual signs in English word order, sometimes with added affixes
26 that are not present in American Sign Language;

27 (7) "Fluent" means a score of "Advanced" or higher for certified
28 mental health professionals and "Intermediate Plus" for other licensed and
29 nonlicensed ancillary staff qualified to work in a mental health setting on a
30 sign language communication skills assessment, including without limitation
31 the Sign Language Proficiency Interview assessment and other communication
32 skills assessments;

33 (8) "Hard of hearing" means the condition of having sustained a
34 hearing loss, whether permanent or fluctuating, that may be corrected by
35 amplification or other hearing assistive technology, but yet presents
36 challenges in processing linguistic information through hearing;

1 (9) "Interpreter" means a licensed qualified interpreter or a
2 licensed provisional interpreter as defined under § 20-14-802;

3 (10) "Linguistically appropriate mental health services" means
4 the full continuum of mental health services that are made available in the
5 communication method preferred by the client or in the communication method
6 that is determined to be most effective by a communication assessment;

7 (11) "Oral, aural, or speech-based system" means a communication
8 system that uses the speech or residual hearing, or both, of an individual
9 who is deaf or hard of hearing, regardless of technology or cued assistance;
10 and

11 (12) "Primary communication method" means the communication
12 method preferred by the individual who is deaf or hard of hearing that will
13 be most effective, as determined by the preference of the individual who is
14 deaf or hard of hearing or by an appropriate communication assessment, or
15 both.

16
17 20-47-1004. Discrimination.

18 (a) A certified mental health professional shall:

19 (1) Offer culturally affirmative mental health services and
20 linguistically appropriate mental health services to a client in the client's
21 primary communication method; and

22 (2) Not deny access to culturally affirmative mental health
23 services and linguistically appropriate mental health services to a client in
24 the client's primary communication method to a client due to the client's
25 having:

26 (A) Residual hearing ability, whether or not supported by
27 amplification or other hearing assistive technology; or

28 (B) Previous experience with some other communication
29 method.

30 (b) This section does not:

31 (1) Prevent a client from receiving mental health services in
32 more than one (1) communication method; or

33 (2) Require a client to receive culturally affirmative mental
34 health services and linguistically appropriate mental health services.

35
36 20-47-1005. Statewide mental health services.

1 The Division of Aging, Adult, and Behavioral Health Services of the
2 Department of Human Services shall:

3 (1) Implement and maintain culturally affirmative mental health
4 services and linguistically appropriate mental health services for any client
5 in his or her primary communication method;

6 (2) Recruit, develop, and maintain an adequate number of
7 certified mental health professionals and other licensed and nonlicensed
8 ancillary staff qualified to work in settings where mental health services
9 are provided to clients to ensure the delivery of culturally affirmative
10 mental health services and linguistically appropriate mental health services
11 one-on-one to any client in his or her primary communication method;

12 (3) Monitor all culturally affirmative mental health services
13 and linguistically appropriate mental health services to ensure that clients
14 of all ages are adequately served;

15 (4) Provide adequate supplemental funding to all culturally
16 affirmative mental health services and linguistically appropriate mental
17 health services and incentives for certified mental health professionals;

18 (5) Establish a certification process for mental health
19 professionals who meet all standards and guidelines, as determined by the
20 division, to provide culturally affirmative mental health services and
21 linguistically appropriate mental health services to clients; and

22 (6) Develop and implement strategies for ensuring access to
23 culturally affirmative mental health services and linguistically appropriate
24 mental health services by clients in geographic areas where there is a lack
25 or shortage of certified mental health professionals, including without
26 limitation the authorization of treatment:

27 (A) In a different location by certified mental health
28 professionals; or

29 (B) Through telemedicine or other remote technology that
30 allows a client to be provided culturally affirmative mental health services
31 and linguistically appropriate mental health services from certified mental
32 health professionals.

33
34 20-47-1006. Deaf Services Coordinator – Advisory committee.

35 (a) In order to provide culturally affirmative mental health services
36 and linguistically appropriate mental health services to clients, the

1 Division of Aging, Adult, and Behavioral Health Services of the Department of
2 Human Services shall employ the Deaf Services Coordinator to coordinate and
3 oversee the implementation of these mental health services statewide.

4 (b) The coordinator shall:

5 (1) Be competent and have extensive experience in providing
6 mental health services to clients;

7 (2) Be fluent in American Sign Language and possess a thorough
8 understanding of the deaf community and culture;

9 (3) Have at least three (3) years of experience providing one-
10 on-one services to clients;

11 (4) Possess:

12 (A) A master's degree or higher in a behavioral health or
13 clinical field; and

14 (B) The skill, knowledge, and experience in adapting and
15 developing policies and procedures based on the actual service needs of
16 individuals who are deaf or hard of hearing; and

17 (5) Know and understand applicable state laws and rules and
18 federal laws and regulations.

19 (c) The coordinator shall:

20 (1) Ensure that:

21 (A) Culturally affirmative mental health services and
22 linguistically appropriate mental health services are accessible statewide;
23 and

24 (B) The provision of appropriate consultation, training,
25 and technical assistance is accessible to mental health professionals in
26 various settings, including without limitation inpatient, outpatient, and
27 residential programs;

28 (2) Serve as a professional liaison to other state agencies or
29 boards for the collaboration needed to maximize the use of in-state resources
30 and joint planning;

31 (3) Develop a model for a statewide system of care for
32 culturally affirmative mental health services and linguistically appropriate
33 mental health services for clients that includes without limitation:

34 (A) Standards of care for individuals who are deaf or hard
35 of hearing, including standards for American Sign Language fluency required
36 in providing care in mental health settings;

1 (B) Guidelines to measure the proficiency of a mental
2 health professional in any communication method; and

3 (C) A partnership with the Advisory Board for Interpreters
4 between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of
5 Hearing, or Oral Deaf;

6 (4) Collaborate with state and private mental health
7 professionals throughout the state to assist and ensure compliance with
8 federal and state laws relating to mental health services for clients;

9 (5) Collect and evaluate clinical and programmatic outcome data
10 from mental health professionals serving individuals who are deaf or hard of
11 hearing;

12 (6) Distribute funds or grants to public and private mental
13 health professionals to achieve optimum service delivery within the system of
14 care; and

15 (7) Provide:

16 (A) Reports as requested by the Director of the Division
17 of Aging, Adult, and Behavioral Health Services of the Department of Human
18 Services; and

19 (B) Clinical and administrative case consultation to
20 mental health professionals when appropriate regarding culturally affirmative
21 mental health services and linguistically appropriate mental health services
22 to clients.

23 (d)(1) The coordinator shall establish an advisory committee to make
24 recommendations and provide advice and assistance concerning the
25 implementation of this subchapter.

26 (2)(A) The advisory committee shall consist of ten (10)
27 individuals appointed by the Director of the Department of Human Services.

28 (B) The advisory committee shall consist of:

29 (i) Individuals who are deaf or hard of hearing;

30 (ii) Parents or legal guardians of individuals who
31 are deaf or hard of hearing;

32 (iii) Certified mental health professionals;

33 (iv) Interpreters; and

34 (v) Educators who are licensed in this state to
35 teach individuals who are deaf or hard of hearing.

36 (C) At least fifty-one percent (51%) of the advisory

1 committee shall be individuals who are deaf or hard of hearing.

2 (D) The members shall serve a two-year term and may be
3 reappointed.

4 (3)(A) The coordinator shall call the first meeting within
5 thirty (30) days of establishing the advisory committee.

6 (B) The advisory committee shall meet at least quarterly
7 after the first meeting is held.

8 (4)(A) Members of the advisory committee are voluntary and shall
9 not receive compensation, wages, or salary due to membership on the advisory
10 committee.

11 (B)(i) Members of the advisory committee may receive
12 reimbursement for travel and other expenses under § 25-16-902 with the
13 approval of the coordinator.

14 (ii) However, the coordinator shall use technology
15 and other available resources to avoid excessive and unnecessary costs
16 related to member reimbursement.

17
18 20-47-1007. Basic standards of care for mental health services for
19 individuals who are deaf or hard of hearing.

20 (a) A client who is admitted for mental health treatment shall have
21 access to culturally affirmative mental health services and linguistically
22 appropriate mental health services.

23 (b)(1) A mental health professional shall work with the Deaf Services
24 Coordinator as appropriate to ensure that culturally affirmative mental
25 health services and linguistically appropriate mental health services are
26 made accessible to clients.

27 (2) A client shall have access to one-on-one culturally
28 affirmative mental health services and linguistically appropriate mental
29 health services from a certified mental health professional who is fluent in
30 the communication method that is preferred by the client or recommended by a
31 communication assessment, or both.

32 (3) If one-on-one culturally affirmative mental health services
33 and linguistically appropriate mental health services by a certified mental
34 health professional are not available within a reasonable geographical area,
35 as determined by the coordinator, for an client, the client shall be offered:

36 (A) An appropriate referral to a certified mental health

1 professional who can provide culturally affirmative mental health services
2 and linguistically appropriate mental health services through telemedicine or
3 other remote technology; or

4 (B)(i) At no cost to the client, culturally affirmative
5 mental health services and linguistically appropriate mental health services
6 through the use of an interpreter.

7 (ii) If an interpreter cannot be physically present
8 in a timely manner, the services of an interpreter may be offered to the
9 client through telemedicine or other remote technology.

10 (4) If an interpreter is offered to a client, the client:

11 (A) May voluntarily decline to accept or use the mental
12 health services through the interpreter without a penalty to the client; and

13 (B) Shall be offered any other assistance and services as
14 required by federal and state law, including without limitation a different
15 interpreter or hearing assistive technology.

16 (5) If a client refuses all culturally affirmative mental health
17 services and linguistically appropriate mental health services that are
18 offered, the mental health professional shall:

19 (A) Secure from the client a signed waiver of the right to
20 receive culturally affirmative mental health services and linguistically
21 appropriate mental health services and place the waiver in the file of the
22 client;

23 (B) Notify the coordinator of the refusal of culturally
24 affirmative mental health services and linguistically appropriate mental
25 health services; and

26 (C) Allow the coordinator to review the culturally
27 affirmative mental health services and linguistically appropriate mental
28 health services offered to ensure that all the mental health services were
29 appropriate.

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32 */s/C. Fite*