

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: Living Choices Assisted Living Home and Community-Based Services Medicaid Waiver and Living Choices Assisted Living Medicaid Provider Manual

DESCRIPTION: The Living Choices Assisted Living Medicaid Waiver is being amended as follows:

- The Contact Information for the Medicaid Agency is updated.
- Section C.2.a is amended to provide the operating agencies with greater flexibility in processing criminal background check requests for providers. The operating agency is moving towards an electronic process for handling criminal background check requests, but the current waiver language requires a paper-based manual process. The state is not proposing any substantive change to the criminal background checks themselves, only how the request for the check is processed.
- Section C.2.b is amended to delete irrelevant language. This section relates to abuse registry screens for providers, but in a previous amendment the state mistakenly included language here regarding criminal background checks. The language being deleted from this section is already included in Section C.2.a and does not need to be repeated in C.2.b.
- Section I.2.a is amended to revise the payment rate for WY5 in accordance with a new cost survey and actuarial analysis conducted for the operating agency, and to implement a revised phase-in of the new final rate.
- Sections J.1, J.1.c.i, and J.2.d.i are amended to reflect the change in the payment rate and phase-in schedule for WY5.

The Living Choices Assisted Living Medicaid Provider Manual is being amended as follows:

- Section 200.100 is amended to reflect the Department's reorganization and the movement of licensure responsibilities to the Division of Provider Services and Quality Assurance.
- Section 200.110 is amended to add language regarding criminal background checks for providers that is consistent with the language recently added to the ARChoices waiver.
- Section 211.100(H) is amended to clarify that when a beneficiary moves from a PASSE to Living Choices, the waiver eligibility date is no earlier than the day after the beneficiary is disenrolled from the PASSE.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 10, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Michael W. Mitchell for Mitchell, Blackstock, Ivers & Sneddon, PLLC on behalf of The Arkansas Residential Assisted Living Association (ARALA)

COMMENT: The Arkansas Residential Assisted Living Association (ARALA) hereby supplies public comments to the proposed rule changes pertaining the revised payment rate for WYS in accordance with the new cost survey and actuarial analysis conducted by the operating agency which revised the phase-in of the new final rate.

ARALA officially provides its objections to the decrease in payment rate and the phase-in schedule for WYS. The phase-in reduction of the payment rate amounts to an approximate 20% decrease in reimbursement. This decrease is having an adverse effect on access, given that existing facilities have closed, and will have an adverse effect on new facilities being established. Specifically, there will be limited access in minority communities. The decrease represented by the proposed rule is especially troubling in view of the minimum wage increase that is occurring in Arkansas. The payment rate decrease coupled with the limitation on the number of Assisted Living slots are combining to have an adverse effect on the Assisted Living industry and those qualified residents in Arkansas.

RESPONSE: Comment considered. The proposed rule actually implements an increase in the rate for assisted living services, not a decrease. In 2016, when CMS approved the 5-year renewal of the Living Choices waiver program, it was on the condition that DHS would implement a rate that was based on evidence and actuarial soundness. In the summer of 2018, DHS had an actuary review the costs of providing assisted living services, and that actuary developed a recommended rate. DHS then implemented that rate in a rule that was approved by CMS and by the Arkansas Legislative Council in December 2018. Because the recommended rate was less than the then-current rate, DHS agreed to phase-in the rate reduction over the two years remaining on the waiver. DHS also agreed to conduct another rate study in the first quarter of 2019. DHS did so, and a total of 29 assisted living providers responded to the cost survey conducted by the actuaries. That rate study resulted in a proposed rate that was higher than the rate approved in December 2018. This proposed rule increases the payment amounts in the phase-in schedule to reflect this newer rate. If this rule is not approved, providers will continue to receive the lower rate.

Commenter's Name: David Cook, Public Policy Manager for Alzheimer's Association, Arkansas Chapter

COMMENT #1: In regards to the proposed reimbursement rate changes proposed in Appendix I: Financial Accountability section A subsection 2:

The Arkansas Chapter of the Alzheimer's Association is concerned that the proposed rate decreases, though implemented over time, could potentially result in a reduction in the number of assisted living facilities that serve Medicaid enrollees. The proposed reimbursement rates will place additional financial obligations on these facilities which may make it harder for them to both maintain and increase the quality of care, retain

qualified health care professionals, and meet the other requirements and regulatory standards imposed by Arkansas State Law.

Low reimbursement rates can be a barrier to the provision of high quality residential care in facilities that serve a high proportion of Medicaid beneficiaries. We are concerned that if providers begin to exit the Medicaid market due to lower reimbursement rates, many of our state's medically frail, including individuals with Alzheimer's or other dementias, will be left with limited choices as they age.

We recommend that a subsequent rate study be conducted that includes a larger pool of providers so as to accurately capture the needs of the state so that every Arkansan regardless of income level has an option to age in place as long as medically possible.

RESPONSE: Comment considered. The proposed rule actually implements an increase in the rate for assisted living services, not a decrease. In 2016, when CMS approved the 5-year renewal of the Living Choices waiver program, it was on the condition that DHS would implement a rate that was based on evidence and actuarial soundness. In the summer of 2018, DHS had an actuary review the costs of providing assisted living services, and that actuary developed a recommended rate. DHS then implemented that rate in a rule that was approved by CMS and by the Arkansas Legislative Council in December 2018. Because the recommended rate was less than the then-current rate, DHS agreed to phase-in the rate reduction over the two years remaining on the waiver. DHS also agreed to conduct another rate study in the first quarter of 2019. DHS did so, and a total of 29 assisted living providers responded to the cost survey conducted by the actuaries. That rate study resulted in a proposed rate that was higher than the rate approved in December 2018. This proposed rule increases the payment amounts in the phase-in schedule to reflect this newer rate. If this rule is not approved, providers will continue to receive the lower rate.

COMMENT #2: In regards to Section 211.100 Section C Subsection 2:

The Current eligibility language is as follows:

The individual has a primary or secondary diagnosis of Alzheimer's disease or related dementia and is cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or others;

We are concerned that the current language could potentially limit access for individuals who exhibit symptoms of Alzheimer's or another dementia in the following ways: An individual must have a primary or secondary diagnosis of Alzheimer's disease or related dementia. We would like more clarification as to what the term "secondary diagnosis" refers to.

We are also concerned that upon meeting the threshold of a diagnosis of Alzheimer's Disease, the individual must also engage in "inappropriate behaviors." This language

may not be indicative of an individual with Alzheimer's. Many individuals with Alzheimer's disease or another dementia do not necessarily exhibit behaviors as described in the current waiver language. We recommend the following changes to this subsection:

The individual has a primary or secondary diagnosis of Alzheimer's disease or related dementia and is cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or others; or

This amendment language would not have a significant fiscal impact on the state's Medicaid budget.

Thank you for your consideration of our comments. Please do not hesitate to contact me if you have any questions.

RESPONSE: Comment considered. This proposed rule only addresses the payment rate for the Living Choices Assisted Living Medicaid waiver and technical clean up language. Revising the eligibility criteria for the waiver is outside the scope of the proposed rule changes. However, DHS will consider these comments for future changes to the waiver.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following answers:

QUESTION #1: What is the status on CMS approval? **RESPONSE:** Waivers are submitted to CMS after the expiration of the public comment period. The public comment period ended on 2/10/20. Submission to CMS is in progress.

QUESTION #2: Ark. Code Ann. § 20-38-103 only requires national background checks for individuals who have lived outside Arkansas within the past five years. What is the authority for requiring national background checks for all employees and contract staff, as stated in § 200.110, ¶ 2? **RESPONSE:** Thank you for your question. The section has been revised as follows: "All owners, principals, employees, and contract staff of a Living Choices Assisted Living provider must have a ~~national and state~~ criminal background check and central registry check." The word "a" was inserted in place of national and state.

QUESTION #3: Ark. Code Ann. § 20-38-102 requires operators to submit background check forms and fingerprints to Arkansas State Police, not to the Department, and does not involve DHS in the process. What is the authority for requiring applicants to submit materials to the Office of Long Term Care, as mentioned in Appendix C-2(a) of the waiver? **RESPONSE:** Thank you for your question. The section has been revised as follows removing the Office of Long Term Care: "When a facility operator applies for licensure to operate a long-term care facility, the operator shall submit ~~to the Office of Long Term Care~~ the appropriate fees, criminal record check forms, and fingerprints in the form and manner determined by DHS."

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, this rule implements a federal rule or regulation. The cost to implement the federal rule or regulation is \$569,641.58 for the current fiscal year (\$164,113.74 in general revenue and \$405,527.84 in federal funds) and \$797,498.21 for the next fiscal year (\$229,759.24 in general revenue and \$567,738.97 in federal funds). The agency estimates the total cost to state, county, and municipal government to implement this rule at \$164,113.74 for the current fiscal year and \$229,759.24 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose

The basis and purpose of this rule, as related to the fiscal impact, is to change the provider payment rate for assisted living facilities in accordance with a new payment rate for assisted living facilities in accordance with a new rate study conducted by the Department's actuaries.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute

When the Legislature approved changes to the Living Choices Assisted Living Medicaid Waiver in December 2018, DHS committed to the Legislature and to providers that it would conduct a revised actuarial study and cost survey to review the rate that was being approved at that time. DHS did so and based on that actuarial study, DHS is proposing adjustments to the payment rate. This change is not required by statute.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs.

When the Legislature approved changes to the Living Choices Assisted Living Medicaid Waiver in December 2018, DHS committed to the Legislature and to providers that it would conduct a revised actuarial study and cost survey to review the rate that was being approved at that time. DHS did so and based on that actuarial study, DHS is proposing adjustments to the payment rate. This change is not required by statute.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule

The agency is unaware of any less costly alternatives.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule

No less costly alternatives have been identified through public comment to date.

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response

No existing state rules have created or contributed to the problem the agency seeks to address.

(7) an agency plan for review of the rule no less than every ten years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives

The agency monitors state and federal rules and policies for opportunities to reduce and control cost.

LEGAL AUTHORIZATION: The Department of Human Services has the authority to “supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it.” Ark. Code Ann. § 20-76-201(1). The Department is explicitly tasked with establishing and maintaining the Arkansas Medicaid program. *See* Ark. Code Ann. § 20-77-107(a)(1). The Department is also explicitly tasked with establishing “an assisted living program for adults,” including “developing a home- and community-based waiver application in accordance with § 1915(c) of the Social Security Act.” Ark. Code Ann. § 20-10-1704(a), (g)(1).

“The department shall establish by rule requirements for registry records checks for: (1) An applicant for licensure or certification of a service provider; (2) An applicant for employment with a service provider; and (3) An employee of a service provider.” Ark. Code Ann. § 20-33-213(e). “Service provider” includes a long-term care facility. Ark. Code Ann. § 20-38-101(9)(H). The Department also has the authority to “[m]ake rules and take actions as are necessary or desirable” to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). It may promulgate rules as necessary to conform its programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

“For Medicaid-eligible clients, the Department of Human Services shall reimburse assisted living facilities on a per diem basis in accordance with approval for per diem reimbursement from the Centers for Medicare and Medicaid Services.” Ark. Code Ann. § 20-10-1706.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Janet Mann
CONTACT PERSON Alexandra Rouse
ADDRESS P.O. box 1437, Slot S295, Little Rock, AR 72203-1437
PHONE NO. 501-508-8875 **FAX NO.** 501-404-4619 **E-MAIL** Alexandra.Rouse@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Mark White
PRESENTER E-MAIL Mark.White@dhs.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Living Choices Assisted Living Home and Community Based Services Medicaid Waiver and Living Choices Assisted Living Medicaid Provider Manual

2. What is the subject of the proposed rule? Living Choices Assisted Living Home and Community Based Services Medicaid Waiver and Living Choices Assisted Living Medicaid Provider Manual

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative

Procedure Act?

Yes

No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

7. What is the purpose of this proposed rule? Why is it necessary? See Attached.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).
<https://medicaid.mmis.arkansas.gov/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: TBD

Time: TBD

Place: TBD

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

TBD

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

January 1, 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Assisted living providers will likely comment

on the rules. At present their position is unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT David McMahon

David.McMahon@dhs.

TELEPHONE 501-396-6421 **FAX** _____ **EMAIL:** Arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Living Choices Assisted Living Home and Community Based Services Medicaid Waiver and Living Choices Assisted Living Medicaid Provider Manual

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue \$164,113.74
Federal Funds \$405,527.84
Cash Funds _____

Next Fiscal Year

General Revenue \$229,759.24
Federal Funds \$567,738.97
Cash Funds _____

Special Revenue	_____
Other (Identify)	_____
Total	<u>\$569,641.58</u>

Special Revenue	_____
Other (Identify)	_____
Total	<u>\$797,498.21</u>

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

Next Fiscal Year

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 164,113.74

Next Fiscal Year

\$ 229,759.24

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose; The basis and purpose of this rule, as related to the fiscal impact, is to change the provider payment rate for assisted living facilities in accordance with a new payment rate for assisted living facilities in accordance with a new rate study conducted by the Department's actuaries.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; When the Legislature approved changes to the Living Choices Assisted Living Medicaid Waiver in December 2018, DHS committed to the Legislature and to providers that

it would conduct a revised actuarial study and cost survey to review the rate that was being approved at that time. DHS did so and based on that actuarial study, DHS is proposing adjustments to the payment rate. This change is not required by statute.

- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs; When the Legislature approved changes to the Living Choices Assisted Living Medicaid Waiver in December 2018, DHS committed to the Legislature and to providers that it would conduct a revised actuarial study and cost survey to review the rate that was being approved at that time. DHS did so and based on that actuarial study, DHS is proposing adjustments to the payment rate. This change is not required by statute.
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule; The agency is unaware of any less costly alternatives.
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule; No less costly alternatives have been identified through public comment to date.
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and No existing state rules have created or contributed to the problem the agency seeks to address.
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives. The agency monitors State and Federal rules and policies for opportunities to reduce and control cost.

NOTICE OF RULE MAKING

The Director of the Division of Medical Services hereby issues, for a thirty-day public comment period, a notice of rulemaking for the following proposed medical assistance rule(s) under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-76-201, 20-77-107, and 25-10-129.

Effective January 1, 2020, the Living Choices Assisted Living Home and Community-Based Services Medicaid Waiver and Living Choices Assisted Living Medicaid Provider Manual are being amended.

The Living Choices Assisted Living Medicaid waiver is being amended as follows:

- The Contact Information for the Medicaid Agency is updated.
- Section C.2.a. is amended to provide the operating agencies with greater flexibility in processing criminal background check requests for providers. The operating agency is moving towards an electronic process for handling criminal background check requests, but the current waiver language requires a paper-based manual process. The state is not proposing any substantive change to the criminal background checks themselves, only how the request for the check is processed.
- Section C.2.b. is amended to delete irrelevant language. This section relates to abuse registry screens for providers, but in a previous amendment the state mistakenly included language here regarding criminal background checks. The language being deleted from this section is already included in Section C.2.a. and does not need to be repeated in C.2.b.
- Section I.2.a. is amended to revise the payment rate for WY5 in accordance with a new cost survey and actuarial analysis conducted for the operating agency, and to implement a revised phase-in of the new final rate.
- Sections J.1., J.1.c.i., and J.2.d.i. are amended to reflect the change in the payment rate and phase-in schedule for WY5.

The Living Choices Assisted Living Medicaid Provider Manual is being amended as follows:

- Section 200.100 is amended to reflect the Department's reorganization and the movement of licensure responsibilities to the Division of Provider Services and Quality Assurance.
- Section 200.110 is amended to add language regarding criminal background checks for providers that is consistent with the language recently added to the ARChoices waiver.
- Section 211.100(H) is amended to clarify that when a beneficiary moves from a PASSE to Living Choices, the waiver eligibility date is no earlier than the day after the beneficiary is disenrolled from the PASSE.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the Medicaid website at


<https://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx>. Public comments must be submitted in writing at the above address or at the following email address:

ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than February 10, 2020. Please note that public comments submitted in response to this notice are considered

public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6164.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. **PO # 4501888131**



Janet Mann, Director
Division of Medical Services

Statement of Necessity and Rule Summary
Living Choices Assisted Living 1915(c) Home and Community Based Services Waiver and
Living Choices Assisted Living Medicaid Provider Manual

Statement of Necessity

The Department of Human Services (DHS) proposes to amend the Living Choices Assisted Living Waiver to change the provider payment rate in accordance with a new rate study conducted by the Department's actuaries, and to amend both the waiver and the Living Choices Assisted Living Medicaid Provider Manual to update language regarding the DHS reorganization; to update language regarding criminal history background checks and central registry checks; and to clarify language regarding eligibility dates for PASSE beneficiaries.

Rule Summary

When DHS amended the Living Choices Assisted Living Waiver at the end of 2018, the Department committed to providers and to the Legislature that it would conduct a second review of the payment rate for assisted living and obtain a new actuarial analysis no later than March 1, 2019. Based on that analysis, the Department is proposing to revise the payment rate. The current rate is scheduled to decrease on a phased-in basis, reaching a final rate of \$62.89 on January 1, 2021. Based on the second actuarial analysis, DHS proposes to revise the final rate to \$68.51, and to revise the phase-in schedule accordingly.

In addition, DHS proposes to amend the waiver and the provider manual to update the language regarding criminal background checks, to allow for the Department to eventually move to an electronic process for conducting checks, instead of the current manual, paper-based process. DHS is also proposing to add language to the provider manual to clarify when waiver eligibility begins for a beneficiary who is moving from a Provider-led Arkansas Shared Savings Entity (PASSE) to the Living Choices Assisted Living Medicaid waiver.

The Living Choices Assisted Living Medicaid waiver is being amended as follows:

- The Contact Information for the Medicaid Agency is updated.
- Section C.2.a. is amended to provide the operating agencies with greater flexibility in processing criminal background check requests for providers. The operating agency is moving towards an electronic process for handling criminal background check requests, but the current waiver language requires a paper-based manual process. The state is not proposing any substantive change to the criminal background checks themselves, only how the request for the check is processed.
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- Section I.2.a. is amended to revise the payment rate for WY5 in accordance with a new cost survey and actuarial analysis conducted for the operating agency, and to implement a revised phase-in of the new final rate.
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