

**DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES**

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**SUBJECT:** SPA-2020-0001-Self-Direction Budget Calculation Methodology & IC Provider Manual

**DESCRIPTION:**

**Statement of Necessity**

This change is necessary to address the impact on the self-direction program from increases in the minimum wage since 2008, and to tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes.

The self-direction program is a waiver program that allows a beneficiary to employ caregivers of the beneficiary's choice using Medicaid funds. A fiscal agent is paid separately to assist the beneficiary in employing caregivers. The beneficiary's budget is set through an assessment of hours of needed care, a determination of funds available to pay for needed care and other goods and services, and the creation of a plan of care. The cost of care is equal to the number of hours of care multiplied by the wage paid to the caregiver, plus the cost of applicable taxes.

The average number of hours in plans of care under Independent Choices is approximately 25 hours. The maximum available number of hours under Independent Choices for personal care under State Plan Medicaid is 14.75 hours. However, ARChoices beneficiaries can select to receive self-direction through the Independent Choices program and receive additional hours of care.

In 2008, the self-direction budget was capped to 57.8% of the personal care rate. This cap is promulgated in the State Plan Amendment approved by CMS and the Independent Choices Provider Manual. Today, the self-direction budget cap corresponds to a maximum hourly wage of approximately \$10.55 based on a personal care rate of \$18.24 per hour.

The 57.8% adjustment factor for the self-direction program was chosen to match the funding available for the self-direction program in 2008, given the personal care rate at the time. The personal care rate is calculated based on average wages for direct care staff, benefit loads such as unemployment taxes, and overhead loads such as administrative costs for employers to do business and employ direct care staff. The self-direction program does not have overhead costs because of the fiscal agent's involvement.

Since 2008, the minimum wage has increased substantially. In 2008, the minimum wage was \$6.25 per hour. In 2018, the minimum wage increased to \$9.25 per hour. In 2020, the minimum wage increased to \$10.00 per hour. On January 1, 2021, the minimum wage will increase to \$11.00 per hour, which is 76% higher than it was in 2008.

Increases in the minimum wage negatively impact the Independent Choices program when the minimum wage is more than the maximum allowed hourly wage plus applicable taxes. This is because the beneficiary will not be able to pay for the number of hours of care the beneficiary needs due to the increased cost of care related to the increase in the minimum wage.

For example, the current maximum allowed hourly wage for caregivers is \$10.55, but that only leaves \$0.55 per hour to cover applicable taxes because the minimum wage is \$10.00. However, taxes on even the minimum wage brings the total cost per hour to \$11.60. This means that the beneficiary would not be able to afford approximately 9.1% of the beneficiary's needed hours of care and would have no remaining funds to afford additional goods or services allowed under the self-direction program.

The problem becomes even more pronounced when the minimum wage increases to \$11.00 per hour on January 1, 2021, because at that rate the total cost per hour increases to approximately \$12.76. This means the beneficiary would not be able to afford approximately 17.3% of the beneficiary's needed hours of care and would have no remaining funds to afford additional goods and services.

In addition to being unable to absorb the impact of minimum wage increases, the current self-direction budget calculation does not accurately reflect the difference between the self-direction program and the agency-based personal care rate. For example, the self-direction program does not have administrative overhead costs that add approximately 37% to the personal care rate calculation, but does have benefit loads for taxes of approximately 16%. Yet, the self-direction program is capped below that at 57.8% of the personal care rate.

The disjunction between the self-direction budget calculation and the personal care rate also makes it difficult for self-direction to be a meaningful alternative to agency-based personal care services because such agencies are not limited to the 57.8% of the personal care rate. Instead, agency-based personal care services can pay the full personal care rate of \$18.24.

### **Rule Summary**

This change will adjust the self-direction budget calculation methodology promulgated in the State Plan Amendment approved by CMS and the Independent Choices manual. Specifically, the self-direction budget calculation methodology would be changed from 57.8% of the personal care rate to 73.0% of the personal care rate.

The 73.0% percentage was calculated using the same method to calculate the personal care rate except that it is based on the current personal care rate and accounts for the lack of administrative overhead costs for self-direction beneficiaries. The link to the personal care rate will allow future adjustments due to changing economic conditions to be accounted solely through changes to the personal care rate.

At 73.0% of the current personal care rate, self-direction beneficiaries would have maximum budgets equal to the number of hours of needed care per month, multiplied by \$13.32 per hour of needed care. These funds could be used to pay for caregivers and other goods and services allowed under the Independent Choices program.

Future changes to the self-direction rate due to further increases in the minimum wage or other factors would be addressed through changes to the personal care rate.

The change will impact approximately 2,800 current beneficiaries who are in the self-direction program.

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on May 9, 2020. The agency indicated that it received no public comments.

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

**QUESTION #1:** Is CMS approval required for these changes? If so, what is the status on that approval? **RESPONSE:** Yes, CMS approval of the Medicaid State Plan change is required. We received CMS approval on May 5, 2020.

**QUESTION #2:** Where does the 73% hourly rate come from? **RESPONSE:** It is based on the personal care rate methodology, less 37% for overhead that is not present in the self-direction program. The overhead is covered by the contractor, which is paid separately. I am attaching the calculation methodology that may help.

The proposed effective date is July 1, 2020.

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

Per the agency, the additional cost to implement the rule is \$7,730,368 for the current fiscal year (\$2,197,744 in general revenue and \$5,532,624 in federal funds) and \$7,730,368 for the next fiscal year (\$2,197,744 in general revenue and \$5,532,624 in federal funds). The estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$2,197,744 for the current fiscal year and \$2,197,744 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 to 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;*

This change is necessary to (1) address the impact on the self-direction program from increases in the minimum wage since 2008, and (2) tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes.

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

To ensure that the program has the budget necessary to provide the hours required for the care needed for this self-direction care program.

*(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;*

Minimum wage has increased since 2008 and the program must account for this increase in costs.

*(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;*

No comments received as to date.

*(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 alternatives are proposed at this time.

*(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*

Not applicable.

*(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 costs.

**LEGAL AUTHORIZATION:** The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. §

**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 PO Box 1437, Slot S295, Little Rock, AR 72203-1437  
PHONE NO. 501-320-6266 FAX NO. 501-404-4619 E-MAIL Alexandra.Rouse@dhs.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Jerald Sharum  
PRESENTER E-MAIL Jerald.Sharum@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, 5<sup>th</sup> Floor  
Little Rock, AR 72201**

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1. What is the short title of this rule? SPA-2020-0001-Self-Direction Budget Calculation Methodology & IC Provider Manual

2. What is the subject of the proposed rule? Independent Choices self-direction budget calculation methodology

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).

<http://humanservices.arkansas.gov/resources/legal-notices>

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

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

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

May 9, 2020

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

July 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. Unknown.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services

**DIVISION** Division of Medical Services

**PERSON COMPLETING THIS STATEMENT** Jerald Sharum

**TELEPHONE** 501-396-6174 **FAX** \_\_\_\_\_ **EMAIL:** gerald.sharum@dhs.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** SPA-2020-0001-Self-Direction Budget Calculation Methodology & IC 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 \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue	\$ 2,197,744
Federal Funds	\$ 5,532,624
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ 7,730,368

General Revenue	\$ 2,197,744
Federal Funds	\$ 5,532,624
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ 7,730,368

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**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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**

**Next Fiscal Year**

\$ 2,197,744

\$ 2,197,744

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; **This change is necessary to (1) address the impact on the self-direction program from increases in the minimum wage since 2008, and (2) tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes.**

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; **To ensure that the program has the budget necessary to provide the hours required for the care needed for this self-direction care program.**

(3) a description of the factual evidence that:



- (a) justifies the agency's need for the proposed rule; and **Minimum wage has increased since 2008 and the program must account for this increase in costs.**
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs; **Minimum wage has increased since 2008 and the program must account for this increase in costs.**
- (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; **No Comments received to date.**
- (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 alternatives are proposed at this time.**
- (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 **Not applicable**
- (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 costs**

## NOTICE OF RULE MAKING

The Director of the Division of Medical Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule 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 July 1, 2020:**

Pursuant to the State Plan Under Title XIX of the Social Security Act for self-directed personal assistance services under 1915(j), the Arkansas Department of Human Services, Division of Medical Services, intends to adjust the self-direction budget calculation methodology promulgated in the State Plan Amendment and the Independent Choices Provider Manual. Specifically, the self-direction budget calculation methodology would increase from 57.8% of the personal care rate to 73.0% of the personal care rate. This change is necessary to address the impact on the self-direction program from increases in the minimum wage since 2008, and to tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes. The changes will impact approximately 2,800 current beneficiaries who are in the self-direction program. The annual financial impact per state fiscal year is \$7,730,368.

The self-direction waiver program allows a beneficiary to employ caregivers of the beneficiary's choice using Medicaid funds with the assistance of a fiscal agent. The beneficiary's budget is set through an assessment of hours of needed care, a determination of funds available to pay for needed care and other goods and services, and the creation of a plan of care. The cost of care is equal to the number of hours of care multiplied by the wage paid to the caregiver, plus the cost of applicable taxes. The average number of hours of care in plans of care under Independent Choices is approximately 25 hours. The maximum available number of hours under Independent Choices for personal care under State Plan Medicaid is 14.75 hours. However, ARChoices beneficiaries can select to receive self-direction through the Independent Choices program and receive additional hours of care.

Since 2008, the minimum wage has increased from \$6.25 per hour to \$10.00 per hour. On January 1, 2021, the minimum wage will increase to \$11.00 per hour, which is 76% higher than it was in 2008. Increases in the minimum wage negatively impact the Independent Choices program when the minimum wage is more than the maximum allowed hourly wage plus applicable taxes as the beneficiary will not be able to pay for the number of hours of care the beneficiary needs due to the increased cost of care related to the increase in the minimum wage.

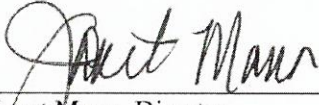
In addition to being unable to absorb the impact of minimum wage increases, the current self-direction budget calculation does not accurately reflect the difference between the self-direction program and the agency-based personal care rate. The 73.0% percentage was calculated using the same method to calculate the personal care rate except that it is based on the current personal care rate and accounts for the lack of administrative overhead costs for self-direction beneficiaries. The link to the personal care rate will allow future adjustments due to changing economic conditions to be accounted solely through changes to the personal care rate. At 73.0% of the current personal care rate, self-direction beneficiaries would have maximum budgets equal to the number of hours of needed care per month, multiplied by \$13.32 per hour of needed care. These funds could be used to pay for caregivers and other goods and services allowed under the Independent Choices program.

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](mailto:ORP@dhs.arkansas.gov). All public comments must be received by DHS no later than **May 9, 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 501-320-6266.

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. 4501888131

  
\_\_\_\_\_  
Janet Mann, Director  
Division of Medical Services

## Statement of Necessity and Rule Summary

### SPA# 2020-0001 – Self-direction Budget Calculation Methodology & IC Provider Manual

#### Statement of Necessity

This change is necessary to address the impact on the self-direction program from increases in the minimum wage since 2008, and to tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes.

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The 57.8% adjustment factor for the self-direction program was chosen to match the funding available for the self-direction program in 2008, given the personal care rate at the time. The personal care rate is calculated based on average wages for direct care staff, benefit loads such as unemployment taxes, and overhead loads such as administrative costs for employers to do business and employ direct care staff. The self-direction program does not have overhead loads because of the fiscal agent's involvement.

Since 2008, the minimum wage has increased substantially. In 2008, the minimum wage was \$6.25 per hour. In 2018, the minimum wage increased to \$9.25 per hour. In 2020, the minimum wage increased to \$10.00 per hour. On January 1, 2021, the minimum wage will increase to \$11.00 per hour, which is 76% higher than it was in 2008.

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For example, the current maximum allowed hourly wage for caregivers is \$10.55, but that only leaves \$0.55 per hour to cover applicable taxes because the minimum wage is \$10.00. However, taxes on even

the minimum wage brings the total cost per hour to approximately \$11.60. This means that the beneficiary would not be able to afford approximately 9.1% of the beneficiary's needed hours of care and would have no remaining funds to afford additional goods or services allowed under the self-direction program.

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In addition to being unable to absorb the impact of minimum wage increases, the current self-direction budget calculation does not accurately reflect the difference between the self-direction program and the agency-based personal care rate. For example, the self-direction program does not have administrative overhead costs that add approximately 37% to the personal care rate calculation, but does have benefit loads for taxes of approximately 16%. Yet, the self-direction program is capped below that at 57.8% of the personal care rate.

The disjunction between the self-direction budget calculation and the personal care rate also makes it difficult for self-direction to be a meaningful alternative to agency-based personal care services because such agencies are not limited to the 57.8% of the personal care rate. Instead, agency-based personal care can pay the full personal care rate of \$18.24.

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Future changes to the self-direction rate due to future increases in the minimum wage or other factors would be addressed through changes to the personal care rate.

The change will impact approximately 2,800 current beneficiaries who are in the self-direction program.