

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES

SUBJECT: Living Choices Assisted Living Facility Waiver Renewal; LCAL 2-20

DESCRIPTION:

Statement of Necessity

CMS approves HCBS waivers for a period of 5 years. The Living Choices Assisted Living waiver expired 1/31/2021 and is currently operating under a temporary extension. This extension will allow DHS to align the waiver start date with the beginning of the state's fiscal year.

Rule Summary

With this renewal cycle, the roles and responsibilities of the operating agencies (DMS, DAABHS, DPSQA, and DCO) are clarified. In addition, the appeals process is changing to an automatic continuation of benefits during the appeal process unless the waiver beneficiary opts out. Rates for services are being updated for the next 5 years. The Provisional Service Plan option is being removed.

PUBLIC COMMENT: A public hearing was held on this rule on April 16, 2021. The public comment period expired on May 13, 2021. The agency indicated that it received no public comments.

The proposed effective date is July 1, 2021.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

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 Mac Golden
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437
Mac.E.Golden
PHONE NO. 501-563-7634 FAX NO. 501-404-4619 E-MAIL @dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Patricia Gann
PRESENTER E-MAIL Patricia.Gann@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

- Living Choices Assisted Living Facility Waiver Renewal; LCAL
1. What is the short title of this rule? 2-20
2. What is the subject of the proposed rule? Five year renewal of the Living Choices HCBS Waiver Program
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."**

See attached.

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://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>

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

Date: April 16th

Time: 10:00 am

Zoom meeting

<https://us02web.zoom.us/j/84229040927>

Place: Webinar ID: 842 2904 0927

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

May 13, 2021

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

July 1, 2021

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**

NOTICE OF RULE MAKING

The Director of the Division of Medical Services (DMS) of the Department of Human Services (DHS) 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, 2021:

DMS renews the Living Choices Assisted Living (LCAL) waiver as required by § 1915(c) of the Social Security Act (“the Act”). The current waiver expired 01/31/21 and operates under a temporary extension until the renewal is approved. Changes with the renewal to the waiver and LCAL provider manual include:

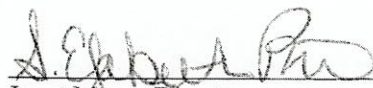
- Clarification of the roles and responsibilities of the operating agencies within DHS.
- Revision of the appeals process that provides an automatic continuation of benefits during the appeal unless the waiver beneficiary opts out.
- Removal of the Provisional Service Plan option.

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 May 13, 2021. 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.

A public hearing by remote access only will be through a Zoom webinar on April 16th, 2021 at 10:00 am. Individuals can access this public hearing by going to <https://us02web.zoom.us/j/84229040927> and using webinar ID: 842 2904 0927. This meeting can also be accessed at One tap mobile: US: +14702509358,,84229040927# or +13126266799,,84229040927# or by telephone dial (for higher quality, dial a number based on your current location): US: +1 470 250 9358 or +1 312 626 6799 or +1 602 753 0140 or +1 720 928 9299 or +1 346 248 7799.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-396-6428.

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. 4501960528



Janet Mann, Director
Division of Medical Services

From: legalads@arkansasonline.com
To: [Lisa Teague](#)
Subject: Re: FULL RUN AD
Date: Tuesday, April 13, 2021 10:28:02 AM
Attachments: [image001.png](#)
[image002.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)

[EXTERNAL SENDER]

Will run as requested.

Thank you.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Lisa Teague" <Lisa.Teague@dhs.arkansas.gov>
To: legalads@arkansasonline.com
Cc: "Jack Tiner" <jack.tiner@dhs.arkansas.gov>, "Mac Golden" <Mac.E.Golden@dhs.arkansas.gov>, "Debbie Lee" <Debbie.Lee.DO@dhs.arkansas.gov>, "Chuck Hardin" <Chuck.Hardin@dhs.arkansas.gov>, "Stephen Giese" <Stephen.Giese@dhs.arkansas.gov>, "Elaine Stafford" <elaine.stafford@dhs.arkansas.gov>, "Patricia Gann" <Patricia.Gann@dhs.arkansas.gov>, "Elizabeth Pitman" <Elizabeth.Pitman@dhs.arkansas.gov>
Sent: Monday, April 12, 2021 10:31:41 AM
Subject: FULL RUN AD

Please run the attached Notice of Public Hearing in the *Arkansas Democrat-Gazette* on the following days:

- Wednesday, April 14th
- Thursday, April 15th
- Friday, April 16th

I am aware that the print version will only be provided to all counties on Sundays.

Invoice to: **AR Dept of Human Services**
P.O. Box 1437
Slot S535
Little Rock, AR 72203

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Service

PERSON COMPLETING THIS STATEMENT Jason Callan

TELEPHONE (501) 320-6540 **FAX** _____ **EMAIL:** Jason.Callan@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 Living Choices Assisted Living Facility HCBS Waiver; LCAL 2-20

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?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	<u>\$0</u>	General Revenue	<u>\$</u>
Federal Funds	<u>\$0</u>	Federal Funds	<u>\$0</u>
Cash Funds	<u>0</u>	Cash Funds	<u>0</u>
Special Revenue	<u>0</u>	Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>	Other (Identify)	<u>0</u>
Total	<u>\$0</u>	Total	<u>\$0</u>

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

Current Fiscal Year

General Revenue	\$0
Federal Funds	\$0
Cash Funds	0
Special Revenue	0
Other (Identify)	0
Total	\$ 0

Next Fiscal Year

General Revenue	\$0
Federal Funds	\$0
Cash Funds	0
Special Revenue	0
Other (Identify)	0
Total	\$ 0

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

\$ 0

Next Fiscal Year

\$ 0

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

- (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;
- (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
- (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.

Statement of Necessity and Rule Summary

Living Choices Waiver Renewal; LCAL 2-20

Statement of Necessity

CMS approves HCBS waivers for a period of 5 years. The Living Choices Assisted Living waiver expires 01/31/2021 and is currently operating under a temporary extension. This extension will allow DHS to align the waiver start date with the beginning of the state's fiscal year of 07/01/2021.

Rule Summary

With this renewal cycle, the roles and responsibilities of the operating agencies (DMS, DAABHS, DPSQA, & DCO) are clarified. In addition, the appeals process is changing to an automatic continuation of benefits during the appeal process unless the waiver beneficiary opts out. Rates for services are being updated for the next 5 years. And, the Provisional Service Plan option is being removed.
