

EXHIBIT G

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: INCHOICE 3-14

DESCRIPTION: This rule proposes to remove reference to the DAAS-IC-20 form in the IndependentChoices Provider Manual.

PUBLIC COMMENT: A public hearing was not held on this rule. The public comment period expired November 30, 2014. The Department received no public comments.

The effective date for the final rule was January 1, 2015.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Ark. Code Ann. § 20-76-201 authorizes the Department of Human Services to administer programs for the indigent and to "make rules and regulations" pertaining to the administration of those programs. Ark. Code Ann. § 20-77-107 specifically authorizes the Department to "establish and maintain an indigent medical care program."

Ark. Code Ann. § 25-10-129 directs the Department to promulgate rules to conform to federal law that affects "programs administered or funded by or through the department" as necessary to receive available federal funds.

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

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Dawn Stehle
CONTACT PERSON Angela Johnson
ADDRESS PO Box 1437, Slot S295, Little
Rock, AR 72203
PHONE NO. 320-6426 FAX NO. 501-404-4619 E-MAIL angela.c.johnson@
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NAME OF PRESENTER AT COMMITTEE MEETING Debby Ellis
PRESENTER E-MAIL debby.ellis@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:

**Donna K. Davis
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? INCHOICE-3-14

- 2. What is the subject of the proposed rule? Removal of IC 20 form references along with minor changes for clarification purposes only.

- 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 Statute 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary? Removal of the DAAS-IC-20 is to discontinue a practice that the Department of Labor could view the state as acting as a joint employer.

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://www.medicaid.state.ar.us/InternetSolution/general/comment/comment.aspx>

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.)

November 30, 2014

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

January 1, 2015

12. Do you expect this rule to be controversial? Yes No

If yes, please explain. _____

13. 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.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Medical Services
PERSON COMPLETING THIS STATEMENT Lynn Burton
TELEPHONE NO. 501-682-1857 **FAX NO.** 501-682-3889 **EMAIL:** Lynn.burton@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 INCHOICE 3-14

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

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

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 _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

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

\$ 0 _____

\$ 0 _____

This rule does not have a budget impact because this change is eliminating from the provider manual the use of Form DAAS-IC-20.

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.

SUMMARY FOR INDEPENDENT CHOICES 3-14

Effective January 1, 2015, the use of the DAAS-IC-20 form will be discontinued. Minor changes for clarification purposes are included but are not substantial policy changes.



Division of Medical Services
Program Development & Quality Assurance

P.O. Box 1437, Slot S295 · Little Rock, AR 72203-1437
501-320-6428 · Fax: 501-404-4619
TDD/TTY: 501-682-6789



TO: Arkansas Medicaid Health Care Providers – IndependentChoices
DATE: January 1, 2015
SUBJECT: Provider Manual Update Transmittal INCHOICE-3-14

REMOVE

Section	Date
202.300	1-1-13
202.400	4-1-08
202.800	1-1-13
202.900	11-1-09
220.200	1-1-13
260.100	11-1-09
260.200	4-1-08
260.430	1-1-13
260.440	4-1-08

INSERT

Section	Date
202.300	1-1-15
202.400	1-1-15
202.800	1-1-15
202.900	1-1-15
220.200	1-1-15
260.100	1-1-15
260.200	1-1-15
260.430	1-1-15
260.440	1-1-15

PROPOSED

Explanation of Updates

Section 202.300 is updated to clarify enrollment requirements for IndependentChoices.

Section 202.400 is updated to clarify policy for Medicaid clients not receiving Personal Care services.

Sections 202.800 and 220.200 are updated to remove the reference to the DAAS-IC-20 Work Agreement.

Section 202.900 is updated to clarify policy for back-up plans.

Section 260.100 is updated to clarify policy for fiscal support services.

Section 260.200 is updated to clarify the method of reimbursement.

Section 260.430 is updated to clarify requirements for counselors.

Section 260.440 is updated to clarify requirements for Financial Management Services.


The paper version of this update transmittal includes revised pages that may be filed in your provider manual. See Section I for instructions on updating the paper version of the manual. For electronic versions, these changes have already been incorporated.

If you have questions regarding this transmittal, please contact the HP Enterprise Services Provider Assistance Center at 1-800-457-4454 (Toll-Free) within Arkansas or locally and Out-of-State at (501) 376-2211.

If you need this material in an alternative format, such as large print, please contact the Program Development and Quality Assurance Unit at (501) 320-6429.

Arkansas Medicaid provider manuals (including update transmittals), official notices, notices of rule making and remittance advice (RA) messages are available for downloading from the Arkansas Medicaid website: www.medicaid.state.ar.us.

Thank you for your participation in the Arkansas Medicaid Program.



Dawn Stehle
Director

PROPOSED

TOC required

202.300

Enrollment

1-1-151-4-
43

The Division of Aging and Adult Services (DAAS) is the point of entry for all enrollment activity for IndependentChoices. The program is limited based on an approved number through the Medicaid State Plan.

The individual or their designee will first call the IndependentChoices toll-free number at 888-682-0044 or 866-710-0456 to speak with an IndependentChoices counselor. The counselor will provide information to the individual about the program is provided to the individual and verify verification made that the individual is currently enrolled in a Medicaid category that covers personal assistance services. If the individual is currently enrolled in an appropriate Medicaid category and has an assessed physical dependency need for "hands on" assistance with personal care needs, the counselor DAAS will enter the individual's participant's information into a DAAS database. Based on the individual's county of residence, the IndependentChoices counselor will either continue working with the individual through the enrollment process, or refer the individual to the contracted counseling agency for the individual's area of the state. If the individual is not currently enrolled in an appropriate Medicaid category, the counselor will refer the individual ~~to~~ will be referred to the DHS County Office for eligibility determination.

The IndependentChoices counselor, nurse and fiscal agent will then work with the individual to complete the enrollment forms either by mail and telephone contact or by a face-to-face meeting. The individual will be provided with the "My IndependentChoices Handbook," a program manual which explains the individual's responsibilities regarding enrollment and continuing participation. The individual must complete the forms in the Enrollment Packet, which consists of the Participant Responsibilities and Agreement, the Backup Personal Assistant and the Authorization to Disclose Health Information. The participant ~~individual~~ must also complete the forms in the Employer Packet, which includes the Limited Power of Attorney, IRS and direct deposit forms related to being a household employer. Each personal assistant must complete the forms in the Employee Packet which include the standard tax withholding forms normally completed by an employee, the Employment Eligibility Verification Form (I-9), a Participant/Personal Assistant Agreement, Employment Application and a Provider Agreement. ~~The Each~~ Each packets each includes step-by-step instructions on how to complete the above forms. IndependentChoices staff will be Assistance is available to the individual, Decision-Making Partner/Communications Manager and the personal assistant to help complete the forms and answer any questions.

As part of the enrollment process, the DAAS RN will complete an assessment using the Home and Community Based Services (HCBS) Level of Care Assessment Tool. ~~Through completing the assessment and using professional judgment, the DAAS RN will determine, through the completed assessment and professional judgment, the level of medical necessity. This determination creates the budget for self-directed services how many hours of personal assistance services are needed by the participant.~~ Eligibility for personal care services is based on the same criteria as state plan personal care services. **NOTE:** For ElderChoices beneficiaries, the DAAS RN will determine the number of need for personal care, Adult Companion Services and Homemaker hours needed. The ElderChoices plan of care will reflect that the beneficiary chooses IndependentChoices as the provider. DAAS-HCBS staff will obtain physician authorization for persons not receiving either ElderChoices or Alternatives for Adults with Physical Disabilities waiver services.

After the in-home assessment, the DAAS RN will complete the paperwork and coordinate with the IndependentChoices counselor. The counselor will process all of the completed enrollment forms. The HCBS Level of Care Assessment is Tool, which includes the cap triggers and the number of hours of services needed, will be sent to the participant's beneficiary's physician for authorization if the participant beneficiary is not authorized for services through a waiver plan of care for ElderChoices or Alternatives for Adults with Physical Disabilities. State and IRS tax forms will be retained by the fiscal agent. Disbursement of funds to a beneficiary participant or

202.400 Current Medicaid Clients Not Receiving Personal Care 1-1-154-1-08

Referrals will be accepted from advocacy organizations, provider agencies or other interested parties for clients who are receiving Medicaid and have a need for personal care, but have not accessed the traditional personal care system. ~~When All~~ referrals are received, the DAAS enrollment staff will complete follow the enrollment procedures as outlined in 202.300.

202.800 ~~Work Agreement and Participant/Personal Assistant Agreements~~ 1-1-154-1-43

The DAAS RN will assure that a written work agreement DAAS-IC-20 is executed between the participant or Decision Making Partner and the employee to clearly identify the tasks required on a daily basis to meet the participant's personal assistance needs. In addition to the Work Agreement, ~~t~~The fiscal agent is responsible for obtaining the Participant/Personal Assistant Agreement form DAAS-IC-17. The purpose of the DAAS-IC-17 is to state the agreements to which both the employer and the employee(s) are in agreement. The agreement is signed by both the participant/beneficiary or Decision-Making Partner and the employee.

202.900 Back-up Plans 1-1-154-1-09

~~Naming~~ Having a back-up worker is required for participation in IndependentChoices. The counselor will assist the Medicaid beneficiary as the employer participant or Decision-Making Partner in developing a back-up plan to outline how the beneficiary participant's needs will be met should the assistant be absent from the home for any reason. The back-up plan must identify caregivers, either formal or informal, who will provide back-up personal attendant services.

220.200 Personal Assistance Services 1-1-154-1-43

The primary use of the monthly allowance is to purchase personal assistance services to meet the participant's personal assistance needs. Assistants will be recruited, interviewed, hired and managed by the Medicaid beneficiary as the employer or a designated Decision-Making Partner. Family members, other than those with legal responsibility to the beneficiary participant may serve as personal assistants. A court appointed legal guardian, spouse, power of attorney or income payee may not serve as a Personal Assistant.

The beneficiary participant's personal assistant performs the services identified on the DAAS-IC-20 ~~Work Agreement~~ under the agreed upon terms of the DAAS-IC-17 IndependentChoices Participant/Personal Assistant Agreement.

260.100 Fiscal Support Services 1-1-154-1-09

Beneficiaries Participants in IndependentChoices will be offered an monthly allowance in lieu of traditional agency-provided personal assistance services. The intended use of the cash monthly allowance is to purchase Personal Assistance Care services, Homemaker or Companion services if applicable. Purchase of items or other medically necessary services related to personal assistance services, or any other medically related item or service will be that are allowed. All payments are by electronic funds transfer (EFT). Use of the cash monthly allowance is determined by the beneficiary/representative exercising budget authority will be outlined on the Cash Expenditure Plan. However, ten percent (10%) of the participant's cash allowance not to exceed \$75.00 will be considered discretionary funds. The discretionary expenditure is used to purchase personal hygiene items and does not require the participant to maintain receipts for the purchases. Requests to purchase nontraditional or unusual items over \$50.00 will require the approval of the Counselor and DAAS. The fiscal agent, or bookkeeper,

- C. Coordinate with Financial Management Services (FMS) provider and DMS
- D. Orientation to IndependentChoices and the concept of consumer direction
- E. Skills training on how to recruit, interview, hire, evaluate, manage or dismiss assistants
- F. Consumer-directed counseling support services
- G. Monitor IndependentChoices participants/Decision-Making Partners
- H. Monitor over and under expenditures of the Cash Expenditure Plan
- I. Provide ~~quarterly~~ monthly reports to DAAS
- J. Use RN's to assess functional need for personal care
- ~~K. Provide all State and Federal forms necessary for the enrolled participant to act as a "Household Employer" to the fiscal provider~~
- ~~LK. Inform DAAS of beneficiaries' participant's readiness to begin self-direction and begin and end dates when disenrollment occurs and results of RN's assessment~~

260.440 Financial Management Services (FMS)

1-1-154-1-
08

Financial management services (FMS) will be beneficiary participant directed and provided by the IndependentChoices fiscal agent. The FMS contractor must adhere to performance based contracting standards and the Scope of Service established by DMS in addition to State and Federal requirements. If FMS is provided by a Certified Public Accountant (CPA), the CPA must be licensed in the State of Arkansas. Subcontracts with FMS direct-service providers must be approved by DAAS. The entity providing the direct FMS service must have an IRS FEIN (Federal Employer Identification Number) dedicated to fiscal agency services. The entity providing this service must have at least 3 years experience providing fiscal employer agency work to individuals with physical disabilities in Arkansas.

The FMS will provide the following supports and services:

- A. Collect and process timesheets of support workers
- B. Process payroll, withholding, filing and payment of applicable federal, state and local employment-related taxes and insurance
- C. Prepare and disburse IRS Forms W-2 and W-3 annually
- D. Receive and disburse funds for payment of beneficiary participant-directed services under an agreement with Medicaid and the Medicaid fiscal intermediary
- E. Assure that all expenditures match the written budget
- F. The current contract with the FMS requires the following:
 1. Creation of systematic processes, internal controls, policies and procedures to comply with FMS requirements
 2. Receiving and reviewing all necessary Federal and State forms required for enrolling the participant to be a "Household Employer," as well as New Hire Packets from the enrolling beneficiary participant's employee
 3. Obtaining individual FEIN number enabling FMS provider to act as a Household Employer Agent
 4. Communicating and assisting consumers in the completion of these forms if needed

