

## MINUTES

**Senate Committee on Public Health, Welfare, and Labor**  
**Senate Committee on State Agencies and Governmental Affairs**  
**House Committee on Public Health, Welfare, and Labor**  
**House Committee on State Agencies and Governmental Affairs**

December 10, 2018  
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The House and Senate Interim Committees on Public Health, Welfare and Labor, along with the House and Senate Interim Committees on State Agencies and Governmental Affairs; met Monday, December 10, 2018, at 9:00 a.m. in Committee Room A, MAC Building, Little Rock, Arkansas.

**Public Health Senate Members Attending:** Senators Cecile Bledsoe, Chair; Eddie Cheatham, Vice Chair; John Cooper, Missy Irvin, and David Wallace.

**State Agencies Senate Members Attending:** Senators Gary Stubblefield, Vice Chair; Trent Garner, Ricky Hill, and Terry Rice.

**Public Health House Members Attending:** Representatives Deborah Ferguson, Vice Chair; Mary Bentley, Justin Boyd, Bruce Coleman, Justin Gonzales, Kim Hammer, Ken Henderson, Fredrick Love, Robin Lundstrum, Stephen Magie, Austin McCollum, David Meeks, John Payton, Aaron Pilkington, Donald Ragland, and Chris Richey.

**State Agencies House Members Attending:** Representatives Bob Ballinger, Chair; Jack Ladyman, Vice Chair; Jim Dotson, Trevor Drown, Jon Eubanks, Kenneth Ferguson, Michelle Gray, Kim Hendren, Douglas House, James Sturch, and Dwight Tosh.

**Other Legislators Attending:** Senators Ronald Caldwell, Alan Clark, Jonathan Dismang, and Jimmy Hickey, Jr. Representatives Fred Allen, Frances Cavanaugh, Dan Douglas, Steve Hollowell, John Maddox, and Danny Watson.

**Members-Elect Attending:** Senator-Elects, NONE. Representatives-Elect Stan Berry, Joe Allen Cloud, and Don Glover.

### **Comments by the Chairs**

Representative Deborah Ferguson called the meeting to order. Since this meeting will be lengthy, Representative Ferguson requested certain limitations and guidelines on members presenting questions and comments, and on the audience giving testimony. She also announced this is Senator Cecile Bledsoe's last time to chair the Senate and House Public Health, Welfare & Labor Committees.

Vice Chair Ferguson asked the committees, that if there is no objection, we will skip down to Item 'M' on the agenda.

**The Following Interim Study Proposals (ISPs) Need to be Adopted for Study by the Committee. This will Allow These Scope of Practice Studies to be Initiated at Least 30 Days Before the Convening of the Next Legislative Session. It is Anticipated that this Action Will Meet the House Rule 72(A) Regarding this Type of Legislation.**

1. **ISP2017-146** – “An Act to Amend the Rabies Control Act Regarding Vaccinations Against Rabies for Animals; and for Other Purposes.” (EXHIBIT M-1)
  - a. Senator John Cooper, Sponsor
2. **ISP2017-148** – “An Act to Authorize a Podiatrist to Have a Collaborative Practice Agreement with an Advanced Practice Registered Nurse; and for Other Purposes.” (EXHIBIT M-2)
  - a. Representative Justin Boyd, Sponsor
3. **ISP2017-149** – “An Act to Authorize Full Independent Practice Authority to Advance Practice Registered Nurses Who Meet Certain Requirements; to Require the Arkansas State Medical Board to Certify Advanced Practice Registered Nurses with Full Independent Practice Authority; and for Other Purposes.” (EXHIBIT M-3)
  - a. Representatives Stephen Magie and Michelle Gray, Sponsors
4. **ISP2017-150** – “Requesting the House Committee on Public Health, Welfare, and Labor Study the Transfer of Regulatory Oversight of Optometrists to the Arkansas State Medical Board.” (EXHIBIT M-4)
  - a. Representative Stephen Magie, Sponsor
5. **ISP2017-151** – “An Act to Amend the Prescriptive Authority of an Advanced Practice Registered Nurse; and for Other Purposes.” (EXHIBIT M-5)
  - a. Representative Mary Bentley, Sponsor

Vice Chair Representative Ferguson stated that, without objection, Public Health committee members will adopt the five (5) Interim Study Proposals (ISP) first (Item ‘M’). The motion was made to adopt all five ISPs, seconded, and the motion carried.

**Consideration to Adopt November 19, 2018, Meeting Minutes (EXHIBIT C)**

Representative Ferguson stated without objection, the November 19, 2018, meeting minutes are adopted.

**Annual Status Report for Sexual Assault Prevention on Campus (Act 563 of 2017) AND Unplanned Pregnancy Prevention, Annual Report as Required by Act 943 of 2015. (EXHIBITS D-1, D-2)**

Ann Clemmer, Senior Associate Director, Arkansas Department of Higher Education, presented these two (2) annual status reports.

Ms. Clemmer stated that Arkansas colleges are actively implementing Sexual Assault Prevention Plans and hosting activities to help prevent sexual assault on all campuses. Listed below are a few of the current prevention plans:

- ❖ Several campuses are utilizing the “Clothesline Project”.
- ❖ SAU Tech (Southern Arkansas University) is part of a regional community partnership that has received a planning grant to work with the U.S. Department of Justice. Their team includes the Camden Police Department and the Women’s Crisis Center.
- ❖ Ozarka College has included sexual assault and pregnancy prevention into their college ‘Spring Fling’ activities.
- ❖ UA Fort Smith now schedules ‘in-person sexual assault presentations’ into their ‘new student orientation’ program.
- ❖ Each March at UA Cossatot, the center for student success hosts the week-long ‘No More’ campaign for prevention and awareness.
- ❖ Northwest Community College hosts a community art display during sexual assault month, called “what were you wearing?” This is to emphasize that sexual assault has never been about what you wear.

The Higher Education Department will be displaying these programs on-line, to share these and other prevention ideas on sexual assault and unplanned pregnancy with all college campuses. Representative John Payton suggested better/more lighting in college parking lots, curfews, and reducing the number of co-ed dorms. Ms. Clemmer said she would present these suggestions to the college campuses. Representative Ferguson thanked Ms. Clemmer for the report.

**Arkansas Tobacco Settlement Commission (ATSC), Quarterly Report for January - March, 2018 (EXHIBIT E)**

Matt Gilmore, Executive Director, ATSC, briefly presented the quarterly report, updating and highlighting the advancements of each ATSC funded program. In each section Mr. Gilmore included personal testimonies from individuals who receive benefits from each program; and the comments of the ATSC evaluator on each program. Representative Ferguson thanked Mr. Gilmore for the report.

**Department of Human Services (DHS), Division of Medical Services (DMS), Review of Rule which Changes Incentive Payments for Arkansas Patient-Centered Medical Homes (PCMH) from Shared Savings Incentive Payments to Performance-Based Incentive Payments, Effective January 1, 2019, PCMH 1-18, SPA 2018-013 (EXHIBIT F)**

Tami Harlan, Director, Division of Medical Services, DHS, presented the proposed rule changes. Effective January 1, 2019, Arkansas Patient-Centered Medical Homes (PCMH) will use performance-based incentive payments instead of shared savings incentive payments. The Division of Medical Services (DMS) listed 14 proposed changes to the 2019 PCMH Program Manual (See Exhibit F) that will effectively implement this change.

This will change the way providers are paid, and will improve incentives for providers to continue to provide quality care at an affordable rate for the patient.

After much discussion and many questions/concerns from the members, Representative Ferguson stated that without objection this rule will stand as reviewed.

**Department of Human Services, Division of Medical Services, Review of Rule which Requires Home Health Providers to Comply with Criminal Background Checks, Effective January 1, 2019, Home Health 1-18 (EXHIBIT G)**

Mark White, Deputy Director, Division of Aging, Adults, & Behavioral Health Services, DHS, presented this proposed rule change.

Effective January 1, 2019, the Home Health provider manual will be updated to require all owners, principals, operators, employees, and applicants for home health providers to comply with criminal background checks, as required by Ark. Code Ann. §§ 20-33-213 and 20-38-191 et seq.

Also, an old reference to Elder Choices and Alternative for Adults with Physical Disabilities is being moved to ARChoices in Homecare.

Representative Ferguson stated that without objection this rule will stand as reviewed.

**Department of Human Services, Division of Medical Services, Review of Rule which Requires Hospice Providers to Comply with Criminal Background Checks, Effective January 1, 2019; and Correct Name Change, Hospice 2-18 (EXHIBIT H)**

Tami Harlan, Director, Division of Medical Services, DHS; presented this proposed rule change.

Effective January 1, 2019, the Hospice provider manual has been updated to require all owners, principals, operators, employees, and applicants for hospice providers to comply with criminal background checks as required by Ark. Code Ann. §§ 20-33-213 and 20-38-101 et seq.

Representative Ferguson stated that without objection this rule will stand as reviewed.

**Department of Human Services, Division of County Operations, Review of Rule which Revises the Medical Services Policy to Incorporate the Center for Medicaid and Medicare Services' (CMS) New Interpretation of the Law that the Penalty Period Start Date for a Home and Community-Based Waiver Services (HCBS) Applicant Will be no Later than the Point at which the Applicant Would Otherwise be Receiving HCBS Waiver Coverage Except for the Penalty. It Also Revises Policy to Allow that an Individual May Establish their Own Special Needs Trust—Medical Services Policy Manual, Sections H-300 through H-325 (EXHIBIT I)**

Mary Franklin, Director, Division of County Operations, DHS, presented this proposed rule change.

Various sections under MS H-300 are being amended to revise the process of determining a start date of an asset transfer penalty period for Home and Community-Based Services (HCBS) Waivers. This will incorporate a new interpretation of the law by CMS; and will revise that an individual may establish their own special needs trust, complying with 5007 of the Cures Act (42 U.S.C. § 1396p (d) (4) (A)).

Representative Ferguson stated that without objection this rule will stand as reviewed.

**Department of Human Services, Division of Medical Services, Review of Rule which Primary Purpose is to Create a More Person-Centered Approach to Long-Term Services and Supports (LTSS) for Medicaid Beneficiaries Who Are Elderly or Are Adults with Physical Disabilities or Impairments. This Will Allow Greater Flexibility and Discretion for Nurses to Create Service Plans that Are Targeted to Each Person's Individual Needs: (EXHIBIT J, Handout)**

- ❖ **Arkansas Medicaid Task and Hour Standards;**
- ❖ **AR Choices in Homecare Home and Community-Based Services Waiver;**
- ❖ **AR Choices in Homecare Home and Community-Based Services Waiver Manual 2-18;**
  - This proposed change will eliminate the RUGS (*Resource Utilization Groups*) algorithm, and replace it with the Arkansas Medicaid Task and Hour Standards. This system focuses on each beneficiary and their needs. Texas uses this method and it is working well.
  - Eligibility criteria for AR Choices will stay the same—no change
  - Reinstates rule to allow family members to provide this type of care
- ❖ **Living Choices Assisted Living Home and Community-Based Services Waiver;**
- ❖ **Living Choices Assisted Living Manual 1-18;**
  - Assisted living providers are currently paid on 4 tier levels
  - Providers receive 2 funding streams:
    - A daily rate from Medicaid – pays for the patient's daily care
      - Actuary stated the daily rate should be \$62.89
    - A specified amount from the beneficiary (\$681 per month) – pays for their room/board
- ❖ **Independent Choices State Plan Amendment;**
- ❖ **Independent Choices Manual 1-18;**
  - Will change the rule to set a cap of 64 hours of care for Independent Choices
- ❖ **Personal Care Manual 1-18;**
- ❖ **Personal Care State Plan Amendment and Program for All-Inclusive Care for the Elderly (PACE) Manual 1-18**
  - Will change the assessment tool to be the same as for the other programs

Mark White, Deputy Director, Division of Aging, Adults, & Behavioral Health Services, and Craig Cloud, Director, Provider Services, Quality Assurance, both with DHS; presented these rule changes. Kelley Linck, Chief Governmental Liaison of Legislative Affairs, DHS, noted these proposed rule changes are divided into sections, but DHS is presenting it as one package.

#### ASSISTED LIVING FACILITIES

Mr. Linck explained these changes are the result of CMS requesting DHS to explain why Arkansas is paying the rates that they are paying. DHS then asked several facilities to let Milliman Group, Inc., the consultant/actuary for DHS, look at their financials for the past few years, so that DHS can submit these rates to CMS, along with the justification for them. The Milliman report was based on three (3) facilities who submitted their records for the actuarial review, and the report recommended that Arkansas reduce the currently paid rates by 21.7% (Arkansas rates are significantly higher than surrounding states).

Mr. White explained the actual rates as they are now, and how these rates will change with the new payment system. If this proposed change is approved, providers will go from a 4-tier payment plan to a single payment plan. After approval, DHS plans to phase in the new payment rates, as listed below, within one year for the single payment plan (Representative Bob Ballinger suggested a two-year phase-in period):

- ❖ January 1, 2019, \$80.33
- ❖ July 1, 2019, \$71.61
- ❖ January 1, 2020, \$62.89 (the full rate recommended by Milliman)

Mr. White stated that the balance remaining at Arkansas Department of Veterans Affairs (ADVA) is approximately \$3 million, and has been since 2002. Mr. Cloud stated that ADVA advanced loans to struggling facilities throughout Arkansas, and some of these loans are still outstanding.

Senator Caldwell noted that the Memorandum of Understanding (MOU) between DHS and ADVA expired over one year ago; and was not disclosed. Mr. White stated that because of the expiration of the MOU, no new facilities may be built with ADVA money. The intended use of this \$3 million is to leave this with ADVA because of outstanding loans that ADVA made to facilities who were struggling.

Discussion between legislators, Mr. White, and Mr. Linck revealed that if these changes were not approved by January 1, 2019, some assisted living centers would have to close because waiver funding would cease and Arkansas would not be able to perform assessments on beneficiaries. This would also cause some beneficiaries to have to find other accommodations such as nursing homes, living with a relative, or in another assisted living facility, etc. Mr. White stated that it is possible, with additional data, to take a second look at this situation, and at the Milliman Report.

#### Information requests from legislators. DHS agreed to furnish this information to the committee:

- ❖ **Representative Hammer** asked Mr. Linck for a full cost comparison of a beneficiary living in a nursing home versus living in an assisted living facility. Mr. Linck said he would provide this information.
- ❖ **Representative Robin Lundstrum** asked for a list of:
  - facilities who borrowed money from ADVA
  - facilities who have paid their loans in full
  - facilities who still owe ADVA
    - how long have they been outstanding
- ❖ **Senator David Wallace** asked for a list of assisted living facilities, by county, and the number of beds, occupied/unoccupied, in each facility in Arkansas.

PUBLIC TESTIMONIES

<u>Name</u>	<u>Representing</u>	<u>Position</u>
Ed Holman	AR Residential Assisted Living Association (ARALA)	Against
Carey Lingenfelter	Home Instead (Northwest Arkansas)	Against
<b>Representative Hammer</b> wants to see the notifications sent to assisted living providers regarding the above-listed changes. Mr. Cloud stated that he has this information and will furnish it to the committee members.		
Kay Gilbrech	Full-time caregiver in the home health program	Against
Bradley Ledgerwood	Beneficiary <i>(His mother, Ann Ledgerwood, read his statement as he is not able to read it)</i>	Against
Kevin Hoover	Beneficiary	Against
Kevin DeLiban	Legal Aid of Arkansas	Against
<b>Mr. DeLiban</b> stated that most states appropriate more money for home and community-based care, so more people will not have to go to nursing homes.		

Mr. White responded to the concerns of the testifiers and summarized the discussion.

Representation Ferguson stated that without objection this rule will stand as reviewed.

**Department of Human Services, Division of Medical Services, Review of Rule that Allows Beneficiaries Who Are Eligible for Arkansas Medicaid Healthcare Benefits on a Medical Spend-Down Basis and Who Are Medically Frail, to Have Access to Tier 2 and Tier 3 Behavioral Health Services, State Plan Amendment (SPA) 2018-16 (EXHIBIT K)**

Paula Stone, Deputy Director, Division of Medical Services, and Kelly Linck, Chief Governmental Liaison of Legislative Affairs, both with DHS, presented this proposed rule change.

This manual and State Plan Amendment creates the Adult Behavioral Health Services for the Community Independence program, which are Tiers II and III home and community-based treatments, with services provided by a Certified Behavioral Health Agency to individuals eligible for Medicaid, based upon the following criteria:

- ❖ Beneficiaries receiving Arkansas Medicaid healthcare benefits on a medical spend down basis; and
- ❖ Beneficiaries who are eligible for Arkansas Medicaid healthcare benefits under the 06, Medically Frail Aid Category.

If an individual falls into one of the above two categories, that individual will not be enrolled into a Provider-Led Arkansas Shared Savings Entity (PASSE) and, if determined by the Independent Assessment to be eligible for Tier II or Tier III services, they will be provided access to those services through traditional Fee-for-Service Medicaid.

Representation Ferguson stated that without objection this rule will stand as reviewed.

**Department of Human Services, Division of Medical Services, Review of Rule which Moves the PASSE (Provider-Led Arkansas Shared Savings Entity) Program into Phase II which Makes the PASSE Responsible for Providing All CES (Children's Extensive Support) Waiver Services & State Plan Services, Including The Home & Community-Based Supportive Services Contained in 1915(i) State plan Amendment for Supportive Services for PASSE Clients, SPA 2018-17 (EXHIBIT L)**

Melissa Stone, Director, and Elizabeth Pittman, Assistant Director, both with the Division of Developmental Disabilities Services (DDDS), DHS, and Paula Stone, Deputy Director, Division of Medical Services, DHS; presented this proposed rule change.

Ms. Melissa Stone addressed Representative Justin Boyd's concern of how to ensure that the system training roll-out is set up in the right time frame; and how are DDDS providers going to be paid. Ms. Melissa Stone said that DDDS met with five DDDS providers and the past four CEOs on this exact concern. Ms. Melissa Stone said they will have a resolution to this concern by March 2019.

The 1915(b) and (c) waivers and 1915(i) State Plan Amendment are being sought pursuant to Arkansas Code § 20-77-2708, derived from Act 775 of 2017. These waivers will provide authorization from CMS for DHS to implement the PASSE Program, required by Acts 775 of 2017. These waivers and the State Plan Amendment authorize the following:

- ❖ PASSE entities continue to provide care coordination as that is defined by Act 775 of 2017. The four essential "case management" functions (independent assessment, plan development, referral for services, and service monitoring) must be performed in compliance with the CMS conflict-free case management rules.
- ❖ PASSE entities become responsible for the provision of all services under Phase II, including all CES Waiver services and Medicaid State Plan services, including all home and community based services (HCBS) provided through the 1915(i) state plan amendment. The only services excluded from payment by the PASSE are:
  - Nonemergency medical transportation in a capitated program;
  - Dental benefits in a capitated program;
  - School-based services provided by school-employees;
  - Skilled nursing facility services;
  - Assisted living facility services;
  - Human development center (HDC) services provided to clients fully admitted to an HDC; or
  - Waiver services provided to adults with physical disabilities through the ARChoices in Homecare program or the Arkansas Independent Choices program, or any successor waiver for the frail, elderly, or physically disabled.
- ❖ Individuals will no longer be "attributed" to a PASSE based on their claims history and/or provider relationships.
- ❖ The PASSE entity will receive a Per Member/Per Month (PMPM) global payment to cover all needed services for each assigned member.
- ❖ The Network requirements were enhanced to reflect that PASSEs are now responsible for providing all services.
- ❖ Each PASSE is now required to develop an internal appeal process, in addition to the grievance process, and the beneficiary must exhaust that appeal process before appealing to the state Medicaid agency.
- ❖ The PASSE entities will now be required to submit monthly encounter data so that service utilization may be tracked. This will be in addition to the quarterly reports that were submitted in Phase I, which will continue in Phase II.
- ❖ The PASSE will now be responsible for credentialing all network providers, including Home and Community-Based Services Providers that provide services to their enrolled members.
- ❖ The 1915(i) State Plan Amendment details the home and community-based-like services that the PASSE will be required to provide to eligible beneficiaries.

Representation Ferguson stated that without objection this rule will stand as reviewed.

The meeting adjourned at 12:20 p.m.