**EMERGENCY REGULATIONS**

**DEPARTMENT OF HUMAN SERVICES**
**DIVISION OF MEDICAL SERVICES**
**AMENDING ADMINISTRATIVE REGULATIONS**

**NUMBER AND TITLE:** ARChoices 1-18 – Resource Utilization Groups (RUGS) Overview

**PROPOSED EFFECTIVE DATE:** **May 16, 2018**

**STATUTORY AUTHORITY:** ACA 25-15-204

**NECESSITY AND FUNCTION:** Based on a recent decision by an Arkansas Circuit Court, to provide a more thorough overview of the Resource Utilization Group (RUG) system that determines the number of Attendant Care hours for an ARChoices in Homecare recipient.

**PAGES FILED:** 21

Rose M. Naff, Director
Division of Medical Services

**Promulgation date:** May 16, 2018

**Contact Person:**

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Little Rock, AR 72203-1437
(501)

# 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** Rose M. Naff

**CONTACT PERSON** Dave Mills

**ADDRESS** PO Box 1437, Slot S295, Little Rock, AR 72203-1437

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**NAME OF PRESENTER AT COMMITTEE MEETING** Tami Harlan

**PRESENTER E-MAIL** Tami.harlan@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? ARChoices 1-18 – Resource Utilization Groups (RUGS) Overview

2. What is the subject of the proposed rule? Adding RUG Overview to the ARChoices Provider Manual at 212.100

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? 5/16/2018

When does the emergency rule expire? 9/13/18

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?

Based on a recent decision by an Arkansas Circuit Court, to provide a more thorough overview of the Resource Utilization Group (RUG) system that determines the number of Attendant Care hours for an ARChoices in Homecare recipient.

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: June 27, 2018
Time: 5:00 p.m.
Place: Central Library, Darragh Auditorium, 100 Rock St., Little Rock

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.)
Effective date for emergency rule is 5/16/2018. Proposed effective date for permanent rule is 9/1/18.

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 and the Arkansas State Library 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** David McMahon

**TELEPHONE** 501-396-6421 **FAX** 501-404-4619 **EMAIL:** David.McMahon@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** ARChoices 1-18 – Resource Utilization Groups (RUGS) Overview

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

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

| Current Fiscal Year | | Next Fiscal Year | |
|---|---|---|---|
| General Revenue | | General Revenue | |
| Federal Funds | | Federal Funds | |
| Cash Funds | | Cash Funds | |
| Special Revenue | | Special Revenue | |
| Other (Identify) | | Other (Identify) | |
| Total | 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 | Next Fiscal Year |
|---|---|
| $ 0 | $ 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 | Next Fiscal Year |
|---|---|
| $ 0 | $ 0 |

The expenditures currently being incurred by DHS related to the use of the tool under question in the order. The emergency promulgation seeks to properly place the tool in the rules thus maintaining the current programs. As such there would be no fiscal impact in implementing the emergency promulgation.

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.

The ARChoices Waiver provides beneficiaries with a monthly allocation of attendant care hours to be used at the beneficiary's discretion throughout the month. The number of attendant care hours approved for each beneficiary is based on the results of that beneficiary's most recent assessment using the ArPath Assessment Tool.

The ArPath Assessment Tool uses a software program that includes an algorithm to evaluate certain responses within an extensive questionnaire to determine whether the beneficiary meets the functional eligibility criteria to participate in the waiver program. The ArPath Assessment Tool then uses another algorithm to evaluate other responses to determine which Resource Utilization Group (RUG) reflects the beneficiary's functional abilities. A RUG is a tier group consisting of individuals with similar functional abilities.

In 2013, attendant care services were determined based on an RN's discretionary interpretation of a beneficiary's responses to the ArPath Assessment Tool's questionnaire. Between 2013 and January 1, 2016, when the ARChoices program was implemented, DAAS recorded beneficiary RUG placement and the number of paid attendant care hours utilized by beneficiaries each month in order to determine the type and amount of resources that beneficiaries with similar functional abilities were used in a given month.

While the reality of living with a disease or condition can vary greatly even among individuals with the same diagnosis, a RUG placement allows DAABHS to better predict the type and extent of care that an individual needs. The purpose of transitioning to a RUG-based care allocation system is to provide more predictable and objective outcomes that better reflect the reality of a beneficiary's needs by organizing the allocation around functional ability.

As of January 1, 2016, the allocation of attendant care hours became based on which RUG the beneficiary is placed in by the ArPath Assessment Tool. The specific number of attendant care hours assigned to a particular RUG was determined by considering an average of the number of hours used by beneficiaries placed in that RUG prior to the implementation of the ARChoices program. The following chart shows the number of hours assigned to each RUG.

| RUG Category | RUG | Monthly Hours |
|---|---|---|
| Special Rehab | RB0 | 157 |
| | RA2 | 97 |
| | RA1 | 55 |
| Extensive Care | SE3 | 352 |
| | SE2 | 201 |
| | SE1 | 153 |
| Special Care | SSB | 161 |
| | SSA | 112 |
| Clinically Complex | CC0 | 143 |
| | CB0 | 94 |
| | CA2 | 69 |
| | CA1 | 36 |

| | | |
|---|---|---|
| Impaired Cognition | IB0 | 116 |
| | IA2 | 81 |
| | IA1 | 38 |
| Behavioral Problems | BB0 | 118 |
| | BA2 | 62 |
| | BA1 | 30 |
| Reduced Physical Function | PD0 | 137 |
| | PC0 | 99 |
| | PB0 | 81 |
| | PA2 | 53 |
| | PA1 | 28 |

**RUG Requirements**

The ArPath Assessment Tool evaluates the assessment responses using an algorithm, which is basically a "rule book" for the software. This particular rulebook is divided into chapters, known as screeners, and each screener is responsible for evaluating a small portion of the assessment responses in order to produce a numerical score. Below is a list of the screeners and the possible scores:

| Screener | Possible Scores |
|---|---|
| Activities of Daily Living (ADL) | 4-18 |
| Instrumental Activities of Daily Living (IADL) | 0-3 |
| Rehab | 0-1 |
| Behavior Problems | 0-1 |
| Extensive Care | 0-1 |
| Special Care | 0-1 |
| Clinically Complex | 0-1 |
| Cognitive Impairment | 0-1 |
| Cumulative | 0-5 |

Each RUG requires a different combination of screener scores in order for a beneficiary to be placed in that RUG. The ArPath Assessment Tool utilizes the criteria for each RUG in the exact order that they are listed in the above chart and it places the beneficiary in the first RUG on the list whose criteria are satisfied by the assessment responses.

The following is a description of the screener scores required for each Special Rehab RUG.

1. **RB0 requires a Rehab screener score of 1 and an ADL score of at least 11.**
2. **RA2 requires a Rehab screener score of 1, an IADL score of at least 2, and an ADL score of no more than 10.**
3. **RA1 requires a Rehab screener score of 1, an IADL score of 1 or 0, and an ADL score of no more than 10.**

The following is a description of the screener scores required for each Extensive Care RUG.

1. **SE3 requires a Cumulative screener score of at least 4, an Extensive Care screener score of 1, and an ADL score of at least 7.**
2. **SE2 requires a Cumulative screener score of either 2 or 3, an Extensive Care screener score of 1, and an ADL score of at least 7.**
3. **SE1 requires a Cumulative screener score of no more than 1, an Extensive Care screener score of 1, and an ADL score of at least 7.**

The following is a description of the screener scores required for each Special Care RUG.

1. **SSB requires an ADL score of at least 14 and a score of 1 for either the Extensive Care screener or the Special Care screener.**
2. **SSA has two possible combinations:**
   a. **An Extensive Care screener score of 1 with and ADL score of no more than 6, or**
   b. **An ADL score within the range of 7-13 and a score of 1 for either the Extensive Care screener or the Special Care screener.**

The following is a description of the screener scores required for each Clinically Complex RUG.

1. **CC0 requires an ADL score of at least 11 and a score of 1 for either the Clinically Complex screener or the Special Care screener.**
2. **CB0 requires an ADL score within the range of 6-10 and a score of 1 for either the Clinically Complex screener or the Special Care screener.**
3. **CA2 requires and ADL score no higher than 5, an IADL score of at least 1, and a score of 1 for either the Clinically Complex screener or the Special Care screener.**
4. **CA1 requires and ADL score no higher than 5, an IADL score of 0, and a score of 1 for either the Clinically Complex screener or the Special Care screener.**

The following is a description of the screener scores required for each Impaired Cognition RUG.

1. **IB0 requires a Cognitive Impairment screener score of 1 and an ADL score within the range of 6-10.**
2. **IA2 requires a Cognitive Impairment screener score of 1, an IADL score of at least 1, and an ADL score of no more than 5.**
3. **IA1 requires a Cognitive Impairment screener score of 1, an IADL score of 0, and an ADL score of no more than 5.**

The following is a description of the screener scores required for each Behavioral Problems RUG.

1. **BB0 requires a Behavior Problems screener score of 1 and an ADL score within the range of 6-10.**
2. **BA2 requires a Behavior Problems screener score of 1, an IADL score of at least 1, and an ADL score of no more than 5.**
3. **BA1 requires a Behavior Problems screener score of 1, an IADL score of 0, and an ADL score of no more than 5.**

The following is a description of the screener scores required for each Reduced Physical Function RUG.

1. **PD0 requires a Rehab screener score of 0 and an ADL score of at least 11.**
2. **PC0 requires a Rehab screener score of 0 and an ADL score of 9 or 10.**
3. **PB0 requires a Rehab screener score of 0 and an ADL score of 6, 7, or 8.**
4. **PA2 requires a Rehab screener score of 0, an IADL score of at least 1, and an ADL score of no more than 5.**
5. **PA1 requires a Rehab screener score of 0, an IADL score of 0, and an ADL score of no more than 5.**

**Screener Requirements**

Activities of Daily Living (ADL)

A beneficiary's ADL score ranges from 4 to 18. It is based on the collective score among responses to the 5 items in the assessment that are listed below. Only 4 of the 5 responses will add to the overall ADL score because the response to Mode of nutritional intake may override the response to Eating.

1. **Bed mobility**
2. **Transfer toilet**
3. **Toilet use**
4. **Eating**
5. **Mode of nutritional intake**

Bed mobility, Transfer toilet, and Toilet use are all scored in the following way:

1. **Independent gets 1 point,**
2. **Independent, set up help only gets 1 point,**
3. **Supervision gets 1 point,**
4. **Limited assistance gets 3 points,**
5. **Extensive assistance gets 4 points,**
6. **Maximal assistance gets 5 points,**
7. **Total dependence gets 5 points, and**
8. **Activity did not occur gets 5 points**

Eating is scored in the following way:

1. **Independent gets 1 point,**
2. **Independent, set up help only gets 1 point,**
3. **Supervision gets 1 point,**
4. **Limited assistance gets 2 points,**
5. **Extensive assistance gets 3 points,**
6. **Maximal assistance gets 3 points,**
7. **Total dependence gets 3 points, and**
8. **Activity did not occur gets 3 points.**

However, 3 points will be added to the ADL score, and the Eating score will be overridden if the response to Mode of nutritional intake is any of the following:

1. **Combined oral and parenteral or tube feeding,**
2. **Nasogastric tube feeding only,**
3. **Abdominal feeding tube, or**
4. **Parenteral feeding tube only**

Instrumental Activities of Daily Living (IADL)

A beneficiary's IADL score ranges from 0 to 3. It is based on the collective score among the responses to the following items in the assessment:

1. **Meal preparation-performance,**
2. **Managing medication-performance, or**
3. **Phone use-performance.**

The responses to each item are scored in the following way.

1. **Independent gets 0 points.**
2. **Independent, set up help only gets 0 points.**
3. **Supervision gets 0 points.**
4. **Limited assistance gets 0 points.**
5. **Extensive assistance gets 0 points.**
6. **Maximal assistance gets 1 point.**
7. **Total dependence gets 1 point.**
8. **Activity did not occur gets 1 point.**

Rehab

A beneficiary's Rehab screener score is 0 by default, but it equals 1 if during the week prior to the assessment the beneficiary spends a total of at least 120 minutes in any combination of the following types of therapy:

1. **Speech-language pathology,**
2. **Occupational therapy, or**
3. **Physical therapy.**

Behavior Problems

A beneficiary's Behavior Problems score is 0 by default, but it equals 1 if the beneficiary has exhibited any of the following at any time within 3 days of the assessment:

1. **Wandering,**
2. **Verbal abuse,**
3. **Physical abuse,**
4. **Socially inappropriate or disruptive behavior,**
5. **Resists care,**
6. **Delusions, or**
7. **Hallucinations.**

Extensive Care

A beneficiary's Extensive Care screener score is 0 by default, but it equals 1 if the response to Mode of nutritional intake is either Abdominal feeding tube or Parenteral feeding tube only. It will also equal 1 if the assessment records that any of the following treatments have been utilized within 3 days of the assessment:

1. **IV medication,**
2. **Suctioning,**
3. **Tracheostomy care, or**
4. **Ventilator or respirator.**

Special Care

A beneficiary's Special Care screener score is 0 by default, but it equals 1 if the assessment records that Radiation therapy has been utilized within 3 days of the assessment or any of the following combinations of responses are logged in the assessment:

1. **A turning/repositioning program has been utilized within 3 days of the assessment and the response to Most severe pressure ulcer is either:**
   a. **Deep craters in the skin or**
   b. **Breaks in the skin exposing muscle or bone;**
2. **Aphasia has been exhibited within 3 days of the assessment and the Mode of nutritional intake is either:**
   a. **Nasogastric tube feeding or**
   b. **Combined oral and parenteral or tube feeding;**
3. **Wound care has been performed within 3 days of the assessment and the response to either of the following items is yes:**
   a. **Major skin problems or**
   b. **Skin tears or cuts;**
4. **Fever and Vomiting are exhibited within 3 days of the assessment;**
5. **Fever is exhibited within 3 days of the assessment and the response to Weight loss of 5% is yes;**
6. **Fever is exhibited within 3 days of the assessment and the response to Mode of nutritional intake is either:**
   a. **Nasogastric tube feeding or**
   b. **Combined oral and parenteral or tube feeding;**
7. **Fever is exhibited within 3 days of the assessment and the response to Pneumonia is any of the following:**
   a. **Primary diagnosis for current stay;**
   b. **Diagnosis present, receiving active treatment; or**
   c. **Diagnosis present, monitored but no active treatment;**
8. **Fever is exhibited within 3 days of the assessment and the response to Dehydration is yes; or**
9. **A beneficiary's ADL score is at least 10 and the response to either Multiple sclerosis or Quadriplegia is any of the following:**
   a. **Primary diagnosis for current stay;**
   b. **Diagnosis present, receiving active treatment; or**
   c. **Diagnosis present, monitored but no active treatment.**

<u>Clinically Complex</u>

A beneficiary's Clinically Complex screener score is 0 by default, but it equals 1 if any of the following is recorded during the assessment:

1. **Mode of nutritional intake is either Nasogastric tube feeding or Combined oral and parenteral or tube feeding;**
2. **The response to Cognitive skills for daily decision making is No discernable consciousness, coma and the response to any of the following is either Total dependence or Activity did not occur:**
   a. **Bed mobility,**
   b. **Transfer toilet,**
   c. **Toilet use, or**
   d. **Eating;**
3. **Any form of Sepsis is recorded in the Other Diseases section of the assessment;**
4. **The response to Dehydration is yes;**
5. **The beneficiary's ADL score is at least 10 and the response to Hemiplegia is any of the following:**
   a. **Primary diagnosis for current stay;**
   b. **Diagnosis present, receiving active treatment; or**

   c. **Diagnosis present, monitored but no active treatment;**
6. **GI or GU bleeding has been exhibited in the 3 days prior to the assessment;**
7. **The response to Pneumonia is any of the following:**
   a. **Primary diagnosis for current stay;**
   b. **Diagnosis present, receiving active treatment; or**
   c. **Diagnosis present, monitored but no active treatment;**
8. **The response to End stage disease, 6 or fewer months to live is yes;**
9. **Chemotherapy was utilized within 3 days of the assessment;**
10. **Dialysis was utilized within 3 days of the assessment;**
11. **A transfusion occurred within 3 days of the assessment;**
12. **Oxygen therapy was utilized within 3 days of the assessment; or**
13. **The response to Foot problems is either Foot problems limit walking or Foot problems prevent walking.**

Impaired Cognition

A beneficiary's Impaired Cognition screener score is 0 by default, but it equals 1 if the score recorded on the Cognitive Performance Scale (CPS) is at least a 3.

Cumulative

A beneficiary's Cumulative screener score can range from 0 to 5. It is based on the collective score after adding the scores from the Special Care, Clinically Complex, and Impaired Cognition screeners. An additional point may be added if either of the following occurs:

1. **The response to Mode of nutritional intake is Parenteral feeding only or**
2. **IV medication is utilized within 3 days of the assessment.**

## 212.100 An Overview of Resource Utilization Groups (RUGs) Reserved ~~1-1-165-16-18~~

The ARChoices Waiver provides beneficiaries with a monthly allocation of attendant care hours to be used at the beneficiary's discretion throughout the month. The number of attendant care hours approved for each beneficiary is based on the results of that beneficiary's most recent assessment using the ArPath Assessment Tool.

The ArPath Assessment Tool uses a software program that includes an algorithm to evaluate certain responses within an extensive questionnaire to determine whether the beneficiary meets the functional eligibility criteria to participate in the waiver program. The ArPath Assessment Tool then uses another algorithm to evaluate other responses to determine which Resource Utilization Group (RUG) reflects the beneficiary's functional abilities. A RUG is a tier group consisting of individuals with similar functional abilities.

In 2013, attendant care services were determined based on an RN's discretionary interpretation of a beneficiary's responses to the ArPath Assessment Tool's questionnaire. Between 2013 and January 1, 2016, when the ARChoices program was implemented, DAAS recorded beneficiary RUG placement and the number of paid attendant care hours utilized by beneficiaries each month in order to determine the type and amount of resources that beneficiaries with similar functional abilities were used in a given month.

While the reality of living with a disease or condition can vary greatly even among individuals with the same diagnosis, a RUG placement allows DAABHS to better predict the type and extent of care that an individual needs. The purpose of transitioning to a RUG-based care allocation system is to provide more predictable and objective outcomes that better reflect the reality of a beneficiary's needs by organizing the allocation around functional ability.

As of January 1, 2016, the allocation of attendant care hours became based on which RUG the beneficiary is placed in by the ArPath Assessment Tool. The specific number of attendant care hours assigned to a particular RUG was determined by considering an average of the number of hours used by beneficiaries placed in that RUG prior to the implementation of the ARChoices program. The following chart shows the number of hours assigned to each RUG.

| RUG Category | RUG | Monthly Hours |
|---|---|---|
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| Special Care | SSB | 161 |
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| | | |
|---|---|---|
| | CA1 | 36 |
| Impaired Cognition | IB0 | 116 |
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| Behavioral Problems | BB0 | 118 |
| | BA2 | 62 |
| | BA1 | 30 |
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| | PB0 | 81 |
| | PA2 | 53 |
| | PA1 | 28 |

**RUG Requirements**

The ArPath Assessment Tool evaluates the assessment responses using an algorithm, which is basically a "rule book" for the software. This particular rulebook is divided into chapters, known as screeners, and each screener is responsible for evaluating a small portion of the assessment responses in order to produce a numerical score. Below is a list of the screeners and the possible scores:

| Screener | Possible Scores |
|---|---|
| Activities of Daily Living (ADL) | 4-18 |
| Instrumental Activities of Daily Living (IADL) | 0-3 |
| Rehab | 0-1 |
| Behavior Problems | 0-1 |
| Extensive Care | 0-1 |
| Special Care | 0-1 |
| Clinically Complex | 0-1 |
| Cognitive Impairment | 0-1 |
| Cumulative | 0-5 |

Each RUG requires a different combination of screener scores in order for a beneficiary to be placed in that RUG. The ArPath Assessment Tool utilizes the criteria for each RUG in the exact order that they are listed in the above chart and it places the beneficiary in the first RUG on the list whose criteria are satisfied by the assessment responses.

The following is a description of the screener scores required for each Special Rehab RUG.

1. **RB0 requires a Rehab screener score of 1 and an ADL score of at least 11.**
2. **RA2 requires a Rehab screener score of 1, an IADL score of at least 2, and an ADL score of no more than 10.**
3. **RA1 requires a Rehab screener score of 1, an IADL score of 1 or 0, and an ADL score of no more than 10.**

The following is a description of the screener scores required for each Extensive Care RUG.

1. SE3 requires a Cumulative screener score of at least 4, an Extensive Care screener score of 1, and an ADL score of at least 7.
2. SE2 requires a Cumulative screener score of either 2 or 3, an Extensive Care screener score of 1, and an ADL score of at least 7.
3. SE1 requires a Cumulative screener score of no more than 1, an Extensive Care screener score of 1, and an ADL score of at least 7.

The following is a description of the screener scores required for each Special Care RUG.

1. SSB requires an ADL score of at least 14 and a score of 1 for either the Extensive Care screener or the Special Care screener.
2. SSA has two possible combinations:
   a. An Extensive Care screener score of 1 with and ADL score of no more than 6, or
   b. An ADL score within the range of 7-13 and a score of 1 for either the Extensive Care screener or the Special Care screener.

The following is a description of the screener scores required for each Clinically Complex RUG.

1. CC0 requires an ADL score of at least 11 and a score of 1 for either the Clinically Complex screener or the Special Care screener.
2. CB0 requires an ADL score within the range of 6-10 and a score of 1 for either the Clinically Complex screener or the Special Care screener.
3. CA2 requires and ADL score no higher than 5, an IADL score of at least 1, and a score of 1 for either the Clinically Complex screener or the Special Care screener.
4. CA1 requires and ADL score no higher than 5, an IADL score of 0, and a score of 1 for either the Clinically Complex screener or the Special Care screener.

The following is a description of the screener scores required for each Impaired Cognition RUG.

1. IB0 requires a Cognitive Impairment screener score of 1 and an ADL score within the range of 6-10.
2. IA2 requires a Cognitive Impairment screener score of 1, an IADL score of at least 1, and an ADL score of no more than 5.
3. IA1 requires a Cognitive Impairment screener score of 1, an IADL score of 0, and an ADL score of no more than 5.

The following is a description of the screener scores required for each Behavioral Problems RUG.

1. BB0 requires a Behavior Problems screener score of 1 and an ADL score within the range of 6-10.
2. BA2 requires a Behavior Problems screener score of 1, an IADL score of at least 1, and an ADL score of no more than 5.
3. BA1 requires a Behavior Problems screener score of 1, an IADL score of 0, and an ADL score of no more than 5.

The following is a description of the screener scores required for each Reduced Physical Function RUG.

1. PD0 requires a Rehab screener score of 0 and an ADL score of at least 11.
2. PC0 requires a Rehab screener score of 0 and an ADL score of 9 or 10.
3. PB0 requires a Rehab screener score of 0 and an ADL score of 6, 7, or 8.
4. PA2 requires a Rehab screener score of 0, an IADL score of at least 1, and an ADL score of no more than 5.
5. PA1 requires a Rehab screener score of 0, an IADL score of 0, and an ADL score of no more than 5.

**Screener Requirements**

Activities of Daily Living (ADL)

A beneficiary's ADL score ranges from 4 to 18. It is based on the collective score among responses to the 5 items in the assessment that are listed below. Only 4 of the 5 responses will add to the overall ADL score because the response to Mode of nutritional intake may override the response to Eating.

1. **Bed mobility**
2. **Transfer toilet**
3. **Toilet use**
4. **Eating**
5. **Mode of nutritional intake**

Bed mobility, Transfer toilet, and Toilet use are all scored in the following way:

1. **Independent gets 1 point,**
2. **Independent, set up help only gets 1 point,**
3. **Supervision gets 1 point,**
4. **Limited assistance gets 3 points,**
5. **Extensive assistance gets 4 points,**
6. **Maximal assistance gets 5 points,**
7. **Total dependence gets 5 points, and**
8. **Activity did not occur gets 5 points**

Eating is scored in the following way:

1. **Independent gets 1 point,**
2. **Independent, set up help only gets 1 point,**
3. **Supervision gets 1 point,**
4. **Limited assistance gets 2 points,**
5. **Extensive assistance gets 3 points,**
6. **Maximal assistance gets 3 points,**
7. **Total dependence gets 3 points, and**
8. **Activity did not occur gets 3 points.**

However, 3 points will be added to the ADL score, and the Eating score will be overridden if the response to Mode of nutritional intake is any of the following:

1. **Combined oral and parenteral or tube feeding,**
2. **Nasogastric tube feeding only,**
3. **Abdominal feeding tube, or**
4. **Parenteral feeding tube only**

Instrumental Activities of Daily Living (IADL)

A beneficiary's IADL score ranges from 0 to 3. It is based on the collective score among the responses to the following items in the assessment:

1. **Meal preparation-performance,**
2. **Managing medication-performance, or**
3. **Phone use-performance.**

The responses to each item are scored in the following way.

1. **Independent gets 0 points.**
2. **Independent, set up help only gets 0 points.**
3. **Supervision gets 0 points.**
4. **Limited assistance gets 0 points.**
5. **Extensive assistance gets 0 points.**
6. **Maximal assistance gets 1 point.**
7. **Total dependence gets 1 point.**
8. **Activity did not occur gets 1 point.**

Rehab

A beneficiary's Rehab screener score is 0 by default, but it equals 1 if during the week prior to the assessment the beneficiary spends a total of at least 120 minutes in any combination of the following types of therapy:

1. **Speech-language pathology,**
2. **Occupational therapy, or**
3. **Physical therapy.**

Behavior Problems

A beneficiary's Behavior Problems score is 0 by default, but it equals 1 if the beneficiary has exhibited any of the following at any time within 3 days of the assessment:

1. **Wandering,**
2. **Verbal abuse,**
3. **Physical abuse,**
4. **Socially inappropriate or disruptive behavior,**
5. **Resists care,**
6. **Delusions, or**
7. **Hallucinations.**

Extensive Care

A beneficiary's Extensive Care screener score is 0 by default, but it equals 1 if the response to Mode of nutritional intake is either Abdominal feeding tube or Parenteral feeding tube only. It will also equal 1 if the assessment records that any of the following treatments have been utilized within 3 days of the assessment:

1. **IV medication,**
2. **Suctioning,**
3. **Tracheostomy care, or**
4. **Ventilator or respirator.**

Special Care

A beneficiary's Special Care screener score is 0 by default, but it equals 1 if the assessment records that Radiation therapy has been utilized within 3 days of the assessment or any of the following combinations of responses are logged in the assessment:

1. A turning/repositioning program has been utilized within 3 days of the assessment and the response to Most severe pressure ulcer is either:
   a. Deep craters in the skin or
   b. Breaks in the skin exposing muscle or bone;
2. Aphasia has been exhibited within 3 days of the assessment and the Mode of nutritional intake is either:
   a. Nasogastric tube feeding or
   b. Combined oral and parenteral or tube feeding;
3. Wound care has been performed within 3 days of the assessment and the response to either of the following items is yes:
   a. Major skin problems or
   b. Skin tears or cuts;
4. Fever and Vomiting are exhibited within 3 days of the assessment;
5. Fever is exhibited within 3 days of the assessment and the response to Weight loss of 5% is yes;
6. Fever is exhibited within 3 days of the assessment and the response to Mode of nutritional intake is either:
   a. Nasogastric tube feeding or
   b. Combined oral and parenteral or tube feeding;
7. Fever is exhibited within 3 days of the assessment and the response to Pneumonia is any of the following:
   a. Primary diagnosis for current stay;
   b. Diagnosis present, receiving active treatment; or
   c. Diagnosis present, monitored but no active treatment;
8. Fever is exhibited within 3 days of the assessment and the response to Dehydration is yes; or
9. A beneficiary's ADL score is at least 10 and the response to either Multiple sclerosis or Quadriplegia is any of the following:
   a. Primary diagnosis for current stay;
   b. Diagnosis present, receiving active treatment; or
   c. Diagnosis present, monitored but no active treatment.

Clinically Complex

A beneficiary's Clinically Complex screener score is 0 by default, but it equals 1 if any of the following is recorded during the assessment:

1. Mode of nutritional intake is either Nasogastric tube feeding or Combined oral and parenteral or tube feeding;
2. The response to Cognitive skills for daily decision making is No discernable consciousness, coma and the response to any of the following is either Total dependence or Activity did not occur:
   a. Bed mobility,
   b. Transfer toilet,
   c. Toilet use, or
   d. Eating;
3. Any form of Sepsis is recorded in the Other Diseases section of the assessment;
4. The response to Dehydration is yes;
5. The beneficiary's ADL score is at least 10 and the response to Hemiplegia is any of the following:
   a. Primary diagnosis for current stay;
   b. Diagnosis present, receiving active treatment; or

c. Diagnosis present, monitored but no active treatment;
6. GI or GU bleeding has been exhibited in the 3 days prior to the assessment;
7. The response to Pneumonia is any of the following:
   a. Primary diagnosis for current stay;
   b. Diagnosis present, receiving active treatment; or
   c. Diagnosis present, monitored but no active treatment;
8. The response to End stage disease, 6 or fewer months to live is yes;
9. Chemotherapy was utilized within 3 days of the assessment;
10. Dialysis was utilized within 3 days of the assessment;
11. A transfusion occurred within 3 days of the assessment;
12. Oxygen therapy was utilized within 3 days of the assessment; or
13. The response to Foot problems is either Foot problems limit walking or Foot problems prevent walking.

Impaired Cognition

A beneficiary's Impaired Cognition screener score is 0 by default, but it equals 1 if the score recorded on the Cognitive Performance Scale (CPS) is at least a 3.

Cumulative

A beneficiary's Cumulative screener score can range from 0 to 5. It is based on the collective score after adding the scores from the Special Care, Clinically Complex, and Impaired Cognition screeners. An additional point may be added if either of the following occurs:

1. The response to Mode of nutritional intake is Parenteral feeding only or
2. IV medication is utilized within 3 days of the assessment.

JUSTIFICATION FOR EMERGENCY RULE

The Director of the Division of Medical Services hereby issues the following proposed medical assistance rule under Arkansas Code Ann. § 25-15-204(g)(2)(A)(i). For the reasons stated below, the Agency has determined the existence of imminent peril to the public health, safety, or welfare and that adopting this emergency rule is necessary to avoid the potential loss of federal funding or certification.

The ARChoices Waiver program provides beneficiaries with a monthly allocation of attendant care hours to be used at the beneficiary's discretion throughout the month. The number of attendant care hours approved for each beneficiary is based on the results of that beneficiary's most recent assessment using the ArPath Assessment Tool through a software program that includes an algorithm to evaluate certain responses within an extensive questionnaire to determine whether the beneficiary meets the functional eligibility criteria to participate in the waiver program. Beneficiaries with similar functional needs are placed into Resource Utilization Groups (RUGs). This process is known as the RUGS methodology or system.

On May 14, 2018, the agency received an order from a state circuit court in which it was enjoined from using the RUGS methodology to determine attendant care hours unless or until it has properly promulgated the rule describing the process. This has required the agency to cease processing new applications for persons coming into the program, as well as cease processing existing waiver beneficiaries who are due for a new assessment for a new plan year. If the agency enrolls or reenrolls beneficiaries into the program without an independent assessment, or makes adjustments to an existing care plan without an independent assessment, it would be out of compliance with the waiver and program manuals as approved by the Centers for Medicare and Medicaid Services (CMS).

To ensure that the more than 8,000 beneficiaries of the ARChoices program can continue receiving services, that new applicants for the program can be processed for services, and to preserve federal financial participation (FFP) and funding for the program, this rule is required to be promulgated on an emergency basis to prevent imminent peril to the public health, safety, and welfare.

Rose Naff
Director
Division of Medical Services

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**


Secretary of State
**Mark Martin**
500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
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**For Office Use Only:**

Effective Date _____ Code Number _____

Name of Agency Department of Human Services

Department Division of Medical Services

Contact Dave Mills E-mail dave.mills@dhs.arkansas.gov Phone 501-320-6306

Statutory Authority for Promulgating Rules Arkansas Code Annotated 25-15-204(g)(2)(A)(i)

**Rule Title:** ARChoices 1-18 - Resource Utilization Groups (RUGS) Overview

| Intended Effective Date (Check One) | | Date |
|---|---|---|
| ☑ Emergency (ACA 25-15-204) | Legal Notice Published ..... | N/A |
| ☐ 10 Days After Filing (ACA 25-15-204) | Final Date for Public Comment ..... | N/A |
| ☐ Other _____ (Must be more than 10 days after filing date.) | Reviewed by Legislative Council ..... | TBA |
| | Adopted by State Agency ..... | 05/16/18 |

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Becky Murphy (Contact Person) becky.murphy@dhs.arkansas.gov (E-mail Address) _____ (Date)

## CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

(501) 371-2165 (Phone Number) rose.naff@dhs.arkansas.gov (E-mail Address)

Director (Title)

5/15/18 (Date)

Revised 7/2015 to reflect new legislation passed in the 2015 Regular Session (Act 1258). This act changed the effective date from 30 days to 10 days after filing the rule.

# ARKANSAS STATE LIBRARY

## Agency Certification Form

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**Classification Number:**

| **Name of Agency:** | **Division/Department/Office:** |
|---|---|
| Department of Human Services | Division of Medical Services |
| **Contact Person:** | **Telephone:** |
| Dave Mills | 501-320-6306 |

**Statutory Authority for Promulgating Rules:**
Arkansas Code 25-15-204(g)(2)(A)(i)

**Title of Rule:**
ARChoices 1-18 - Resource Utilization Groups (RUGS) Overview

| Rule Status | Date Adopted by Agency | Effective Date |
|---|---|---|
| Emergency<br>*(Use drop down to select different status)* | May 16, 2018 | ☐ **30 Days After Filing**<br>☑ **Other:** 05/16/18 *(if other, specify date)* |

☐ **Rule above is proposed and will be replaced by final version**

☑ **Financial and/or Fiscal Impact Statement Attached**

## Certification of Authorized Officer

**I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.**

**Signature:** _____ **Date:** 5/15/18

**Title:** Director, Division of Medical Services

State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director for Fiscal Services
Tim Carlock, Assistant Director for Information Technology
Matthew Miller, Assistant Director for Legal Services
Richard Wilson, Assistant Director for Research Services

# Memorandum

**TO:** **ALC—Executive Subcommittee**

**FROM:** **Laura Kehler Shue, Legislative Attorney, Administrative Rules Review Section, Legal Services Division**

**CC:** **Marty Garrity, Director, Bureau of Legislative Research; Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division**

**DATE:** **May 16, 2018**

**SUBJECT:** **Legal Authorization for Department of Human Services—Emergency Rule regarding ARChoices 1-18 – Resource Utilization Groups (RUGS)**

The Department of Human Services' stated purpose for its emergency rule is to properly promulgate the Resource Utilization Groups (RUGs) methodology used in the ARChoices Waiver program after a state circuit court issued an order enjoining use of it on May 14, 2018. The court found that the Department's promulgation was based upon improper procedure and failed to properly promulgate the rule as required by the Administrative Procedure Act, specifically Ark. Code Ann. § 25-15-204.

The Department asserts that the methodology used in the ARChoices Waiver program to determine attendant care hours is necessary to prevent imminent peril to the public health, safety, or welfare. The Department also states that adopting this emergency rule is necessary to avoid the potential loss of federal funding or certification. The Centers for Medicare and Medicaid Services previously approved the waiver program and program manuals.

The financial statement filed with the emergency rule states that there are no additional expenditures as the emergency rule promulgation will maintain the current programs.

The Department asserts that the state law that grants its substantive authority for this rule is Arkansas Code Annotated § 20-76-201. The Department has the power to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Ark. Code Ann. § 20-76-201 (12).