

# EXHIBIT K

## DEPARTMENT OF HUMAN SERVICES, DEVELOPMENTAL DISABILITIES SERVICES

**SUBJECT: DDS Alternative Community Services Waiver (DDS ACS) Update #1-17 and Developmental Disabilities Services ACS Waiver**

**DESCRIPTION:** The Department of Human Services, Division of Medical Services is proposing changes to the Medicaid Provider Manual, Division of Developmental Disability Services (DDS) Home and Community Based Services (HCBS) Waiver (formerly the Alternative Community Services Waiver).

The following is a summary of the changes:

1. Changes the title of the services, to reflect that they are Home and Community Based Services under the federal regulations.
2. Incorporates changes from the September 1, 2016 Waiver renewal, specifically, as follows:
  - a. Adds supportive living retainer payments to providers for the lesser of 14 consecutive days or the number of days during which an individual is in an ineligible setting.
  - b. Adds requirements for conflict free case management, including a stipulation that prohibits an organization from providing case management and any direct service to the same person.
  - c. Removes restrictions on paying overtime and family members hired as staff working more than 40 hours per week.
  - d. Adds the Home and Community Based Settings Transition Plan.
  - e. Changes the effective term of Interim Plan of Care (IPOC) from 90 days to 60 days.

**PUBLIC COMMENT:** A public hearing was held on March 29, 2017. The public comment period expired on April 1, 2017. The department received no comments.

The proposed effective date is pending legislative approval.

**FINANCIAL IMPACT:** The financial impact is \$1,652,800 for the current fiscal year (\$499,641 in general revenue and \$1,153,159 in federal funds) and \$2,605,050 for the next fiscal year (\$789,591 in general revenue and \$1,815,459 in federal funds). In the increased cost to the state, the fiscal impact is comprised of increased general revenue requirements due to the addition of 40 waiver slots in SFY 2017, beginning September 1, 2017, and five slots per quarter the following year.

Since 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, the agency submitted the following additional information:

**(1) a statement of the rule's basis and purpose;**

The Medicaid Provider Manual for DDS ACS Waiver is being updated to reflect the Medicaid ACS Waiver, AR 0188, which provides an alternative to institutional care for individuals with ID/DD. The waiver provides services and supports to allow individuals that meet II/ID level of care to work, live and be fully integrated into the community.

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

The agency seeks to continue implementation of the waiver program to provide services and supports to individuals who are eligible for the waiver so that they may remain in their community. The waiver operates under 1915(c) of the Social Security Act and 42 CFR 441. The proposed rule incorporates the September 1, 2016 amendments into the Provider Manual.

**(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;**

The HCBS waiver provides an alternative to facility based care. The annual average cost for Waiver services in the community is \$49,610.51; as compared with the ICF residential facility annualized average cost of care, which is \$149,576.27.

**(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;**

n/a

**(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;**

n/a

**(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**

n/a

**(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 renewal was submitted to CMS in accordance with 42 CFR 441, which requires a HCBS waiver to be submitted or renewal every five years. Accordingly, DDS must assure that providers are in compliance with standards and in compliance with the State of Arkansas to participate in the Medicaid Waiver Program. Therefore, DDS, in cooperation with the Division of Medical Services, updates the Medicaid Provider Manual to reflect the new ACS Waiver requirements

**LEGAL AUTHORIZATION:** The proposed rule is necessary to update the Medicaid Provider Manual so that is consistent with the waiver approved by CMS. The Department of Human Services is authorized 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.” Arkansas Code Annotated § 20-76-201 (12). Arkansas Code § 20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

## QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services  
 DIVISION Division of Developmental Disabilities Services  
 DIVISION DIRECTOR Melissa Stone  
 CONTACT PERSON Elizabeth Pitman  
 ADDRESS P.O. Box 1437, Slot N501  
 PHONE NO. (501) 682-4936 FAX NO. (501) 682-8380 E-MAIL Elizabeth.pitman@dhs.arkansas.gov  
 NAME OF PRESENTER AT COMMITTEE MEETING Melissa Stone  
 PRESENTER E-MAIL Melissa.stone@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, 5<sup>th</sup> Floor**  
**Little Rock, AR 72201**

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1. What is the short title of this rule? DDS Alternative Community Services Waiver (DDS ACS) Update #1-17 and Developmental Disabilities Services ACS Waiver

2. What is the subject of the proposed rule? This Section of the Provider Manual is being updated to incorporate changes from the September 1, 2016 waiver renewal.

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. Ark. Code Ann. § 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary? The proposed rule is necessary to update the Medicaid Provider Manual so that it is consistent with the waiver approved by CMS on March 10, 2017 with a retroactive effective date of September 1, 2016 (according to the Portal). The waiver provides services and support to eligible beneficiaries who need ICF/IID level of care, so that they may live, work and be fully integrated into community living.

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). www.medicaid.state.ar.us/general/comment/comment.aspx

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

Date: March 29, 2017  
Time: 4:30 p.m.  
Darragh Center  
Main Library  
100 S. Rock Street  
Place: Little Rock, AR

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

April 1, 2017

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

July 1, 2017 for this promulgation (CMS retroactively approved the Waiver with an effective date of September 1, 2016)

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. For--Provider Organizations and Providers, specifically: Arkansas Waiver Association; Developmental Disabilities Provider Association-Judy Watson, President

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Human Services

**DIVISION** Division of Developmental Disabilities Services

**PERSON COMPLETING THIS STATEMENT** Elizabeth Pitman

**TELEPHONE** 501-682-4936      **FAX** 501-682-8380      **EMAIL:** Elizabeth.pitman@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** DDS Alternative Community Services Waiver (DDS ACS) Update #1-17 and Developmental Disabilities Services ACS Waiver

1. Does this proposed, amended, or repealed rule have a financial impact?      Yes       No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?      Yes       No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?      Yes       No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

\_\_\_\_\_

(b) The reason for adoption of the more costly rule;

\_\_\_\_\_

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

\_\_\_\_\_

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
<b>Total</b>	<u>0</u>

**Next Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
<b>Total</b>	<u>0</u>

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

**Current Fiscal Year**

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

**Next Fiscal Year**

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**

\$ \$499,641

**Next Fiscal Year**

\$ 789,591

Fiscal Impact is comprised of: Increased general revenue requirements due to the addition of 40 waiver slots in SFY 2017, beginning September 1, 2017, and five slots per quarter the following year. Five slots will be added per quarter until a total of 100 waiver slots are added. The additional general revenue requirements will continue until all slots are added. We will receive an increase in federal funds of \$1,153,159 in the current fiscal year; and \$1,815,459 in the next fiscal year.

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;

*The Medicaid Provider Manual for DDS ACS Waiver is being updated to reflect the Medicaid ACS Waiver, AR 0188, which provides an alternative to institutional care for individuals with ID/DD. The waiver provides services and supports to allow individuals that meet II/ID level of care to work, live and be fully integrated into the community.*

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

*The agency seeks to continue implementation of the waiver program to provide services and supports to individuals who are eligible for the waiver so that they may remain in their community. The waiver operates under 1915(c) of the Social Security Act and 42 CFR 441. The proposed rule incorporates the September 1, 2016 amendments into the Provider Manual.*

- (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;

*The HCBS waiver provides an alternative to facility based care. The annual average cost for Waiver services in the community is \$49,610.51; as compared with the ICF residential facility annualized average cost of care, which is \$149,576.27.*

- (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;

*n/a*

- (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;

*n/a*

- (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

*n/a*

- (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 renewal was submitted to CMS in accordance with 42 CFR 441, which requires a HCBS waiver to be submitted or renewal every five years. Accordingly, DDS must assure that providers are in compliance with standards and in compliance with the State of Arkansas to participate in the Medicaid Waiver Program. Therefore, DDS, in cooperation with the Division of Medical Services, updates the Medicaid Provider Manual to reflect the new ACS Waiver requirements.*