

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES -
OTHER TYPES OF CARE

Revised: ~~April 1,~~
~~2008~~July 1, 2020

28. For self-directed personal assistance services under 1915(j) (see Supplement 4 to Attachment 3.1-A for a full description) the rate will be determined as follows:

Arkansas's methodology for determining the participant's budget is based on the assessment of needs for the participant and the development of the service plan. The cost of providing the services included in the service plan is calculated based on the expected reimbursement for personal care under the state plan referenced in Supplement 4 to Attachment 3.1-A, Page 1, and are adjusted to account for the self-directed service delivery model. Based on historical utilization patterns and differences in set-up and oversight, the State will use an adjustment factor of ~~57.873.0~~57.873.0% of the expected waiver/state plan service reimbursement to calculate the participant's service budget for self- directed personal assistance services.

TOC not required

260.200

Method of Reimbursement

~~4-1-157-1-~~
20

The Cash Allowance will be quoted as a Monthly Cash Allowance, using thirty (30) as the days in a typical month. However, the amount of the allowance awarded will be based on the actual number of days in each month. The Monthly Cash Allowance shall be calculated based on a maximum hourly rate of 73.00% of the personal care rate.~~CMS approved an adjustment factor of 57.8% to the agency rate based on historical data from 1998–2007~~

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Medical Services

PERSON COMPLETING THIS STATEMENT Jerald Sharum

TELEPHONE 501-396-6174 **FAX** _____ **EMAIL:** gerald.sharum@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 SPA-2020-0001-Self-Direction Budget Calculation Methodology & IC Provider Manual

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

Next Fiscal Year

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

General Revenue	\$ 2,197,744
Federal Funds	\$ 5,532,624
Cash Funds	
Special Revenue	
Other (Identify)	
Total	\$ 7,730,368

Next Fiscal Year

General Revenue	\$ 2,197,744
Federal Funds	\$ 5,532,624
Cash Funds	
Special Revenue	
Other (Identify)	
Total	\$ 7,730,368

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

\$ 2,197,744

Next Fiscal Year

\$ 2,197,744

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; **This change is necessary to (1) address the impact on the self-direction program from increases in the minimum wage since 2008, and (2) tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes.**

- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; **To ensure that the program has the budget necessary to provide the hours required for the care needed for this self-direction care program.**

- (3) a description of the factual evidence that:

- (a) justifies the agency's need for the proposed rule; and **Minimum wage has increased since 2008 and the program must account for this increase in costs.**
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs; **Minimum wage has increased since 2008 and the program must account for this increase in 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; **No Comments received to date.**
- (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; **No alternatives are proposed at this time.**
- (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 **Not applicable**
- (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 agency monitors State and Federal rules and Policies for opportunities to reduce and control costs**

Statement of Necessity and Rule Summary

SPA# 2020-0001 – Self-direction Budget Calculation Methodology & IC Provider Manual

Statement of Necessity

This change is necessary to address the impact on the self-direction program from increases in the minimum wage since 2008, and to tie the self-direction budget calculation methodology to the personal care rate more accurately in order to eliminate the need for further calculation changes.

The self-direction program is a waiver program that allows a beneficiary to employ caregivers of the beneficiary's choice using Medicaid funds. A fiscal agent is paid separately to assist the beneficiary in employing caregivers. The beneficiary's budget is set through an assessment of hours of needed care, a determination of funds available to pay for needed care and other goods and services, and the creation of a plan of care. The cost of care is equal to the number of hours of care multiplied by the wage paid to the caregiver, plus the cost of applicable taxes.

The average number of hours of care in plans of care under Independent Choices is approximately 25 hours. The maximum available number of hours under Independent Choices for personal care under State Plan Medicaid is 14.75 hours. However, ARChoices beneficiaries can select to receive self-direction through the Independent Choices program and receive additional hours of care.

In 2008, the self-direction budget was capped to 57.8% of the personal care rate. This cap is promulgated in the State Plan Amendment approved by CMS and the Independent Choices Provider Manual. Today, the self-direction budget cap corresponds to a maximum hourly wage of approximately \$10.55 based on a personal care rate of \$18.24 per hour.

The 57.8% adjustment factor for the self-direction program was chosen to match the funding available for the self-direction program in 2008, given the personal care rate at the time. The personal care rate is calculated based on average wages for direct care staff, benefit loads such as unemployment taxes, and overhead loads such as administrative costs for employers to do business and employ direct care staff. The self-direction program does not have overhead loads because of the fiscal agent's involvement.

Since 2008, the minimum wage has increased substantially. In 2008, the minimum wage was \$6.25 per hour. In 2018, the minimum wage increased to \$9.25 per hour. In 2020, the minimum wage increased to \$10.00 per hour. On January 1, 2021, the minimum wage will increase to \$11.00 per hour, which is 76% higher than it was in 2008.

Increases in the minimum wage negatively impact the Independent Choices program when the minimum wage is more than the maximum allowed hourly wage plus applicable taxes. This is because the beneficiary will not be able to pay for the number of hours of care the beneficiary needs due to the increased cost of care related to the increase in the minimum wage.

For example, the current maximum allowed hourly wage for caregivers is \$10.55, but that only leaves \$0.55 per hour to cover applicable taxes because the minimum wage is \$10.00. However, taxes on even

the minimum wage brings the total cost per hour to approximately \$11.60. This means that the beneficiary would not be able to afford approximately 9.1% of the beneficiary's needed hours of care and would have no remaining funds to afford additional goods or services allowed under the self-direction program.

The problem becomes even more pronounced when the minimum wage increases to \$11.00 per hour on January 1, 2021, because at that rate the total cost per hour increases to approximately \$12.76. This means the beneficiary would not be able to afford approximately 17.3% of the beneficiary's needed hours of care and would have no remaining funds to afford additional goods or services.

In addition to being unable to absorb the impact of minimum wage increases, the current self-direction budget calculation does not accurately reflect the difference between the self-direction program and the agency-based personal care rate. For example, the self-direction program does not have administrative overhead costs that add approximately 37% to the personal care rate calculation, but does have benefit loads for taxes of approximately 16%. Yet, the self-direction program is capped below that at 57.8% of the personal care rate.

The disjunction between the self-direction budget calculation and the personal care rate also makes it difficult for self-direction to be a meaningful alternative to agency-based personal care services because such agencies are not limited to the 57.8% of the personal care rate. Instead, agency-based personal care can pay the full personal care rate of \$18.24.

Rule Summary

This change will adjust the self-direction budget calculation methodology promulgated in the State Plan Amendment approved by CMS and the Independent Choices manual. Specifically, the self-direction budget calculation methodology would be changed from 57.8% of the personal care rate to 73.0% of the personal care rate.

The 73.0% percentage was calculated using the same method to calculate the personal care rate except that it is based on the current personal care rate and accounts for the lack of administrative overhead costs for self-direction beneficiaries. The link to the personal care rate will allow future adjustments due to changing economic conditions to be accounted solely through changes to the personal care rate.

At 73.0% of the current personal care rate, self-direction beneficiaries would have maximum budgets equal to the number of hours of needed care per month, multiplied by \$13.32 per hour of needed care. These funds could be used to pay for caregivers and other goods and services allowed under the Independent Choices program.

Future changes to the self-direction rate due to future increases in the minimum wage or other factors would be addressed through changes to the personal care rate.

The change will impact approximately 2,800 current beneficiaries who are in the self-direction program.