

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 _____

**Division of Aging, Adult, and Behavioral Health Services
(DAABHS)**

COVID-19 Response Manual

~~July 1, 2021~~ January 1, 2022

DAABHS COVID-19 RESPONSE CONTENTS

200.000 OVERVIEW

- 201.000 Authority
- 202.000 Purpose
- 203.000 Appeals
- 204.000 Severability

210.000 AGING AND ADULT

- 211.000 Extension of Person Centered Service Plans—ARChoices, Living Choices, and PACE
- 212.000 ARChoices, Living Choices and PACE Manual—Suspension of Timelines for
Evaluation
- 213.000 Living Choices Assisted Living Facilities Reimbursement Rate

~~220.000 BEHAVIORAL HEALTH~~

- ~~221.000 Outpatient Behavioral Health Agencies Certified as Acute Crisis Units~~

200.000 OVERVIEW

201.000 Authority

The following rules are duly adopted and promulgated by the Division of Aging, Adult, and Behavioral Health Services (DAABHS) Arkansas Department of Human Services (DHS) under the authority of Arkansas Code Annotated §§ -20-76-201, 20-77-107, 25-10-129, and 25-10-126.

Families First Coronavirus Response Act (Public Law 116-127 – March 18, 2020)

Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136 – March 27, 2020)

202.000 Purpose

In response to the COVID-19 pandemic, DHS identified programs and services that required additional flexibility or changes to adapt to ensuring the health and safety of our clients. This manual details them so that DHS may render uninterrupted assistance and services to our clients.

203.000 Appeals

Appeal requests for the COVID-19 response policies must adhere to the policy set forth in the Medicaid Provider Manual Section 160.000 Administrative Reconsideration and Appeals which can be accessed at <https://medicaid.mmis.arkansas.gov/Provider/Docs/all.aspx>.

204.000 Severability

Each section of this manual is severable from all others. If any section of this manual is held to be invalid, illegal, or unenforceable, such determination shall not affect the validity of other sections in this manual and all such other sections shall remain in full force and effect. In such an event, all other sections shall be construed and enforced as if this section had not been included therein.

210.000 AGING AND ADULT

211.000 Extension of Person-Centered Service Plans ~~ARChoices, Living Choices and PACE~~

The Person-Centered Service Plan (PCSP) serves to document the level of service need and is the official plan of care for those beneficiaries who have been found medically eligible for services.

Agency nurses should be able to extend PCSPs and authorizations based on review of current medical/functional needs. DAABHS nurses will complete an evaluation of the beneficiary's current needs and will extend the dates for qualifying beneficiaries, ensuring continued eligibility for services. PCSPs are living documents and are to be updated as goals and needs are met. During the extension period, the PCSP will continue to be updated to the level of current service needs based on continued phone contact with beneficiary.

The following rule provisions are suspended until ~~December 31, 2021~~ the termination of the federal public health emergency, including any extensions.

ARChoices: 212.312 which requires that a PCSP expiration date be 365 days from the date of the DHS RN's signature of the AAS-9503, the ARChoices PCSP.

Living Choices: 211.150 The Independent Assessment Contractor RN performs an assessment periodically (at least annually), and the Division of County Operations re-determines level of care annually. The results of the level of care determination and the re-evaluation are documented on form DHS-704.

212.200 Each Living Choices beneficiary will be evaluated at least annually by a DHS RN. The DHS RN evaluates the resident to determine whether a nursing home intermediate level of care is still appropriate and whether the plan of care should continue unchanged or be revised.

PACE: 212.200 involving involuntary dismissal of a Program of All-Inclusive Care for the Elderly (PACE) patient.

215.200 (B) and (C) require semi-annual and annual evaluations by providers.

These services will be available until ~~December 31, 2021~~ the termination of the federal public health emergency, including any extensions.

212.000 ~~ARChoices, Living Choices and PACE Manual~~ Suspension of Timelines for Evaluation

Families First Corona Virus Response Act requires states to maintain an individual eligibility for amount, duration, and scope of benefits during the public health emergency ~~AR~~Choices, Living Choices and PACE clients who do not receive an evaluation within 365 days of their existing eligibility date would be transitioned to traditional Medicaid or lose access to care under these programs.

This rule is suspended to allow members who do not receive a timely evaluation to remain eligible for ARChoices, Living Choices and PACE.

ARChoices	212.312 which requires functional eligibility be determined prior to the expiration of financial and functional eligibility
Living Choices	211.150 which requires that an evaluation is completed annually by DHS RN to help inform the determination of functional eligibility
PACE	212.200 which refers to involuntary dismissal of a PACE patient.

These services will be available until ~~December 31, 2021~~the termination of the federal public health emergency, including any extensions.

213.000 Living Choices Assisted Living Facilities Reimbursement Rate

The rate reduction scheduled to occur January 1, 2021 will be suspended until the termination of the federal public health emergency, including any extensions, or until the Centers for Medicaid & Medicare Services (CMS) approves the implementation of the rate in Arkansas' Living Choices Waiver Renewal, whichever occurs first. The result of the suspension or approval by CMS is an additional cost to the Medicaid program of \$4.36 ~~per client per day.~~

220.000—BEHAVIORAL HEALTH

221.000—~~Outpatient Behavioral Health Agencies Certified as Acute Crisis Units.~~

~~DMS is suspending the Acute Crisis Unit benefit limits of 96 hours per encounter, one encounter per month, and 6 encounters per state fiscal year. The rule to be suspended is in Section 253.003 of the Outpatient Behavioral Health Services Provider Manual.~~

~~The allowable code for this rule suspension:~~

- ~~• Acute Crisis Unit~~
- ~~• H0018 U4~~
- ~~• Benefit Limits 96 hours or less per encounter, 1 encounter per month, 6 encounters per SFY~~

~~These services will be available until December 31, 2021.~~

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Aging, Adult, and Behavioral Health Services (DAABHS)

PERSON COMPLETING THIS STATEMENT Jason Callan

TELEPHONE (501) 320-6540 **FAX** _____ **EMAIL:** Jason.Callan@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 Division of Aging, Adult, and Behavioral Health Services (DAABHS) Manual Extension

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> </u>
Special Revenue	<u> </u>
Other (Identify)	<u> </u>
Total	<u>\$0</u>

Next Fiscal Year

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

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

Current Fiscal Year

General Revenue	\$218,517
Federal Funds	\$551,452
Cash Funds	
Special Revenue	
Other (Identify)	
Total	\$769,969

Next Fiscal Year

General Revenue	\$437,034
Federal Funds	\$1,102,903
Cash Funds	
Special Revenue	
Other (Identify)	
Total	\$1,539,938

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

\$ 0

Next Fiscal Year

\$ 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

\$ 218,517

Next Fiscal Year

\$ 437,034

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; - *Due to the COVID-19 pandemic, DAABH made revisions to rules to ensure continuity of services for clients.*
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; - *DAABHS nurses will complete an evaluation of the beneficiary's current needs and will extend the dates for qualifying beneficiaries, ensuring continued eligibility for services. DAABH suspended a rule to allow members who do not receive a timely evaluation to remain eligible for ARChoices, Living Choices and PACE.*

- (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;
 - *DAABHS nurses will complete an evaluation of the beneficiary's current needs and will extend the dates for qualifying beneficiaries, ensuring continued eligibility for services. DAABH suspended a rule to allow members who do not receive a timely evaluation to remain eligible for ARChoices, Living Choices and PACE.*
- (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; - *None*.
- (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; - *None 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 - *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 Agency monitors State and Federal rules and policies for opportunities to reduce and control costs.*

Statement of Necessity and Rule Summary
Division of Aging, Adult, and Behavioral Health Services Manual Extension

Statement of Necessity

The rule was initially promulgated to sunset on December 31, 2021; however, the public health emergency is ongoing, therefore DAABHS amends the termination date to extend the sunset date to the end of the federal public health emergency, including any extensions.

Summary

The Director of the Division of Aging, Adult, and Behavioral Health amends the COVID-19 Response Manual to extend the sunset date of three provisions from December 31, 2021 to the end of the federal public health emergency, including any extensions. DAABHS continues to suspend the 365-day expiration date requirement for Person-Centered Service Plans for ARChoices. Also suspended are the rules for the periodic Independent Assessment and annual Division of County Operations level of care redetermination as well as the DHS RN annual evaluation to determine whether a nursing home intermediate level of care is still appropriate. PACE involuntary dismissal rules are suspended as well as the semi-annual and annual requirements. These suspensions allow beneficiaries to remain eligible for ARChoices, Living Choices, and PACE programs even though they do not have timely evaluations. The Living Choices Assisted Living Facilities rate will be maintained at the current rate pending approval for permanency by CMS.

NOTICE OF RULE MAKING

The Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rules under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-76-201, 20-77-107, and 25-10-129.

Effective January 1, 2022:

The Director of the Division of Aging, Adult, and Behavioral Health Services (DAABHS) amends the COVID-19 Response Manual to remove the sunset date of December 31, 2021, to align with the termination of the federal public health emergency, including any extensions. DAABHS allows the suspension of the Outpatient Behavioral Health Agencies Certified as Acute Crisis Units to sunset on December 31, 2021.

The proposed rules are available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rules at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than November 8, 2021. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-396-6428.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed, and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color, or national origin. 4502035775



Jay Hill, Director

Division of Aging, Adult, and Behavioral Health Services