

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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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 _____

Application for a §1915(c) Home and Community-Based Services Waiver

PURPOSE OF THE HCBS WAIVER PROGRAM

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waivers target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The Centers for Medicare & Medicaid Services (CMS) recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the state, service delivery system structure, state goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

Request for an Amendment to a §1915(c) Home and Community-Based Services Waiver

1. Request Information

A. The **State of Arkansas** requests approval for an amendment to the following Medicaid home and community-based services waiver approved under authority of §1915(c) of the Social Security Act.

B. **Program Title:**

Living Choices Assisted Living Waiver

C. **Waiver Number:** AR.0400

Original Base Waiver Number: AR.0400.

D. **Amendment Number:** AR.0400.R04.06

E. **Proposed Effective Date:** (mm/dd/yy)

03/01/24 07/01/2024

Approved Effective Date: 03/01/24

Approved Effective Date of Waiver being Amended: 07/01/21

2. Purpose(s) of Amendment

~~Arkansas has an approved American Rescue Plan Act (ARP) Spending Plan under Section 9817 that outlines the Workforce Stabilization Incentive Program (Program). The effective dates of the Program are from October 1, 2021 to March 31, 2025. Due to the expiration of the Appendix K, the State is seeking to amend the base waiver to include the Program terms. The Workforce Stabilization Incentive Program allows Living Choices provider to pay supplemental/enhanced payments to direct care workers in Assisted Living Facilities.~~

~~Likewise, due to the Appendix K expiration date, the State is seeking to amend the base waiver to include the current per person-per day rate of \$81.59 for urban facilities, with an additional 5% differential for rural facilities which totals \$85.67. The State has amended Appendix J, beginning with waiver year 3 to reflect these rates. Arkansas has broken out the Living Choices-Assisted Living Services component into 2 parts: Urban Assisted Living Facilities and Rural Assisted Living Facilities. This amendment proposes to increase the current rate of \$81.59 (urban) and \$85.67 (rural) for Living Choices Assisted Living Facility providers to \$86.73 for both urban and rural, thus removing the distinction between the two types of facilities. This rate change comes as the result of a cost report analysis completed by Myers & Stauffer on behalf of the Department of Human Services, Division of Aging, Adult and Behavioral Health Services.~~

~~Act 198 of the 2023 General Legislative Session requires Assisted Living Facility providers-DHS- to complete an annual cost reports and submit them to DHS-of its Assisted Living Facility providers, and gives DHS the opportunity to make rate changes as a result of the cost report findings.~~

3. Nature of the Amendment

A. Component(s) of the Approved Waiver Affected by the Amendment. This amendment affects the following component(s) of the approved waiver. Revisions to the affected subsection(s) of these component(s) are being submitted concurrently (*check each that applies*):

MARKUP

Component of the Approved Waiver	Subsection(s)
<input type="checkbox"/> Waiver Application	
<input type="checkbox"/> Appendix A Waiver Administration and Operation	
<input type="checkbox"/> Appendix B Participant Access and Eligibility	
<input type="checkbox"/> Appendix C Participant Services	
<input type="checkbox"/> Appendix D Participant Centered Service Planning and Delivery	
<input type="checkbox"/> Appendix E Participant Direction of Services	
<input type="checkbox"/> Appendix F Participant Rights	
<input type="checkbox"/> Appendix G Participant Safeguards	
<input type="checkbox"/> Appendix H	
<input checked="" type="checkbox"/> Appendix I Financial Accountability	I-2: Rates, Billing and Claims; I-3: Payment
<input checked="" type="checkbox"/> Appendix J Cost-Neutrality Demonstration	J-1: Composite Overview; J-2: Derivation of Estimates

B. Nature of the Amendment. Indicate the nature of the changes to the waiver that are proposed in the amendment (*check each that applies*):

- ☐ Modify target group(s)
 - ☐ Modify Medicaid eligibility
 - ☐ Add/delete services
 - ☐ Revise service specifications
 - ☐ Revise provider qualifications
 - ☐ Increase/decrease number of participants
 - ☒ Revise cost neutrality demonstration
 - ☐ Add participant-direction of services
 - ☒ Other
- Specify:

The State is seeking to amend the waiver due to a change in the rate and the current rate structure. The State is moving to a singular daily rate for Assisted Living Services based upon a rate review.

Application for a §1915(c) Home and Community-Based Services Waiver

6. Additional Requirements

Note: Item 6-I must be completed.

- i. Public Input.** Describe how the state secures public input into the development of the waiver:

Policy and form revisions, procedural changes, and clarifications are based on input from participants, caregivers (related and non-related), and providers. Comments are reviewed and appropriate action taken to incorporate changes or modifications to benefit participants, service delivery, and quality of care. Comments and public input are gathered through routine monitoring of program requirements, provider workshops/trainings, program integrity audits, and monitoring of participants and contact with stakeholders. These experiences and lessons learned are applied to the operations of Living Choices Assisted Living Facility Waiver.

Notices of amendments and renewals of the waiver are posted on the DHS website <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/> for at least 30 days to allow the general public to submit comments on changes. Notices of amendments and renewals are also published in a statewide newspaper with instructions for submitting comments to DMS.

The public notice for this amendment was published in the Arkansas Democrat-Gazette for three consecutive days from 10/01/2023mm/dd/yyyy to 10/03/2023mm/dd/yyyy. The 30-day public comment period ended 10/30/2023mm/dd/yyyy. Physical copies of the entire proposed waiver renewal were mailed to constituents upon request and were posted on the DHS website on the proposed rules page at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. The entire proposed waiver amendment was also emailed to an Interested Parties list.

Appendix I: Financial Accountability

I-2: Rates, Billing and Claims (1 of 3)

- a. Rate Determination Methods.** In two pages or less, describe the methods that are employed to establish provider payment rates for waiver services and the entity or entities that are responsible for rate determination. Indicate any opportunity for public comment in the process. If different methods are employed for various types of services, the description may group services for which the same method is employed. State laws, regulations, and policies referenced in the description are available upon request to CMS through the Medicaid agency or the operating agency (if applicable).

DMS is responsible for the oversight of rate determinations with consultation by DAABHS. There is an established procedure followed by DMS to conduct rate studies, get provider input, and rebase rates when needed. Rates are published for public comment and are made available to all providers before implementation of the new rate via an official notice from DMS. Upon enrollment with Medicaid, new providers are referred to the Arkansas Medicaid website which has published fee schedules. Various methodologies are used for rate determination depending on the waiver service.

~~The Division of Medical Services is required to conduct rate reviews for every Medicaid program in a three-year cycle. Living Choices rates were reviewed in 2021 (year 3 of the cycle). The rates were updated last in 2019. The most recent review indicated that no rate rebasing was needed.~~

The rates may be found at <https://humanservices.arkansas.gov/wp-content/uploads/LCAL-fees.pdf>

Assisted Living Facility Rate Determination Methods: This waiver renewal reforms the payment rate determination method for assisted living facilities (ALFs) serving waiver participants. For purposes of this waiver, “assisted living facility” means a Medicaid-certified and enrolled assisted living facility with a Level II license. As described below, a rate change takes effect 01/01/2019, with the implementation of the rate phased-in over two years.

Methods Employed to Determine Rates: To establish the new assisted living facility payment methodology, the State employed an actuarial analysis by the Arkansas Medicaid program’s contracted actuaries. This included a cost survey of assisted living facilities and consideration of other states’ federally-approved rate methods and rate levels; direct care cost factors (e.g., direct care work wages and benefits, direct care-related supervision and overhead); Arkansas labor market wage levels; rate scenarios; and Arkansas’ minimum and prevailing assisted living facility staffing levels. The actuary’s report is available to CMS upon request through the Division of Aging, Adult, and Behavioral Health Services (DAABHS).

The rate methodology excludes reimbursement of room and board costs.

The new methodology and resulting per diem rates provide for payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough assisted living facility providers, as required under 42 U.S.C. 1396a(a)30(A) and 42 CFR §447.200-205.

Uniform, Statewide Rate Methodology: The rate methodology is uniform and applies statewide to all Level II licensed assisted living facilities serving waiver participants.

Opportunities for Public Comment: Before submitting this waiver renewal to CMS for federal review and approval, DHS engaged in various opportunities for public comment including a webinar. These are in addition to the public comment process for this waiver renewal and the revised provider manual. Further, both the waiver renewal and the revised provider manual undergo prior review by Arkansas legislative committees.

See Main Section 6-I for additional information.

Entities Responsible for Rate Determination and Oversight of Rate Determination Process: As the Medicaid agency, DMS is responsible for oversight of all Medicaid rate determinations and for ensuring that provider payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers. DAABHS is responsible for day-to-day waiver administration, service planning, and access and care delivery in the waiver and DPSQA is responsible for ALF licensure, ALF Medicaid certification, provider accountability, quality of care, inspections, and auditing) jointly monitor to ensure that assisted living facility payments are consistent with the requirements of 42 U.S.C. § 1396a(a)30(A) and 42 CFR § 447.200-205.

Amendment Effective 03/01/2024:

As the COVID-19 pandemic and Public Health Emergency has continued, there has been an increase in applications for the Living Choices waiver increasing the need for direct care staff, further compounded by all providers competing within a severely tightened health care labor market with increased personnel costs. We are extending the end date of the previously approved rate increase from December 31, 2022 to the expiration of the waiver.

The State of Arkansas will not use ARP Funding for this requested rate increase.

Arkansas is extending the current rate of \$67.25 per person per day to \$81.59 per person per day, with an additional 5% differential for rural facilities, which totals \$85.67. This rate is comprised of two components:

• A daily rate of \$49.04 for total practitioner costs, meaning the costs of all direct care labor (care aides, CNAs, nurses). This rate is based on the wages currently paid by DHS to similar staff at the Arkansas Health Center, a state-owned nursing home. This amount represents an increase from the 2019 survey data to account for the competitive labor market and increased wages in the health care sector as a result of the COVID-19 pandemic.

• A daily rate of \$32.55 for remaining administrative and overhead costs. This rate is based on a cost survey and rate review completed by Milliman in 2019. In that rate review, Milliman recommended that the then current rate include administrative/overhead costs as 90.5% of the total practitioner costs, which for the then effective rate equaled \$32.55 per patient per day. The 90.5% was based on the average administrative and overhead costs for surveyed assisted living providers. Therefore, \$32.55 represents the average overhead and administrative cost of surveyed providers. We have received sample cost data from providers within the last three months, and that sample cost data demonstrates that \$32.55 per patient per day is sufficient to cover allowable administrative and overhead costs.

Amendment Effective 07/01/2024:

Pursuant to Arkansas Code Title 20, Chapter 10, Subchapter 24, the Department of Human Services (DHS) Division of Aging, Adult and Behavioral Health Services (DAABHS) has completed the review of cost reports submitted by the Assisted Living Facilities who participate in the Living Choices Assisted Living Facility Waiver program. DHS, through its qualified contractor, Myers and Stauffer, has reviewed each cost report submitted by the Assisted Living Facilities. This statute requires providers to submit annual cost reports and for DHS to consider the cost report results for possible amendment request to the waiver rate.

To calculate a rate for the waiver program Myers and Stauffer used a rate build-up methodology using the hourly wage data and daily staffing ratios from the 2023 cost survey. This methodology was selected due to the diversity of provider characteristics and cost experiences. This methodology reduced the impact of data outliers. The hourly wage data and daily staffing ratios were utilized to calculate a base cost for direct care. Adjustments were applied to this calculation to account for employee benefits costs and inflation. This calculation produced an estimate of the total cost of the direct care labor. Data for contracted positions was also gathered through the cost survey. This cost represents a smaller share of the total direct care staffing costs.

The direct care staffing costs are the primary driver of the waiver costs, and therefore, the primary component of our rate calculation. In addition to the staffing ratios and hourly wage rates, other statistics were necessary to complete the direct care staffing calculation. The median staff benefits percentage from the 2023 cost survey data, 18.08 percent, was used as the benefits percentage. Applying this factor to the direct care wages subtotal (not including contracted staff wages) accounts for the expected cost of providing employee benefits.

An inflation factor is also a common reimbursement element in order to account for expected increases in costs between the data collection period and the rate effective period. An inflation factor was applied to adjust historical costs from the midpoint of the cost data period, December 31, 2022 to the midpoint of the fiscal year 2025 rate period, December 31, 2024. Two inflation factor options were evaluated, the IHS Global Insight, Centers for Medicare & Medicaid Services (CMS) Nursing Home without Capital Market Basket Index (NF Market Basket) and the Consumer Price Index (CPI). The NF Market Basket index is a standard source used to calculate inflation factors for long-term care services. The calculation produced an inflation factor of 6.63 percent. Historically the Department has utilized the Consumer Price Index (CPI), for inflation calculations. This inflation factor was calculated to be 5.67 percent.

Appendix J: Cost Neutrality Demonstration**J-1: Composite Overview and Demonstration of Cost-Neutrality Formula**

Composite Overview. Complete the fields in Cols. 3, 5 and 6 in the following table for each waiver year. The fields in Cols. 4, 7 and 8 are auto-calculated based on entries in Cols 3, 5, and 6. The fields in Col. 2 are auto-calculated using the Factor D data from the J-2-d Estimate of Factor D tables. Col. 2 fields will be populated ONLY when the Estimate of Factor D tables in J-2-d have been completed.

Level(s) of Care: Nursing Facility

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8
Year	Factor D	Factor D'	Total: D+D'	Factor G	Factor G'	Total: G+G'	Difference (Col 7 less Column4)
1	17209.53	2173.00	19382.55	40959.00	1687.00	42646.00	23263.45
2	17209.53	2244.00	19453.55	42296.00	1742.00	44038.00	24584.45
3	18588.78	2317.00	20905.78	43677.00	1799.00	45476.00	24570.22
4	21347.23	2393.00	23740.23	45102.00	1858.00	46960.00	23219.77
5	21347.23	2471.00	23818.23	46574.00	1919.00	48493.00	24674.77

Appendix J: Cost Neutrality Demonstration**J-2: Derivation of Estimates (3 of 9)**

a. Derivation of Estimates for Each Factor. Provide a narrative description for the derivation of the estimates of the following factors.

i. Factor D Derivation. The estimates of Factor D for each waiver year are located in Item J-2-d. The basis and methodology for these estimates is as follows:

Factor D is derived from current reporting of expenditures from the Medicaid DSS and consideration of previous waiver estimates of utilization and growth rates. Factor D was calculated utilizing data from 01/01/2019 through 12/31/2019.

The unduplicated cap of 1725 was used as the number of users for WY1-WY5 to allow for full-year participation of each available slot. Given the average length of stay of 291 days, the state calculates 1,505 as the maximum number of unduplicated participants who can be served under a point-in-time (PIT) maximum of 1,200. The calculation is:

$$1,200 \text{ (max PIT cap)} \times 365 \text{ days} \div 291 \text{ days (avg. length of stay)} = 1,505$$

This exact amount was used for the estimated number of users in Appendix J-2-d. Units per user was calculated based on actual usage from 02/01/2016-01/31/2019.

Extended Medicaid State Plan Prescription Drug costs were estimated based on actual costs from the previous 5 years of the waiver. The most recent data from Medicaid DSS shows that this service cost has remained constant, therefore, we do not anticipate an increase in utilization of this service. The number of users for this service has increased over the last 5 years and have been updated to reflect more users of this service.

The Extended Medicaid State Plan Prescription Drug service was calculated utilizing the actual cost of services from 02/01/2016-01/31/2019.

The state's actuary calculated a composite average of the four (4) Living Choices Assisted Living Services tier rate used during the previous renewal cycle, adjusted to reflect the distribution of participants between the four tiers, of \$80.33. The payment rate recommended by the actuary is \$62.89, which is a 20.7% decrease from the

July 1, 2020, the rate decreased to \$67.25; and on January 1, 2021, for the final month of the waiver, the rate should have decreased to the actuary's recommended rate of \$62.89. The state submitted an Appendix K to suspend the final rate decrease and is requesting that under the renewal the rate remain at the current rate of \$67.25.

The dates utilized by the actuary to develop the rate include February 1, 2016 through January 31, 2020.

~~The state is currently conducting a rate study for Living Choices and will submit an amendment request should the rate study yield a new rate for this service.~~

Amendment Effective 03/01/2024:

The State will continue to utilize the approved Appendix K per person per day rate of \$81.59 with an additional 5% differential for rural facilities, which totals \$85.67 for the Living Choices Assisted Living Service until data can be received and verified in accordance with Arkansas law, and if warranted, the State will seek any needed amendments. Arkansas has identified 2 subcomponents for the Living Choices Assisted Living Services waiver component: Urban Assisted Living Facilities and Rural Assisted Living Facilities.

The data that informed the rates included a 2019 rate study and a 2020 & 2021 provider cost survey to determine the indirect service cost. Additionally, the median hourly rate of nursing and certified nursing assistant staff at our state-run nursing home was taken into consideration and applied a 4.1% inflation factor to trend the rate forward. After establishing the urban rate of \$81.59, we applied a 5% rural differential to get to \$85.67. The applied inflation factor was an average of inflation rates reported from the Consumer Price Index for the years 2018-2022.

In December 2023, using data from DAABHS internal databases, the census of existing assisted living facilities was used to determine the percentage of urban and rural facilities in Arkansas. The designation of rural and urban providers can be sourced to the 2020 US Census maps and definitions for Urban and Non-Urban areas.

Amendment Effective 07/01/2024:

Pursuant to Arkansas Code Title 20, Chapter 10, Subchapter 24, the Department of Human Services (DHS) Division of Aging, Adult and Behavioral Health Services (DAABHS) has completed the review of cost reports submitted by the Assisted Living Facilities who participate in the Living Choices Assisted Living Facility Wavier program. DHS, through its qualified contractor, Myers and Stauffer, has reviewed each cost report submitted by the Assisted Living Facilities. This statute requires providers to submit annual cost reports and for DHS to consider the cost report results for possible amendment request to the waiver rate.

To calculate a rate for the waiver program Myers and Stauffer used a rate build-up methodology using the hourly wage data and daily staffing ratios from the 2023 cost survey. This methodology was selected due to the diversity of provider characteristics and cost experiences. This methodology reduced the impact of data outliers. The hourly wage data and daily staffing ratios were utilized to calculate a base cost for direct care. Adjustments were applied to this calculation to account for employee benefits costs and inflation. This calculation produced an estimate of the total cost of the direct care labor. Data for contracted positions was also gathered through the cost survey. This cost represents a smaller share of the total direct care staffing costs.

The direct care staffing costs are the primary driver of the waiver costs, and therefore, the primary component of our rate calculation. In addition to the staffing ratios and hourly wage rates, other statistics were necessary to complete the direct care staffing calculation. The median staff benefits percentage from the 2023 cost survey data, 18.08 percent, was used as the benefits percentage. Applying this factor to the direct care wages subtotal (not including contracted staff wages) accounts for the expected cost of providing employee benefits.

An inflation factor is also a common reimbursement element in order to account for expected increases in costs between the data collection period and the rate effective period. An inflation factor was applied to adjust historical costs from the midpoint of the cost data period, December 31, 2022 to the midpoint of the fiscal year 2025 rate period, December 31, 2024. Two inflation factor options were evaluated, the IHS Global Insight, Centers for Medicare & Medicaid Services (CMS) Nursing Home without Capital Market Basket Index (NF Market Basket) and the Consumer Price Index (CPI). The NF Market Basket index is a standard source used to calculate inflation factors for long-term care services. The calculation produced an inflation factor of 6.63 percent. Historically the Department has utilized the Consumer Price Index (CPI), for inflation calculations. This inflation factor was calculated to be 5.67 percent.

Appendix J: Cost Neutrality Demonstration

J-2: Derivation of Estimates (8 of 9)

d. Estimate of Factor D.

i. Non-Concurrent Waiver. Complete the following table for each waiver year. Enter data into the Unit, # Users, Avg. Units Per User, and Avg. Cost/Unit fields for all the Waiver Service/Component items. Select Save and Calculate to automatically calculate and populate the Component Costs and Total Costs fields. All fields in this table must be completed in order to populate the Factor D fields in the J-1 Composite Overview table.

Waiver Year: Year 4

Waiver Service/ Component	Unit	# Users	Avg. Units Per User	Avg. Cost/ Unit	Component Cost	Total Cost
Extended Medicaid State Plan Prescription Drugs Total:						234000.00
Extended Medicaid State Plan Prescription Drugs	1 Month	250	12.00	78.00	234000.00	
Living Choices Assisted Living Services Total:						36589964.61 37,983,837.15
Living Choices Assisted Living Service	1 Day	01505	0291.00	0.0186.73	0.00 3798 3837 .15	
Urban Assisted Living Facilities	1 Day	7830	291.000	81.590	18590526.27 0	
Rural Assisted Living Facilities	1 Day	7220	291.000	85.670	17999438.34 0	
GRAND TOTAL:					36823964.6138217837.15	
Total Estimated Unduplicated Participants:						1725
Factor D (Divide total by number of participants):					21347.232215454.27	
Average Length of Stay on the Waiver:						291

Appendix J: Cost Neutrality Demonstration

J-2: Derivation of Estimates (9 of 9)

d. Estimate of Factor D.

i. Non-Concurrent Waiver. Complete the following table for each waiver year. Enter data into the Unit, # Users, Avg. Units Per User, and Avg. Cost/Unit fields for all the Waiver Service/Component items. Select Save and Calculate to automatically calculate and populate the Component Costs and Total Costs fields. All fields in this table must be completed in order to populate the Factor D fields in the J-1 Composite Overview table.

Waiver Year: Year 5

Waiver Service/ Component	Unit	# Users	Avg. Units Per User	Avg. Cost/ Unit	Component Cost	Total Cost
Extended Medicaid State Plan Prescription Drugs Total:						234000.00
Extended Medicaid						

State Plan Prescription Drugs	1 Month	250	12.00	78.00	234000.00	
Living Choices Assisted Living Services Total:						36589964.61 <u>37983837.15</u>
Living Choices Assisted Living Service	1 Day	<u>01505</u>	<u>0.00291</u>	<u>0.0186.73</u>	0.00 <u>3798</u> <u>3837</u> <u>.15</u>	
Urban Assisted Living Facilities	1 Day	<u>7830</u>	<u>291.000</u>	<u>81.590.01</u>	18590526.27 <u>0</u>	
Rural Assisted Living Facilities	1 Day	<u>7220</u>	<u>291.000</u>	<u>85.670.01</u>	17999438.34 <u>0</u>	
GRAND TOTAL:						36823964.61 <u>38217837.15</u>
Total Estimated Unduplicated Participants:						1725
Factor D (Divide total by number of participants):						2134722155.27 <u>23</u>
Average Length of Stay on the Waiver:						291

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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) _____

Total _____

Next Fiscal Year

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

Total _____

(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, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or 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

\$ _____

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.

FINANCIAL IMPACT STATEMENT ADDENDUM

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;

To increase the daily rates paid Assisted Living Facility providers.

A cost report study with analysis conducted by Myers and Stauffer was completed of 50 Assisted Living Facilities. The report was presented to ALC and the Hospital and Medicaid Study Subcommittee. The public was given the opportunity to provide comment on this study and DHS has responded to comments. This amendment to the Living Choices waiver formally requests approval from CMS to increase the daily rate to \$86.73 and a shift away from urban and rural rates to one single rate for all Assisted Living Facilities across Arkansas.

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

To address the results and recommendation of the cost report analysis issued by Myers and Stauffer.

- (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;

See the Cost Report, Arkansas Legislative Council hearing, and public comments found at <https://humanservices.arkansas.gov/rules/ar-living-choices-al-waiver/>.

- (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;

See the Cost Report, Arkansas Legislative Council hearing, and public comments found at <https://humanservices.arkansas.gov/rules/ar-living-choices-al-waiver/>.

- (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;

See the Cost Report, Arkansas Legislative Council hearing, and public comments found at <https://humanservices.arkansas.gov/rules/ar-living-choices-al-waiver/>.

(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

Living Choices Rate Increase Effective 07/01/2024

Statement of Necessity

Act 198 of 2023 requires Assisted Living Facilities (ALFs) to complete annual cost-reports and submit them to the Department of Human Services as a condition for participating in the Arkansas Medicaid Program. The reports “[a]ssist the department in ascertaining and monitoring the financial stability and solvency” of the facilities.

Following passage of the Act, the Division of Aging, Adult, and Behavioral Health Services (DAABHS) completed the review of cost reports received through its qualified contractor, Myers & Stauffer. Myers & Stauffer issued a [cost report analysis](#). Based upon the analysis, DHS proposes a rate increase for Living Choices Assisted Living Facility providers.

Summary of Changes

As a result of the cost analysis, DAABHS proposes an amendment to the Centers for Medicare and Medicaid (CMS) for its 1915(c) Home and Community-Based Services Living Choices Assisted Living Waiver. The amendment proposes an increase of the current daily rates of \$81.59 (urban) and \$85.67 (rural) for providers to \$86.73 for both urban and rural, thus removing the distinction between the two types of facilities.

NOTICE OF RULE MAKING

The Department of Human Services (DHS) announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule 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.

The Director of the Division of Aging, Adult, and Behavioral Services proposes an amendment to the Arkansas 1915(c) Home and Community-Based Services Living Choices Assisted Living Waiver seeking an increase of the daily rate paid assisted living facility providers. The proposal increases the current daily rates of \$81.59 (urban) and \$85.67 (rural) to \$86.73 for both urban and rural providers, removing the distinction between the facility types. The proposal is a result of the review of cost reports submitted to DHS following the implementation of Act 198 of 2023, and subsequent cost report analysis rate review. The proposed effective date of the rule is July 1, 2024. The projected annual cost of this change is \$1,393,873.00 per year (State \$390,284.00; Federal \$1,003,588.00).

To calculate the rate, DHS contracted Myers & Stauffer to review and issue an analysis of the reports. Myers & Stauffer used a rate build-up methodology using the hourly wage data and daily staffing ratios from the 2023 cost survey. This methodology was selected due to the diversity of provider characteristics and cost experiences, and because it reduced the impact of data outliers. The hourly wage data and daily staffing ratios were utilized to calculate a base cost for direct care. Adjustments were applied to this calculation to account for employee benefit costs and inflation. This calculation produced an estimate of the total cost of the direct care labor. Data for contracted positions also was gathered through the cost survey. This cost represents a smaller share of the total direct care staffing costs. The direct care staffing costs are the primary driver of the waiver costs, and therefore, the primary component of the rate calculation. In addition to the staffing ratios and hourly wage rates, other statistics were necessary to complete the direct care staffing calculation. The median staff benefits percentage from the 2023 cost survey data, 18.08 percent, was used as the benefits percentage. Applying this factor to the direct care wages subtotal (not including contracted staff wages) accounts for the expected cost of providing employee benefits. Also, an inflation factor was applied to adjust historical costs.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Policy and Rules, 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 rule at ar.gov/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 May 13, 2024. 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.

A public hearing will be held by remote access through Zoom. Public comments may be submitted at the hearing. The details for attending the Zoom hearing appear at ar.gov/dhszoom.

If you need this material in a different format, such as large print, contact the Office of Policy and Rules at 501-320-6428. 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. 4502201653