

EXHIBIT H

DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES

SUBJECT: Alternatives for Adults with Physical Disabilities (AAPD) Waiver #4-14

DESCRIPTION: This proposed rule updates the Alternatives for Adults with Physical Disabilities (AAPD) Waiver Provider Manual to change the number of hours that an attendant care service provider is allowed to work. An individual provider may not work for more than 40 hours per week. An individual provider may work for only one beneficiary during a single day. Established benefit limits will remain the same for each beneficiary (up to 56 hours per week, based on the beneficiary's approved Plan of Care). This regulation change is necessary to comply with the Department of Labor – Fair Labor Standards Act (DOL-FLSA) regulation eliminating the companionship services exemption from minimum wage and overtime.

PUBLIC COMMENT: A public hearing was not held on this rule. The public comment period expired November 29, 2014. The Department received the following public comments:

Billy Altom, Executive Director

Association of Programs for Rural Independent Living

COMMENT: I am writing to express the Association of Programs for Rural Independent Living's grave concern about the proposal by the Division of Medical Services of the Arkansas Department of Human Services to cap hours for personal assistants in the *Alternatives for Adults with Physical Disabilities Waiver* (AAPD) program at no more than 40 hours per week, without exception, in order to avoid the cost of overtime compensation, and to limit each worker to providing services to only one consumer per day to avoid compensating workers for travel time. This rigid response to new U.S. Department of Labor (USDOL) regulations under the federal Fair Labor Standards Act, will harm both consumers and workers. We urge you to reconsider this approach and instead budget for sufficient funds to pay overtime compensation to attendants in this program.

The requirements, which finally grant the same wage and hour protections to home care aides that the majority of U.S. workers already receive, are essential. Not only does the new USDOL rule afford workers the respect and wages they deserve, but it also provides a foundation on which to build a stronger, more stable home care workforce that can meet Arkansas' ever-growing need for long-term services and supports (LTSS).

Indeed, today, more than 150,000 Arkansans need LTSS. This number will jump by 50 percent by 2030, and 80 percent by 2060. The vast majority of these individuals prefer to receive LTSS in their homes. Enacting policies, such as the Division of Medical Services' proposal, to circumvent the USDOL rule is counterproductive to building the workforce necessary to meet these burgeoning needs.

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As you know, the LTSS provided to approximately 2,200 individuals with disabilities through the AAPD program, allows them to live safely at home rather than in more expensive nursing home settings. The real threat to Arkansas' budget and families is not the USDOL' s new requirements but rather the Division of Medical Services' proposed response. Adopting an inflexible cap on hours and limiting workers to assisting only one consumer per day could make it impossible for some consumers in this program to continue to live at home. This would be a devastating outcome for the Arkansans who rely on these services and their families, and *it can be avoided* if, instead, Arkansas budgets for sufficient funds to pay overtime compensation to attendants in this program.

One of the greatest challenges in providing LTSS to individuals in their homes is high turnover among home care aides. Industry turnover rates are estimated somewhere between 40 and 60 percent annually. Recruiting and training replacement workers is expensive (estimated at a direct cost of \$2,500 per worker), costing the industry, states, and taxpayers billions of dollars each year.

Rather than implementing a universal, inflexible cap on overtime and prohibiting attendants from providing services to more than one consumer per day, Arkansas must balance the needs of consumers, workers, and taxpayers. In some cases, splitting a high number of hours between two workers is a good solution. In other cases, the consumer's disability and/or family situation may require overtime pay. Most importantly, decisions about how much care a consumer receives and who provides it should be based on a person-centered assessment of the individual's needs.

Furthermore, the Division of Medical Services' proposal assumes that a sufficient number of new workers will be willing and available to do this work immediately if overtime is prohibited and workers are limited to only one consumer per day. Although the extension of minimum wage and overtime protections to the home care workforce is an essential first step to stabilizing the workforce and attracting more individuals to the profession, recruitment and retention remain a challenge--exacerbated by growing demand (demand for personal care attendants in Arkansas is projected to grow by 28 percent by 2020). It is possible that the state will be unable to recruit enough additional workers to completely avoid the payment of overtime and travel time costs. In rural Arkansas, the only available person to provide care may be the one worker already providing it. The state must take a more thoughtful approach in order to ensure that consumers don't go without the LTSS they need, and that its policy decisions do not cause a shortage of home care workers. Indeed, the United States District Court found that the state is responsible for setting wage rates and policies that attract enough home care workers to deliver all of the services for which the individual qualifies.

As a first step to developing a more reasoned approach, the Division of Medical Services should calculate and release Arkansas' workforce data - including the extent of overtime and part-time hours and travel time between consumers for attendants in this program. The Division should then share this information with stakeholders, including consumers

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and workers, to find solutions that avoid disruption of care and strengthen Arkansas's system of LTSS.

Moreover, the Division must consider any action in the context of the 1999 U.S. Supreme Court *Olmstead* decision, in which it confirmed the right of people with disabilities to receive services in the least restrictive setting. Specifically, USDOL guidance on the new regulation refers to the *Olmstead* decision, saying "If a public entity as a joint employer of its home care workers puts in place new policies that have the impact of reducing or otherwise disrupting a consumer's services, the state must ensure that the policy does not place the affected individuals at serious risk of institutionalization. *See id.* This could include making exceptions to the policy or providing alternative services to individuals who otherwise would be placed at serious risk of institutionalization. *Id.* (citing October 22, 2012 Letter from DOJ and OCR to Washington State); *accord M.R. v. Dreyfus*, 663 F.3d 1100 (9th Cir. 2011) (finding that a state violates the ADA and *Olmstead* when policies place individuals at serious risk of institutionalization)." Insofar as consumers' homes and care are disrupted by the Division of Medical Services' proposed overtime ban and limits on the number of consumers per worker per day, and consumers face otherwise unnecessary placement in a nursing home, the state will be defying the *Olmstead* mandate and violating their civil rights.

RESPONSE: Your letter of November 24, 2014, outlines the many challenges, in terms of both policy and practicality, posed by the new regulations governing home care workers as implemented by the U.S. Department of Labor, as well as by DOL's new guidance regarding when a state Medicaid program is considered a joint employer for purposes of the Fair Labor Standards Act. DHS is cognizant of these concerns and recognizes the difficulties these new federal regulations impose. In considering changes to the Alternatives for Adults with Physical Disabilities (AAPD) Medicaid policy, DHS reviewed all options available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

Please note that the individual client plan of care will not be affected by this change. The change only impacts clients who consumer direct and receive more than 40 hours of attendant care service on their plan of care. These clients will need to make other arrangements for services above 40 hours per week. Many clients currently employ more than one worker. In addition, clients routinely identify backup providers and will likely use a backup provider (either a consumer directed provider or an agency provider) for those instances. DAAS is prepared to address hardships on a case by case basis to ensure that client health and welfare is not jeopardized and that clients are not placed at risk of institutionalization.

Thank you for your comments.

State of Arkansas:
Disability Rights Arkansas, Inc.
Spa Area Independent Living Services

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Disability Resource Advocacy Center
Association of Programs for Rural Independent Living
ADAPT-Arkansas Chapter

National Groups:
National Senior Citizens Law Center
Bazon Center for Mental Health Law
National Disability Rights Network
National ADAPT
National Council on Independent Living

COMMENT: Thank you for the opportunity to submit comments on Provider Manual Update Transmittal APDWVR-4-14. Disability Rights Arkansas (ORA) is the federally authorized and funded nonprofit organization serving as the Protection and Advocacy System (P&A) and the Client Assistance Program (CAP) for individuals with disabilities in Arkansas. ORA is authorized to advocate for and protect human, civil and legal rights of all Arkansans with disabilities consistent with federal law.

Disability Rights Arkansas is writing to express our strong opposition to the Division of Medical Services proposal to cap hours for personal assistants in the Alternatives for Adults with Physical Disabilities Waiver program at no more than 40 hours per week, without exception. We also strongly oppose the proposal to impose the restriction that only one provider may work for one worker each day and the proposal to set an 8 hour cap on hours worked per day.

These rigid responses to the U.S. Department of Labor regulations under the federal Fair Labor Standards Act have the potential to cause severe harm to many of the approximately 2,200 Arkansans with disabilities who are self-directing in the program. We urge the Division of Medical Services to convene a panel of stakeholders, including individuals with disabilities who are currently using Consumer-Directed Attendant Care program and workers who provide services, to find creative solutions to implement the new Department of Labor rules in a way that takes budget considerations into account but does not cause unintended harm to consumers.

1. Convene a stakeholder panel to identify options for implementing the new Department of Labor Rule that balances the health and safety of people with disabilities, workforce issues, and fiscal considerations.

We strongly oppose a hard cap of 40 hours per week without exceptions. While this policy might bring Arkansas into technical compliance with the new Department of Labor rules, it will hurt both consumers and workers and may violate other federal laws, including the Medicaid Act and the Americans with Disabilities Act (ADA). Consumers

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who cannot find additional workers to fill their hours will experience, as a result of this policy, cuts in services that are critical to their health, safety and ability to live in the community. The impact on consumers in rural areas, where there is a very limited pool of workers, will likely be acute. Some consumers with specialized needs, such as complex medical or behavioral challenges, will suffer harm by having multiple providers work for them. Workers who now work more than 40 hours may experience a precipitous drop in income. Paid family members are a critical component of this workforce in Arkansas; for these workers who have chosen to forego other paid employment in order to provide care, the reduction in income could undermine the entire family's financial security and even force some consumers into more costly out-of-home placements.

We ask that the Division work with stakeholders to complete an analysis of overtime and travel costs before putting in place any restrictive policies that could lead to cuts in services for consumers. We are aware that Arkansas, like many states, has not historically collected data by worker hours or tracked travel time, and we urge the Division to work with home care workers, worker advocates, and Financial Management Services to gather data to come up with a reasonable estimate of the costs and explore policy options for addressing overtime and travel costs.

In developing a reasonable and balanced policy to implement this new rule, the Division should consider not only the costs of paying for overtime but also the costs of implementing restrictions. In order to avoid violating Medicaid law and endangering the health and well-being of consumers, Arkansas may need to recruit additional workers, set up backup worker systems, and hire additional staff to explain and enforce the restrictions. These costs must be balanced with the cost of more generous overtime and travel policies. As part of this process, we also encourage you to contact the Centers for Medicare & Medicaid services (CMS) to explore options for using federally-matched Medicaid funds to help defray the costs of paying for overtime and travel.

2. The Division must have an exceptions process to any policy that restricts overtime and travel.

If, after engaging in the process described above, the Division determines that there must be some reasonable limitations on overtime and travel that generally apply to providers in the Consumer-Directed Attendant Care Program, the Division *must* put an exceptions process in place. The Division should create a policy or process that allows consumers who would be particularly harmed by any restrictive policies to be exempted from those policies or for alternative services to be put in place for those consumers. Consumers who would be harmed by the cap should be able to quickly apply for, and receive an, exception.

Such an exceptions policy is required by the ADA and the Supreme Court's *Olmstead* decision for consumers who would be at serious risk of institutionalization due to the policies, including those who are unable to find additional workers (for example, in rural areas of Arkansas). It is also needed for consumers who might experience harm from

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having multiple workers due to their specialized needs. Both the Department of Justice and CMS have urged states to have such policies to prevent harm to consumers and to fulfill a state's *Olmstead* obligations. Failing to put an exceptions process in place could also undermine the new person-centered planning requirements.

3. Remove the one consumer per day restriction to allow flexibility for workers and consumers alike.

It will be very difficult for consumers who need a limited number of service hours each day to find an attendant if providers cannot work for more than one consumer each day. For example, some consumers may use as little as two or three hours of assistance per day. It will be impossible for any provider to make a living working such few hours, meaning that consumers may be left with no one at all willing to take the job. The same problem may occur for consumers who need to hire a second worker for hours in excess of the 8 hour daily limit currently in the regulations - for example, a consumer who receives 10 hours of services daily may be unable to find a worker who can fill only two hours. If the Division does adopt the one consumer per day restriction, an exceptions process must be put in place as discussed above.

4. Remove the 8 hour per day cap on hours worked.

Under the Department of Labor rule, overtime must be paid for hours worked over 40 each week. Arkansas state overtime requirements also generally require overtime only for hours worked over 40 each week. Whatever limits the Division ultimately places on providers, it should be implemented on a weekly basis to allow flexibility for consumers to best have their care needs met.

People with disabilities and seniors have fought long and hard for service models like the Consumer-Directed Attendant Care program that give us control of our own lives. We look forward to working with the Division to ensure that the new home care rule can be implemented in ways that do not harm consumers and the workers that provide these critical services.

RESPONSE: Your letter of November 25, 2014, outlines the many challenges, in terms of both policy and practicality, posed by the new regulations governing home care workers as implemented by the U.S. Department of Labor, as well as by DOL's new guidance regarding when a state Medicaid program is considered a joint employer for purposes of the Fair Labor Standards Act. DHS is cognizant of these concerns and recognizes the difficulties these new federal regulations impose. In considering changes to the Alternatives for Adults with Physical Disabilities (AAPD) Medicaid policy, DHS reviewed all options available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

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Please note that the individual client plan of care will not be affected by this change. The change only impacts clients who consumer direct and receive more than 40 hours of attendant care service on their plan of care. These clients will need to make other arrangements for services above 40 hours per week. Many clients currently employ more than one worker. In addition, clients routinely identify backup providers and will likely use a backup provider (either a consumer directed provider or an agency provider) for those instances. DAAS is prepared to address hardships on a case by case basis to ensure that client health and welfare is not jeopardized and that clients are not placed at risk of institutionalization.

CMS has already advised states that federal Medicaid funds may not be used to pay overtime expenses incurred because of these new rules.

Thank you for your comments.

Donna Massey, President
Arkansas Community Organizations

COMMENT: Arkansas Community Organizations is a membership organization of more than 1,000 low-to moderate- income households in central and southeast Arkansas. Many members of our organization work as home health care aides. And many of us have family members who receive home health care services through Medicaid. We strongly support the Department of Labor ruling that ends the home health care worker exemption from the federal Fair Labor Standards Act. We strongly oppose the proposal by the Division of Medical Services of the Arkansas Department of Human Services (DHS) to cap hours for personal assistants in the Alternatives for Adults with Physical Disabilities Waiver (AAPD) program at no more than 40 hours per week, without exception, in order to avoid the cost of overtime compensation, and to limit each worker to providing services to only one consumer per day to avoid compensating workers for travel time.

There are more than 2,000 people in the state who receive long term services and supports through the Division of Medical Services. This program allows these people to live safely at home rather than in expensive nursing homes. The demand and the need for this program is much higher than the number of people who receive the program through DHS. As more of our population ages, the need will only increase. We need to think about ways to expand the program rather making inflexible rules that will harm both the workers and those in need.

The work that home health care aides do is important to many families in our organization. They perform a service that improves the quality of life for thousands of Arkansas. Home health care workers are entitled to the same worker protections as other workers. The low pay that these workers receive and the demands of the jobs lead to high turnover in the industry. The real threat to Arkansas's budget and families is not compliance with wage and overtime requirements, but rather the Division of Medical

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Services' proposed response. Adopting an inflexible cap on hours and limiting workers to assisting only one consumer per day could make it impossible for some consumers in this program to continue to live at home. This would be a devastating outcome for those Arkansans who rely on these services and their families. It can be avoided if Arkansas budgets for sufficient funds to pay overtime compensation and travel time to the attendants in this program.

Providing services to the elderly and disabled in their homes is a good program and a needed alternative to nursing homes. We need to expand long term support and services to the disabled. In order to do so, we need to develop a strong workforce that can provide these needed services. We will not be able to develop the workforce we need if we do not pay people fairly, budget for the overtime that a patient may require and allow workers to take on more than one client per day.

We hope you will take these remarks under consideration.

RESPONSE: We have reviewed your comments and understand your concerns related to Home Health aides. The proposed changes do not affect home health aides in general. Instead, the proposed changes apply only to one specific Medicaid waiver program, known as Alternatives to Adults with Physical Disabilities (AAPD). This program provides for consumer directed providers and not home health aides such as those you reference in your comment. In considering changes to AAPD Medicaid policy, DHS reviewed all options available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

Thank you for your comments.

Jodi M. Sturgeon, President

PHI

COMMENT: I am writing to express PHI's concern with the proposal by the Division of Medical Services of the Arkansas Department of Human Services to cap hours for personal assistants in the Alternatives for Adults with Physical Disabilities Waiver (AAPD) program at no more than 40 hours per week and to limit each worker to providing services to only one consumer per day. The proposal seeks to avoid compensating workers for overtime and travel in a rigid response to new U.S. Department of Labor (USDOL) regulations under the federal Fair Labor Standards Act. If enacted, such limitations on personal assistants will harm both consumers and workers. We urge you to reconsider this approach and instead budget sufficient funds for overtime compensation to personal assistants in this program.

PHI (formerly the Paraprofessional Healthcare Institute) is a national organization that works to improve the lives of people who need home or residential care -and improve the lives of the direct-care workers who provide that care. Our work is grounded in the philosophy that quality jobs for direct-care workers contribute to quality care for long-

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term care consumers. We strongly support the extension of minimum wage and overtime protections to home care workers, and we promote thoughtful implementation of these protections by states in ways that benefit both workers and consumers.

The USDOL requirements, which finally grant the same wage and hour protections to home care aides that virtually all other U.S. workers already receive, are essential. Not only does the new USDOL rule afford workers the respect and wages they deserve, but it also provides a foundation on which to build a stronger, more stable home care workforce that can meet Arkansas's ever-growing need for long-term services and supports (LTSS).

Today, more than 150,000 Arkansans need LTSS. This number will increase 50 percent by 2030, and 80 percent by 2060. The vast majority of these individuals prefer to receive LTSS in their homes. Enacting policies to circumvent the USDOL rule, such as the Division of Medical Services' proposal, is counterproductive to building the workforce necessary to meet these burgeoning needs.

As you know, the LTSS provided to approximately 2,200 individuals with disabilities through the AAPD program allow Arkansans to live safely at home rather than in more expensive nursing home settings. The real threat to the state's budget and to families is not the USDOL's new requirements but rather the Division of Medical Services' proposed response. Adopting an inflexible cap on hours and limiting workers to assisting only one consumer per day could make it impossible for some consumers in this program to continue to live at home, a devastating outcome for the Arkansans who rely on these services and for their families. But this outcome *can be avoided* if Arkansas budgets sufficient funds to pay overtime compensation to attendants in this program.

Arkansas must balance the needs of consumers, workers, and taxpayers as it implements the new USDOL regulations. In some cases, splitting a high number of hours between two workers is a good solution. In other cases, the consumer's disability and/or family situation may require overtime pay. Most importantly, decisions about how much care a consumer receives and who provides it should be based on a person-centered assessment of the individual's needs.

Furthermore, the Division of Medical Services' proposal assumes that a sufficient number of new workers will be willing and available to do this work immediately if overtime is prohibited and workers are limited to only one consumer per day. Although the extension of minimum wage and overtime protections to the home care workforce is an essential first step to stabilizing the workforce and attracting more individuals to the profession, recruitment and retention remain a challenge. Industry turnover rates are estimated somewhere between 40 and 60 percent annually. Recruiting and training replacement workers is expensive (estimated at a direct cost of \$2,500 per worker), costing the industry, states, and taxpayers billions of dollars each year.

At the same time, demand for personal care assistants in Arkansas is projected to grow by 28 percent by 2020. It is possible that the state will be unable to recruit enough additional

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workers to meet this demand while completely avoiding the payment of overtime and travel time costs, particularly in rural areas. The United States District Court found that the state is responsible for setting wage rates and policies that attract enough home care workers to deliver all of the services for which the individual qualifies. In order to do so, Arkansas must take a more thoughtful approach in order to ensure that consumers don't go without the LTSS they need and that its policy decisions do not cause a shortage of home care workers.

As a first step to developing a more reasoned approach, the Division of Medical Services should calculate and release state workforce data, including the extent of overtime, part-time hours, and travel time captured for attendants in this program. The Division should then share this information with stakeholders, including consumers and workers, to find solutions that avoid disruption of care and strengthen Arkansas's system of LTSS.

Moreover, the Division must consider any action it takes in the context of the 1999 U.S. Supreme Court *Olmstead* decision, which confirmed the right of people with disabilities to receive services in the least restrictive setting. Specifically, LSDOL guidance on the new regulation refers to the *Olmstead* decision, saying "If a public entity as a joint employer of its home care workers puts in place new policies that have the impact of reducing or otherwise disrupting a consumer's services, the state must ensure that the policy does not place the affected individuals at serious risk of institutionalization. *See id.* This could include making exceptions to the policy or providing alternative services to individuals who otherwise would be placed at serious risk of institutionalization. *Id.* (citing October 22, 2012 Letter from DOJ and OCR to Washington State); *accord M.R. v. Dreyfus*, 663 F.3d 1100 (9th Cir. 2011) (finding that a state violates the ADA and *Olmstead* when policies place individuals at serious risk of institutionalization)."

Consumers' homes and the quality of care they receive will be disrupted by the Division of Medical Services's proposed overtime ban and limits on the number of consumers per worker per day. PHI strongly urges the State to consider a more sustainable approach to its provision of LTSS—one that improves quality of life, rather than reduces it, for LTSS recipients and the hardworking personal attendants who care for them.

RESPONSE: Your letter of November 24, 2014, outlines the many challenges, in terms of both policy and practicality, posed by the new regulations governing home care workers as implemented by the U.S. Department of Labor, as well as by DOL's new guidance regarding when a state Medicaid program is considered a joint employer for purposes of the Fair Labor Standards Act. DHS is cognizant of these concerns and recognizes the difficulties these new federal regulations impose. In considering changes to the Alternatives for Adults with Physical Disabilities (AAPD) Medicaid policy, DHS reviewed all options available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

Please note that the individual client plan of care will not be affected by this change. The change only impacts clients who consumer direct and receive more than 40 hours of

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attendant care service on their Plan of Care. These clients will need to make other arrangements for services above 40 hours per week. Many clients currently employ more than one worker. In addition, clients routinely identify backup providers and will likely use a backup provider (either a consumer directed provider or an agency provider) for those instances. DAAS is prepared to address hardships on a case by case basis to ensure that client health and welfare is not jeopardized and that clients are not placed at risk of institutionalization.

CMS has already advised states that federal Medicaid funds may not be used to pay overtime expenses incurred because of these new rules.

Mahlon Tolleson

COMMENT: This is to comment on the proposed rule to limit home health aides as discussed in the Arkansas Democrat Gazette of November 28, 2014.

My wife has needed the services of Home Health several times after a surgical hospitalization. They were lifesavers for us. This latest go-round, the hospital sent my wife home after 24 hours in the hospital with a broken arm. That might not be a big problem for most people, but since she is dependent on a walker, she was completely helpless. We couldn't even get her in the house, we had to call the local ambulance company to assist.

With the help of trained, educated, experienced, licensed nurses and therapists, who came to our home, as she could NOT leave, she is almost back to "normal." This would have been impossible without their help. I can't imagine that any of them would be willing to work for minimum wage or visit only 1 client a day.

Ms .Kate Luck was quoted in the article as finding it impossible to verify travel distance and time. Could you kindly provide her with a computer and explain the use of Google Maps or Mapquest? Companies such as FedEx and UPS have no problem doing making these calculations.

I know this economy is difficult for many agencies, but there has to be another way. We CANNOT do without home health aides. These proposed changes will ELIMINATE home health, because NO ONE would work under those restrictions.

RESPONSE: We have reviewed your comments and understand your concerns related to Home Health aides. Contrary to the newspaper article, the proposed changes do not affect home health aides in general. Instead, the proposed changes apply only to consumer directed providers and not home health aides such as those you reference in your comment. In considering changes to AAPD Medicaid policy, DHS reviewed all options available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

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Thank you for your comments.

Mahlona Bowdon

COMMENT: I would like to comment on the proposed rule to limit home health aides as discussed in the Arkansas Democrat Gazette of November 28, 2014. I am a Christian and an ordained minister, so I will try to be nice, but it will be a REAL struggle because this is the stupidest thing I have ever heard of. It reminds me of a sign recently saw which said, "I'm sorry hurt your feelings when I called you stupid. I thought you already knew."

My mother lives in AR and she has needed the services of Home Health several times after a surgical hospitalization. They have been lifesavers! Most recently, the hospital sent mom home after just one day in the hospital. She had fallen and broken her arm. That might not be a big problem for most people, but because of botched hip surgery, she is dependent on a walker to take even ONE step, so she was sent home completely helpless. We could not even get her out of the car and into the house, we had to call the local ambulance company to hoist her in.

Because of the help we received from trained, educated, experienced, licensed nurses and therapists, who came to Mom's house, since she could NOT leave, she is almost back to "normal." This would have been impossible without their help. I don't think any of them are willing to work for minimum wage or visit only 1 client a day.

I am still laughing about Ms. Kate Luck saying in the article that it is impossible to verify travel distance and time. Ever heard of Google Maps, TomTom or Mapquest???

Somebody please get this lady a computer and explain it to her!

In this economy, I'm sure many agencies, are finding things difficult, but we CANNOT do without home health aides. These proposed changes will ELIMINATE home health, because NO ONE would work under those restrictions.

RESPONSE: We have reviewed your comments and understand your concerns related to Home Health aides. Contrary to the newspaper article, the proposed changes do not affect home health aides in general. Instead, the proposed changes apply only to consumer directed providers and not home health aides such as those you reference in your comment. In considering changes to AAPD Medicaid policy, DHS reviewed all options available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

Thank you for your comments.

Rey Hernandez
NWA Workers' Justice Center

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COMMENT: I am writing to express the Northwest Arkansas Worker Justice Center's grave concern about the proposal by the Division of Medical Services of the Arkansas Department of Human Services to cap hours for personal assistants in the Alternatives for Adults with Physical Disabilities Waiver (AAPD) program at no more than 40 hours per week, without exception, in order to avoid the cost of overtime compensation, and to limit each worker to providing services to only one consumer per day to avoid compensating workers for travel time. This rigid response to new U.S. Department of Labor (USDOL) regulations under the federal Fair Labor Standards Act, will harm both consumers and workers. We urge you to reconsider this approach and instead budget for sufficient funds to pay overtime compensation to attendants in this program.

The requirements, which finally grant the same wage and hour protections to home care aides that the majority of U.S. workers already receive, are essential. Not only does the new USDOL rule afford workers the respect and wages they deserve, but it also provides a foundation on which to build a stronger, more stable home care workforce that can meet Arkansas' ever-growing need for long-term services and supports (LTSS).

Indeed, today, more than 150,000 Arkansans need LTSS. This number will jump by 50 percent by 2030, and 80 percent by 2060. The vast majority of these individuals prefer to receive LTSS in their homes. Enacting policies, such as the Division of Medical Services' proposal, to circumvent the USDOL rule is counterproductive to building the workforce necessary to meet these burgeoning needs.

As you know, the LTSS provided to approximately 2,200 individuals with disabilities through the AAPD program, allows them to live safely at home rather than in more expensive nursing home settings. The real threat to Arkansas' budget and families is not the USDOL's new requirements but rather the Division of Medical Services' proposed response. Adopting an inflexible cap on hours and limiting workers to assisting only one consumer per day could make it impossible for some consumers in this program to continue to live at home. This would be a devastating outcome for the Arkansans who rely on these services and their families, and *it can be avoided* if, instead, Arkansas budgets for sufficient funds to pay overtime compensation to attendants in this program.

One of the greatest challenges in providing LTSS to individuals in their homes is high turnover among home care aides. Industry turnover rates are estimated somewhere between 40 and 60 percent annually. Recruiting and training replacement workers is expensive (estimated at a direct cost of \$2,500 per worker), costing the industry, states, and taxpayers billions of dollars each year.

Rather than implementing a universal, inflexible cap on overtime and prohibiting attendants from providing services to more than one consumer per day, Arkansas must balance the needs of consumers, workers, and taxpayers. In some cases, splitting a high number of hours between two workers is a good solution. In other cases, the consumer's disability and/or family situation may require overtime pay. Most importantly, decisions

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about how much care a consumer receives and who provides it should be based on a person-centered assessment of the individual's needs.

Furthermore, the Division of Medical Services' proposal assumes that a sufficient number of new workers will be willing and available to do this work immediately if overtime is prohibited and workers are limited to only one consumer per day. Although the extension of minimum wage and overtime protections to the home care workforce is an essential first step to stabilizing the workforce and attracting more individuals to the profession, recruitment and retention remain a challenge - exacerbated by growing demand (demand for personal care attendants in Arkansas is projected to grow by 28 percent by 2020). It is possible that the state will be unable to recruit enough additional workers to completely avoid the payment of overtime and travel time costs. In rural Arkansas, the only available person to provide care may be the one worker already providing it. The state must take a more thoughtful approach in order to ensure that consumers don't go without the LTSS they need, and that its policy decisions do not cause a shortage of home care workers. Indeed, the United States District Court found that the state is responsible for setting wage rates and policies that attract enough home care workers to deliver all of the services for which the individual qualifies.

As a first step to developing a more reasoned approach, the Division of Medical Services should calculate and release Arkansas' workforce data--including the extent of overtime and part-time hours and travel time between consumers for attendants in this program. The Division should then share this information with stakeholders, including consumers and workers, to find solutions that avoid disruption of care and strengthen Arkansas's system of LTSS.

Moreover, the Division must consider any action in the context of the 1999 U.S. Supreme Court *Olmstead* decision, in which it confirmed the right of people with disabilities to receive services in the least restrictive setting. Specifically, USDOL guidance on the new regulation refers to the *Olmstead* decision, saying "If a public entity as a joint employer of its home care workers puts in place new policies that have the impact of reducing or otherwise disrupting a consumer's services, the state must ensure that the policy does not place the affected individuals at serious risk of institutionalization. *See id.* This could include making exceptions to the policy or providing alternative services to individuals who otherwise would be placed at serious risk of institutionalization. *Id.* (citing October 22, 2012 letter from DOJ and OCR to Washington State); *accord M.R. v. Dreyfas*, 663 F.3d 1100 (9th Cir. 2011) (finding that a state violates the ADA and *Olmstead* when policies place individuals at serious risk of institutionalization)." Insofar as consumers' homes and care are disrupted by the Division of Medical Services' proposed overtime ban and limits on the number of consumers per worker per day, and consumers face otherwise unnecessary placement in a nursing home, the state will be defying the *Olmstead* mandate and violating their civil rights.

RESPONSE: Your letter of November 25, 2014, outlines the many challenges, in terms of both policy and practicality, posed by the new regulations governing home care

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workers as implemented by the U.S. Department of Labor, as well as by DOL's new guidance regarding when a state Medicaid program is considered a joint employer for purposes of the Fair Labor Standards Act. DHS is cognizant of these concerns and recognizes the difficulties these new federal regulations impose. In considering changes to the Alternatives for Adults with Physical Disabilities (AAPD) Medicaid policy, DHS reviewed all options available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

Please note that the individual client plan of care will not be affected by this change. The change only impacts clients who consumer direct and receive more than 40 hours of attendant care service on their Plan of Care. These clients will need to make other arrangements for services above 40 hours per week. Many clients currently employ more than one worker. In addition, clients routinely identify backup providers and will likely use a backup provider (either a consumer directed provider or an agency provider) for those instances. DAAS is prepared to address hardships on a case by case basis to ensure that client health and welfare is not jeopardized and that clients are not placed at risk of institutionalization.

CMS has already advised states that federal Medicaid funds may not be used to pay overtime expenses incurred because of these new rules.

Rich Huddleston, Executive Director
Arkansas Advocates for Children and Families

COMMENT: Arkansas Advocates for Children and Families would like to express our concern about the proposal from the Arkansas Department of Human Services Division of Medical Services to cap hours for individuals providing attendant care services in the Alternatives for Adults with Physical Disabilities Waiver (AAPD) program at no more than 40 hours per week, without exception, and to limit each worker to providing services to only one consumer per day to in order to avoid the cost of overtime compensation and compensating workers for travel time. This rigid response to new U.S. Department of Labor (USDOL) regulations under the federal Fair Labor Standards Act, will harm both consumers and workers. We urge you to reconsider this approach and instead budget for sufficient funds to pay overtime compensation to attendants in this program.

The requirements, which finally grant the same wage and hour protections to home care aides that the majority of U.S. workers already receive, are essential. Not only does the new USDOL rule afford workers the respect and wages they deserve, but it also provides a foundation on which to build a stronger, more stable home care workforce that can meet Arkansas' ever-growing need for long-term services and supports (LTSS).

Today, more than 150,000 Arkansans need LTSS. This number will jump by 50 percent by 2030, and 80 percent by 2060. Many of these individuals prefer to receive LTSS in their homes. Enacting policies, such as the Division of Medical Services' proposal, to

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circumvent the USDOL rule is counterproductive to building the workforce necessary to meet these burgeoning needs.

As you know, the LTSS provided to approximately 2,200 individuals with disabilities through the AAPD program, allows them to live safely at home rather than in more expensive nursing home settings. The real threat to Arkansas' budget and families is not the USDOL's new requirements but rather the Division of Medical Services' proposed response. Adopting an inflexible cap on hours and limiting workers to assisting only one consumer per day could make it impossible for some consumers in this program to continue to live at home. This would be a devastating outcome for the Arkansans who rely on these services and their families, and *it can be avoided* if, instead, Arkansas budgets for sufficient funds to pay overtime compensation to attendants in this program.

One of the greatest challenges in providing LTSS to individuals in their homes is high turnover among home care aides. Industry turnover rates are estimated somewhere between 40 and 60 percent annually. Recruiting and training replacement workers is expensive (estimated at a direct cost of \$2,500 per worker), costing the industry, states, and taxpayers billions of dollars each year.

Home care aides are often low wage workers and parents that rely on their earnings to meet the families' basic needs. Artificially limiting their work hours can create financial hardships for them. Additionally, many families rely on having consistent access to attendant care services, in order to provide much needed support for a family member requiring long term care. Any disruption in services resulting from reduced work hours or increased turnover could be critical to the health and well-being of individuals on the AAPD waiver. The family may also have to make adjustments to their own work schedules to provide care and supervision, which may negatively impact their ability to remain consistently, employed and results in an additional cost burden for the family.

Rather than implementing a universal, inflexible cap on overtime and prohibiting attendants from providing services to more than one consumer per day, Arkansas must balance the needs of consumers, workers, and taxpayers. In some cases, splitting a high number of hours between two workers is a good solution. In other cases, the consumer's disability and/or family situation may require overtime pay. Most importantly, decisions about how much care a consumer receives and who provides it should be based on a person-centered assessment of the individual's needs.

Furthermore, the Division of Medical Services' proposal assumes that a sufficient number of new workers will be willing and available to do this work immediately if overtime is prohibited and workers are limited to only one consumer per day. Although the extension of minimum wage and overtime protections to the home care workforce is an essential first step to stabilizing the workforce and attracting more individuals to the profession, recruitment and retention remain a challenge--exacerbated by growing demand (demand for personal care attendants in Arkansas is projected to grow by 28 percent by 2020). It is possible that the state will be unable to recruit enough additional workers to completely

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avoid the payment of overtime and travel time costs. In rural Arkansas, the only available person to provide care may be the one worker already providing it. The state must take a more thoughtful approach in order to ensure that consumers don't go without the LTSS they need, and that its policy decisions do not cause a shortage of home care workers. Indeed, the United States District Court found that the state is responsible for setting wage rates and policies that attract enough home care workers to deliver all of the services for which the individual qualifies.

As a first step to developing a more reasoned approach, the Division of Medical Services should calculate and release Arkansas' workforce data--including the extent of overtime and part-time hours and travel time between consumers for attendants in this program. The Division should then share this information with stakeholders, including consumers and workers, to find solutions that avoid disruption of care and strengthen Arkansas's system of LTSS.

Moreover, the Division must consider any action in the context of the 1999 U.S. Supreme Court *Olmstead* decision, in which it confirmed the right of people with disabilities to receive services in the least restrictive setting. Specifically, USDOL guidance on the new regulation refers to the *Olmstead* decision, saying "If a public entity as a joint employer of its home care workers puts in place new policies that have the impact of reducing or otherwise disrupting a consumer's services, the state must ensure that the policy does not place the affected individuals at serious risk of institutionalization. *See id.* This could include making exceptions to the policy or providing alternative services to individuals who otherwise would be placed at serious risk of institutionalization. *Id.* (citing October 22, 2012 Letter from DOJ and OCR to Washington State); *accord M.R. v. Dreyfus*, 663 F.3d 1100 (9th Cir. 2011) (finding that a state violates the ADA and *Olmstead* when policies place individuals at serious risk of institutionalization)." Insofar as consumers' homes and care are disrupted by the Division of Medical Services' proposed overtime ban and limits on the number of consumers per worker per day, and consumers face otherwise unnecessary placement in a nursing home, the state will be defying the *Olmstead* mandate and violating their civil rights.

Thank you for the opportunity to submit comments on the changes to the AAPD waiver. Please contact us at Arkansas Advocates for Children and Families for more information.

RESPONSE: Your letter of November 24, 2014, outlines the many challenges, in terms of both policy and practicality, posed by the new regulations governing home care workers as implemented by the U.S. Department of Labor, as well as by DOL's new guidance regarding when a state Medicaid program is considered a joint employer for purposes of the Fair Labor Standards Act. DHS is cognizant of these concerns and recognizes the difficulties these new federal regulations impose. In considering changes to the Alternatives for Adults with Physical Disabilities (AAPD) Medicaid policy, DHS reviewed all options available for compliance with the DOL-regulations and determined that these policy modifications were the most appropriate remedy.

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Please note that the individual client plan of care will not be affected by this change. The change only impacts clients who consumer direct and receive more than 40 hours of attendant care service on their Plan of Care. These clients will need to make other arrangements for services above 40 hours per week. Many clients currently employ more than one worker. In addition, clients routinely identify backup providers and will likely use a backup provider (either a consumer directed provider or an agency provider) for those instances. DAAS is prepared to address hardships on a case by case basis to ensure that client health and welfare is not jeopardized and that clients are not placed at risk of institutionalization.

CMS has already advised states that federal Medicaid funds may not be used to pay overtime expenses incurred because of these new rules.

Stephen Copley, Chair
Arkansas Interfaith Committee for Worker Justice

COMMENT: I am writing to express the Arkansas Interfaith Committee for Worker Justice's concern about the proposal by the Division of Medical Services of the Arkansas Department of Human Services to cap hours for personal assistants in the Alternatives for Adults with Physical Disabilities Waiver (AAPD) program at no more than 40 hours per week, without exception, in order to avoid the cost of overtime compensation, and to limit each worker to providing services to only one consumer per day to avoid compensating workers for travel time.

As people of faith, we are concerned about this response to new U.S. Department of Labor regulations under the federal Fair Labor Standards Act. We believe this action will harm both consumers and workers. It is essential that home care aides be granted the same wage and hour protections that the majority of U.S. workers already receive.

In addition to maintaining the wages of home care aides, it is a necessary service to consumers. But, without adequate pay, there may not be the number of home care aides needed to care for those who need long-term services and supports (LTSS). Today, more than 150,000 Arkansans need LTSS. This number will jump by 50 percent by 2030 and 80 percent by 2060. The vast majority of these individuals prefer to receive LTSS in their homes.

The Interfaith Committee for Worker Justice would ask you to reconsider the approach being considered and instead budget for sufficient funds to pay overtime compensation to attendants in this program.

RESPONSE: Your letter of November 26, 2014, outlines the many challenges, in terms of both policy and practicality, posed by the new regulations governing home care workers as implemented by the U.S. Department of Labor, as well as by DOL's new guidance regarding when a state Medicaid program is considered a joint employer for purposes of the Fair Labor Standards Act. DHS is cognizant of these concerns and

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recognizes the difficulties these new federal regulations impose. In considering changes to the Alternatives for Adults with Physical Disabilities (AAPD) Medicaid policy, DHS reviewed all options available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

Please note that the individual client plan of care will not be affected by this change. The change only impacts clients who consumer direct and receive more than 40 hours of attendant care service on their Plan of Care. These clients will need to make other arrangements for services above 40 hours per week. Many clients currently employ more than one worker. In addition, clients routinely identify backup providers and will likely use a backup provider (either a consumer directed provider or an agency provider) for those instances. DAAS is prepared to address hardships on a case by case basis to ensure that client health and welfare is not jeopardized and that clients are not placed at risk of institutionalization.

CMS has already advised states that federal Medicaid funds may not be used to pay overtime expenses incurred because of these new rules.

Sylvia Tolleson

COMMENT: I am writing to comment on the proposed rule to limit home health aides as discussed in the Arkansas Democrat Gazette of November 28, 2014.

As a senior citizen who has needed the services of Home Health several times after a surgical hospitalization, I can't say enough about what a lifesaver they have been. It would have been impossible to make it without them. They deserve FAR more than minimum wage. There were trained, licensed nurses and therapists that came to help me get back on my feet.

As to your Ms. Kate Luck who seems to be unable to verify travel - ever heard of a map, or Google Maps or Mapquest??? That is the most ridiculous part of the article. There are MANY ways of calculating mileage and travel times. FedEx and UPS seem to have no problem doing that -but then, they are not run by the government, they have to actually turn a profit.

I'm sure the present economy is proving difficult for many agencies, but there has to be another way to solve this. We CANNOT do without home health aides, and THAT is what will happen if this proposed rule change goes through.

RESPONSE: We have reviewed your comments and understand your concerns related to Home Health aides. Contrary to the newspaper article, the proposed changes do not affect home health aides in general. Instead, the proposed changes apply only to consumer directed providers and not home health aides such as those you reference in your comment. In considering changes to AAPD Medicaid policy, DHS reviewed all options

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available for compliance with the DOL regulations and determined that these policy modifications were the most appropriate remedy.

The effective date for the final rule was January 1, 2015.

CONTROVERSY: This rule is expected to be controversial. This change will impact attendant care service providers who have been working up to 56 hours per week and/or with more than one beneficiary per day. Some beneficiaries may now need to receive services from more than one provider.

FINANCIAL IMPACT: These rule changes have no financial impact because the rule is updating the provider manual to set the new maximum amount of workable hours for Consumer Directed Providers. These changes do not affect beneficiary benefit limits.

LEGAL AUTHORIZATION: Ark. Code Ann. § 20-76-201 authorizes the Department of Human Services to administer programs for the indigent and to "make rules and regulations" pertaining to the administration of those programs. Ark. Code Ann. § 20-77-107 specifically authorizes the Department to "establish and maintain an indigent medical care program."

Ark. Code Ann. § 25-10-129 directs the Department to promulgate rules to conform to federal law that affects "programs administered or funded by or through the department" as necessary to receive available federal funds.

29 CFR § 552 contains the federal regulatory structure for the application of the federal Fair Labor Standards Act (FLSA) as it relates to domestic service. In 78 FR 60454, the federal regulations were amended to narrow the definition of "companionship services", which are exempt from the FLSA's minimum wage and overtime provisions, so that more domestic service workers are protected under the FLSA.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of Medical Services
DIVISION DIRECTOR Dawn Stehle
CONTACT PERSON Camille Johnson
ADDRESS PO Box 1437, Slot S295, Little Rock, AR 72203
PHONE NO. 501-320-6466 FAX NO. 501-404-4619 E-MAIL Camille.Johnson@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Krista Hughes
PRESENTER E-MAIL Krista.Hughes@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? Alternatives for Adults with Physical Disabilities (AAPD) Waiver #4-14
2. What is the subject of the proposed rule? Provider attendant care services benefit limit
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. 78 FR 60454
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. Arkansas Statute 20-76-201

7. What is the purpose of this proposed rule? Why is it necessary? **Effective January 1, 2015, Arkansas Medicaid proposes to update the Alternatives for Adults with Physical Disabilities (AAPD) Waiver Provider Manual to change the number of hours that an attendant care service provider is allowed to work. An individual provider may not work for more than 40 hours per week. An individual provider may work for only one beneficiary during a single day. Established benefit limits will remain the same for each beneficiary (up to 56 hours per week, based on the beneficiary's approved Plan of Care). This regulation change is necessary to comply with the Department of Labor-Fair Labor Standards Act (DOL-FLSA) regulation eliminating the companionship services exemption from minimum wage and overtime.**

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://www.medicaid.state.ar.us/InternetSolution/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule?

Yes

No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

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

November 29, 2014

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

January 1, 2015

12. Do you expect this rule to be controversial? Yes No

If yes, please explain.

This change will impact attendant care service providers who have been working up to 56 hours per week and/or with more than one beneficiary per day. Some beneficiaries may now need to receive services from more than one provider.

13. 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.

Attendant care service providers, beneficiaries and advocacy organizations. Their positions for or against this change is not known at this time.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Medical Services
PERSON COMPLETING THIS STATEMENT Lynn Burton
TELEPHONE NO. 682-1857 **FAX NO.** 404-4619 **EMAIL:** Lynn.burton@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 Alternatives for Adults with Physical Disabilities (AAPD) Waiver #4-14

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

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

Next Fiscal Year

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

Total _____

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

Next Fiscal Year

\$ 0 _____

\$ 0 _____

This rule changes has no financial impact because the rule is updating the provider manual to set the new maximum amount of workable hours for Consumer Directed Providers. This change does not affect beneficiary benefit limits.

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.

Mark Up

TOC not required

213.220 Benefit Limit Consumer-Directed Attendant Care 1-1-153

One unit of consumer-directed attendant care service equals a full 15 minutes. The established benefit limit for Alternatives Attendant Care Service is 11,648 units per state fiscal year. Services are reimbursable when provided according to the beneficiary's approved Plan of Care.

A maximum of 8 hours per day, 7 days per week is allowed, except that an individual provider may not work for more than 40 hours per week. An individual provider may work for only one beneficiary during a single day. The number of hours included on a beneficiary's Plan of Care is based on a medical assessment, the individual's needs and other support systems in place.

242.210 Billing Instructions for Agency and Consumer-Directed Attendant 1-1-153
Care Providers

The following instructions must be read and carefully followed so that HP Enterprise Services can efficiently process claims. Accuracy, completeness and clarity are important. Claims cannot be processed if applicable information is not supplied or is illegible. Claims should be typed whenever possible.

Regardless of the date that Attendant Care services begin for an Alternatives beneficiary, Medicaid reimbursement is not allowed prior to the effective date of the Medicaid Provider Identification Number (PIN) as issued by the Medicaid fiscal agent, HP Enterprise Services.

NOTE: It is very important to submit a completed provider certification packet immediately. Each packet must include all of the required documents, tax forms and copies of identification as required for the individual service. Packets received and processed will establish a provider's eligibility as stated in this manual. Provider eligibility will not begin prior to the first day of the month that a correctly completed DAAS certification/Medicaid Attendant Care provider enrollment packet is received by DAAS. Therefore, packets must not be held and mailed in for processing at a later date.

For example, the waiver eligibility effective date for the Alternatives beneficiary is 1-15-07. The Attendant Care provider and the Alternatives beneficiary signed the Alternatives Attendant Care Service Agreement (AAS-9512) on 1-20-07. A correctly completed DAAS certification/Medicaid Attendant Care provider enrollment packet was received by DAAS on 2-10-07. Services provided on or after 2-1-07 will be eligible for reimbursement.

- The Attendant Care Service Agreement (AAS-9512) cannot be back dated.
- Once signed and dated by the provider and the waiver beneficiary, the Attendant Care Service Agreement (AAS-9512) must be postmarked within 14 calendar days of the signatures on the agreement.
- Prior to providing attendant care services, the provider must be certified by DAAS, possess an active Medicaid PIN issued on behalf of the Arkansas Medicaid Program and have a copy of the employer/beneficiary's current Plan of Care provided by the DAAS Rehab Counselor or RN.

Medicaid may be billed only for the amount of services authorized in the Alternatives Plan of Care and only for what the Attendant Care provider has actually provided. **MEDICAID CANNOT BE BILLED FOR FUTURE DATES OF SERVICE.** An individual provider may not work for more than 40 hours per week. An individual provider may work for only one beneficiary during a single day.

Following is the address and telephone number for the HP Enterprise Services Provider Enrollment Unit in the event there are questions about a PIN number:

HP Enterprise Services
Provider Enrollment Unit
PO Box 8105
Little Rock, AR 72203-8105
(501) 376-2211 or 1-800-457-4454

Following is the address and telephone number for the HP Enterprise Services Provider Assistance Center in the event there are questions about a claim:

HP Enterprise Services
Provider Assistance Center
PO Box 8036
Little Rock, AR 72203-8036
(501) 376-2211 or 1-800-457-4454

If an Attendant Care provider quits working for an Alternatives beneficiary, the DAAS RN/Counselor must be notified immediately in writing, citing the last day of employment.

242.311 Consumer-Directed Attendant Care Services

1-1-153

When filing paper claims for Consumer-Directed Attendant Care, Form AAS-9559 must be used. Billing will be monitored to ensure compliance with the waiver Plan of Care. All billing will be reviewed based on the number of units authorized per week, Sunday through Saturday. When computing units, the provider must bill no more than the number of units authorized per week beginning on Sunday. The Consumer Directed Provider is limited to 40 hours of work per week. All reviews are conducted based on the number of units billed Sunday through Saturday each week. Units billed outside this timeframe and over the number of authorized units are subject to recoupment.

Regardless of the number of waiver beneficiaries for whom an Attendant Care provider works, ~~no more than 42 hours per day~~ 40 hours per week are eligible for reimbursement consideration by the Arkansas Medicaid program. In addition, if an Attendant Care provider is employed by another waiver beneficiary OR another employer, all hours of employment will be considered when authorizing Attendant Care services for a waiver beneficiary. No more than a total of ~~42 hours/day~~ 40 hours per week including ALL employment, will be allowed for an Attendant Care provider.

Regardless of the number of providers a waiver beneficiary hires, no more hours than authorized on the waiver Plan of Care are eligible for reimbursement consideration by the Arkansas Medicaid Program. The Consumer Directed Provider is limited to provision of services to one client per day.

Summary

Alternatives for Adults with Physical Disabilities Waiver Provider Manual 4-14

Effective January 1, 2015, Arkansas Medicaid proposes to update the Alternatives for Adults with Physical Disabilities (AAPD) Waiver Provider Manual to change the number of hours that an attendant care service provider is allowed to work. An individual provider may not work for more than 40 hours per week. An individual provider may work for only one beneficiary during a single day. Established benefit limits will remain the same for each beneficiary (up to 56 hours per week, based on the beneficiary's approved Plan of Care). This regulation change is necessary to comply with the Department of Labor-Fair Labor Standards Act (DOL-FLSA) regulation eliminating the companionship services exemption from minimum wage and overtime.

