

EXHIBIT N

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
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NAME OF PRESENTER AT COMMITTEE MEETING Tami Harlan
PRESENTER E-MAIL tami.harlan@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? Living Choices Assisted Living waiver renewal & Living
Choices Assisted Living Update #2-15
2. What is the subject of the proposed rule? Renewal of the Living Choices Assisted Living waiver
with the addition of HCBS Settings rules.
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. 42 CFR 441.301(c)(4)-
(5)
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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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? The purpose of the proposed rule is to renew the existing Living Choices Medicaid waiver so that residents of licensed level II assisted living facilities may continue to receive Medicaid services in the facility. The point in time cap, which is the number of participants eligible at any one time, will be increased from 1,000 to 1,200 to better serve waiver participants. The unduplicated cap, which is the total number of participants during the waiver year, will remain the same at 1,300. The Living Choices Provider Manual is amended to add new regulations regarding Home and Community-Based Services (HCBS) Settings.

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 21, 2015

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
February 1, 2016

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

If yes, please explain. _____

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.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services
DIVISION Division of Medical Services
PERSON COMPLETING THIS STATEMENT Craig Cloud
TELEPHONE NO. 501-320-6439 **FAX NO.** 501-404-4619 **EMAIL:** Craig.Cloud@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 Living Choices Assisted Living Waiver Renewal

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.

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

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

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

Current Fiscal Year

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

Next Fiscal Year

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

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue	\$2,533
Federal Funds	\$5,972
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$8,505

General Revenue	\$184,831
Federal Funds	\$426,586
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$611,417

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

\$ 2,533

\$ 184,831

This will be a cost of state general revenue to the Medicaid program.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

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

The purpose of increasing the point in time cap is to delay the need for a waiting list. If the cap is not increased, it is projected that a waiting list will be needed by June 2016.

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

The problem is the current point in time cap is too low to meet projected growth. Increasing the point in time cap is not required by statute. CMS does not require a point in time cap. The point in time cap is used as a management tool for the agency. DAAS seeks to delay the point in time cap without changing the unduplicated cap of 1,300. Due to the critical need for individuals in need of assisted living, individuals waiting on a slot for assisted living will most likely choose more costly nursing home care.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

Individuals in need of assisted living services face a critical need for the service. It is often determined that the individual can no longer remain safely in their own home. The need for round-the-clock care is evident. If an individual in need of these services is faced with a lengthy wait for admittance in an assisted living facility because a waiver slot is not available, they will be forced to seek more costly care in a nursing facility. Medicaid mandates nursing facility care, so there are no caps on the number of individuals who can receive Medicaid in a nursing facility.

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

There are no statutory requirements for this change. The rules cost may decrease the need for nursing facility care.

(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;

The state could keep the point in time cap at 1,000. This will create a waiting list beginning June 2016. By delaying implementation of the waiting list, it will delay the need for more costly nursing home care.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

N/A

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

The waiver is renewed every 5 years and the cap will be reevaluated at that time.

- (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.

**Living Choices Assisted Living Wavier Renewal &
Living Choices Assisted Living Update #2-15
Summary**

The Living Choices Assisted Living (LCAL) 1915(c) Medicaid Waiver is being renewed for a five year period. The unduplicated annual cap will remain the same at 1,300. The point in time cap will increase from 1,000 to 1,200. There are no other changes being made to the waiver. The LCAL Provider Manual is being amended to add new federal regulations found at 42 CFR 441.301(c)(4)-(5) regarding Home and Community-Based Settings.