

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
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NAME OF PRESENTER AT COMMITTEE MEETING Marilyn Strickland
PRESENTER E-MAIL marilyn.strickland@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
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule?

Living Choices Assisted Living (LCAL) 1915(c) HCBS Waiver Slot Increase
- 2. What is the subject of the proposed rule?

Increase the number of point in time participants in the 1915(c) HCBS Living Choices Assisted Living (LCAL) waiver from 800 to 1,000 to comply with A.C.A. §20-10-1704.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ___ No X.
If yes, please provide the federal rule, regulation, and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes X No ___

If yes, what is the effective date of the emergency rule?

June 15, 2012

When does the emergency rule expire?

October 12, 2012

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes X 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 Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire.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 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 increase the number of point in time participants in the Living Choices Assisted Living waiver from 800 to 1,000.

The proposed rule is necessary to comply with A.C.A. §20-10-1704.

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.)

July 13, 2012

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

October 15, 2012 (Adopted by Federal Regulation June 15, 2012)

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.

Medical associations, interested providers, and advocacy organizations. Their positions for or against 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 Thomas Carlisle

TELEPHONE NO. 682-0422 FAX NO. 682-2480 EMAIL: thomas.carlisle@arkansas.gov

To comply with Act 1104 of 1995, 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 (LCAL) 1915(c) HCBS Waiver Slot Increase

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes X No _____
2. Does this proposed, amended, or repealed rule affect small businesses?
Yes _____ No X

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year – SFY 2012

Next Fiscal Year – SFY 2013

General Revenue \$ 7,222
Federal Funds \$17,580
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total \$24,802

General Revenue \$1,161,692
Federal Funds \$2,751,046
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total \$3,912,738

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party 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 the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

Next Fiscal Year

Summary for
Living Choices Assisted Living (LCAL) 1915(c) HCBS Waiver Slot Increase

The Living Choices Assisted Living (LCAL) 1915(c) Home and Community Based Services waiver is administered by the Department of Human Services, Division of Medical Services. A.C.A. § 20-10-1704 requires the Living Choices Assisted Living waiver to serve a minimum of one thousand (1,000) persons. To comply with A.C.A § 20-10-1704, the number of point in time participants in the Living Choices Assisted Living waiver will be increased from eight hundred (800) to one thousand (1,000) effective June 15, 2012. However, the number of unduplicated participants cannot exceed 1,300 per waiver year = 12-1 thru 11-30.

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.R02.02
- E. Proposed Effective Date: *(mm/dd/yy)*
06/15/12
Approved Effective Date of Waiver being Amended: 12/01/10

2. Purpose(s) of Amendment

Purpose(s) of the Amendment. Describe the purpose(s) of the amendment:
 DMS requests an increase in the unduplicated number of participants from 800 to 1300 for waiver years 2-5. The limitation on the number of participants served at any point in time is increased to 1000 for waiver years 2-5.

Appendix B-3,f is revised with regard to prioritization criteria for the waiting list process.

Appendix J: Cost Neutrality Demonstration figures are revised to reflect 1300 participants for waiver years 2-5.

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*):

Component of the Approved Waiver	Subsection(s)
<input type="checkbox"/> Waiver Application	
<input type="checkbox"/> Appendix A – Waiver Administration and Operation	
<input checked="" type="checkbox"/> Appendix B – Participant Access and Eligibility	B-3a;B-3b;B-
<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	J-2
<input type="checkbox"/> Appendix J – Cost-Neutrality Demonstration	

- 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)

The following percentage that is less than 100% of the institutional average:

Specify percent: _____

Other:

Specify: _____

Appendix B: Participant Access and Eligibility

B-2: Individual Cost Limit (2 of 2)

Answers provided in Appendix B-2-a indicate that you do not need to complete this section.

b. **Method of Implementation of the Individual Cost Limit.** When an individual cost limit is specified in Item B-2-a, specify the procedures that are followed to determine in advance of waiver entrance that the individual's health and welfare can be assured within the cost limit:

c. **Participant Safeguards.** When the State specifies an individual cost limit in Item B-2-a and there is a change in the participant's condition or circumstances post-entrance to the waiver that requires the provision of services in an amount that exceeds the cost limit in order to assure the participant's health and welfare, the State has established the following safeguards to avoid an adverse impact on the participant (*check each that applies*):

- The participant is referred to another waiver that can accommodate the individual's needs.
- Additional services in excess of the individual cost limit may be authorized.

Specify the procedures for authorizing additional services, including the amount that may be authorized:

Other safeguard(s)

Specify: _____

Appendix B: Participant Access and Eligibility

B-3: Number of Individuals Served (1 of 4)

a. **Unduplicated Number of Participants.** The following table specifies the maximum number of unduplicated participants who are served in each year that the waiver is in effect. The State will submit a waiver amendment to CMS to modify the number of participants specified for any year(s), including when a modification is necessary due to legislative appropriation or another reason. The number of unduplicated participants specified in this table is basis for the cost-neutrality calculations in Appendix J:

Table: B-3-a

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Waiver Year	Unduplicated Number of Participants
Year 1	800
Year 2	1300
Year 3	1300
Year 4	1300
Year 5	1300

b. **Limitation on the Number of Participants Served at Any Point in Time.** Consistent with the unduplicated number of participants specified in Item B-3-a, the State may limit to a lesser number the number of participants who will be served at any point in time during a waiver year. Indicate whether the State limits the number of participants in this way: *(select one)*:

- The State does not limit the number of participants that it serves at any point in time during a waiver year.
- The State limits the number of participants that it serves at any point in time during a waiver year.

The limit that applies to each year of the waiver period is specified in the following table:

Table: B-3-b

Waiver Year	Maximum Number of Participants Served At Any Point During the Year
Year 1	800
Year 2	1000
Year 3	1000
Year 4	1000
Year 5	1000

Appendix B: Participant Access and Eligibility

B-3: Number of Individuals Served (2 of 4)

c. **Reserved Waiver Capacity.** The State may reserve a portion of the participant capacity of the waiver for specified purposes (e.g., provide for the community transition of institutionalized persons or furnish waiver services to individuals experiencing a crisis) subject to CMS review and approval. The State *(select one)*:

- Not applicable. The state does not reserve capacity.

The State reserves capacity for the following purpose(s).

Appendix B: Participant Access and Eligibility

B-3: Number of Individuals Served (3 of 4)

d. **Scheduled Phase-In or Phase-Out.** Within a waiver year, the State may make the number of participants who are served subject to a phase-in or phase-out schedule *(select one)*:

- The waiver is not subject to a phase-in or a phase-out schedule.

The waiver is subject to a phase-in or phase-out schedule that is included in Attachment #1 to Appendix B-3. This schedule constitutes an intra-year limitation on the number of participants who are served in the waiver.

e. **Allocation of Waiver Capacity.**

Select one:

- Waiver capacity is allocated/managed on a statewide basis.

Waiver capacity is allocated to local/regional non-state entities.

Specify: (a) the entities to which waiver capacity is allocated; (b) the methodology that is used to allocate capacity and how often the methodology is reevaluated; and, (c) policies for the reallocation of unused capacity among local/regional non-state entities:

- f. Selection of Entrants to the Waiver. Specify the policies that apply to the selection of individuals for entrance to the waiver:

Entrance onto the Living Choices waiver program is on a first come, first-served basis, once individuals meet all medical and financial eligibility requirements.

However, once the unduplicated number of participants is reached, a waiting list will be implemented for this program and the following process will apply. Each Living Choices application will be accepted and eligibility will be determined. If all waiver slots are filled, the applicant will be notified of his or her eligibility for services; that all service slots are filled; and that the applicant is number ___ in line for an available slot. It is not permissible to deny any eligible person based on the unavailability of a slot in the Living Choices program.

Entry to the waiver will then be prioritized based on the following criteria:

- a) waiver application determination date for persons inadvertently omitted from the waiver waiting list due to administrative error (this may include cases where a denied case was appealed and the denial was reversed or DCO failed to log the application onto the waiting list);
- b) waiver application determination date for persons residing in a nursing facility and being discharged after a 90 day stay; waiver application determination date for persons residing in an approved Level II Assisted Living Facility for the past six months or longer;
- c) waiver application determination date for persons in the custody of DHS Adult Protective Services (APS);
- d) waiver application determination date for all other persons.

Appendix B: Participant Access and Eligibility

B-3: Number of Individuals Served - Attachment #1 (4 of 4)

Answers provided in Appendix B-3-d indicate that you do not need to complete this section.

Appendix B: Participant Access and Eligibility

B-4: Eligibility Groups Served in the Waiver

- a.
1. State Classification. The State is a (select one):
 - §1634 State
 - SSI Criteria State
 - 209(b) State
 2. Miller Trust State.

Indicate whether the State is a Miller Trust State (select one):

 - No
 - Yes

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-2d Estimate of Factor D tables. Col. 2 fields will be populated ONLY when the Estimate of Factor D tables in J-2d have been completed.

Level(s) of Care: Nursing Facility

Col. 1 Year	Col. 2 Factor D	Col. 3 Factor D'	Col. 4 Total: D+D'	Col. 5 Factor G	Col. 6 Factor G'	Col. 7 Total: G+G'	Col. 8 Difference (Col 7 less Column4)
1	16115.99	1775.41	17891.40	34399.08	3113.82	37512.90	19621.50
2	16601.24	1847.49	18448.73	35795.68	3240.24	39035.92	20587.19
3	17099.57	1922.50	19022.07	37248.99	3371.79	40620.78	21598.71
4	17612.13	2000.55	19612.68	38761.30	3508.69	42269.99	22657.31
5	18140.71	2081.77	20222.48	40335.00	3651.14	43986.14	23763.66

Appendix J: Cost Neutrality Demonstration

J-2: Derivation of Estimates (1 of 9)

- a. **Number Of Unduplicated Participants Served.** Enter the total number of unduplicated participants from Item B-3-a who will be served each year that the waiver is in operation. When the waiver serves individuals under more than one level of care, specify the number of unduplicated participants for each level of care:

Table: J-2-a: Unduplicated Participants

Waiver Year	Total Number Unduplicated Number of Participants (from Item B-3-a)	Distribution of Unduplicated Participants by Level of Care (if applicable)
		Level of Care:
		Nursing Facility
Year 1	800	800
Year 2	1300	1300
Year 3	1300	1300
Year 4	1300	1300
Year 5	1300	1300

Appendix J: Cost Neutrality Demonstration

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

- b. **Average Length of Stay.** Describe the basis of the estimate of the average length of stay on the waiver by participants in item J-2-a.

The average length of stay on the waiver is estimated to be 240 days. This average was calculated as days of eligibility from the MMIS segments, using the Medicaid DSS (BusinessObjects). These numbers were determined by reporting the total days of waiver service (based on service eligibility days within the waiver year) for all participants and dividing by the unduplicated count of participants.

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 1

Waiver Service/Component	Unit	# Users	Avg. Units Per User	Avg. Cost/ Unit	Component Cost	Total Cost
Extended Medicaid State Plan Prescription Drugs Total:						257697.00
Extended Medicaid State Plan Prescription Drugs	1 Month	100	9.00	286.33	257697.00	
Living Choices Assisted Living Services Total:						12527918.30
Tier Level 1	1 Day	266	230.00	62.98	3853116.40	
Tier Level 2	1 Day	241	230.00	67.06	3717135.80	
Tier Level 3	1 Day	216	230.00	72.76	3614716.80	
Tier Level 4	1 Day	77	230.00	75.83	1342949.30	
Pharmacist Consultant Services Total:						107180.00
Pharmacist Consultant Services	1 Day	100	230.00	4.66	107180.00	
GRAND TOTAL:						12892795.30
Total Estimated Unduplicated Participants:						900
Factor D (Divide total by number of participants):						16115.99
Average Length of Stay on the Waiver:						240

Appendix J: Cost Neutrality Demonstration

J-2: Derivation of Estimates (6 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 2

Waiver Service/Component	Unit	# Users	Avg. Units Per User	Avg. Cost/ Unit	Component Cost	Total Cost
Extended Medicaid State Plan Prescription Drugs Total:						432647.64
Extended Medicaid State Plan Prescription Drugs	1 Month	163	9.00	294.92	432647.64	
Living Choices Assisted Living Services Total:						20969017.20
Tier Level 1	1 Day	432	230.00	64.87	6445483.20	

Tier Level 2	1 Day	392	230.00	69.08	6228252.80	
Tier Level 3	1 Day	351	230.00	74.94	6049906.20	
Tier Level 4	1 Day	125	230.00	78.10	2245375.00	
Pharmacist Consultant Services Total:						179952.00
Pharmacist Consultant Services	1 Day	163	230.00	4.80	179952.00	
GRAND TOTAL:					21581616.84	
Total Estimated Unduplicated Participants:					1300	
Factor D (Divide total by number of participants):					16601.24	
Average Length of Stay on the Waivers:					240	

Appendix J: Cost Neutrality Demonstration

J-2: Derivation of Estimates (7 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 3

Waiver Service/Component	Unit	# Users	Avg. Units Per User	Avg. Cost/Unit	Component Cost	Total Cost
Extended Medicaid State Plan Prescription Drugs Total:						445630.59
Extended Medicaid State Plan Prescription Drugs	1 Month	163	9.00	303.77	445630.59	
Living Choices Assisted Living Services Total:						21598605.40
Tier Level 1	1 Day	432	230.00	66.82	6639235.20	
Tier Level 2	1 Day	392	230.00	71.15	6414884.00	
Tier Level 3	1 Day	351	230.00	77.19	6231548.70	
Tier Level 4	1 Day	125	230.00	80.45	2312937.50	
Pharmacist Consultant Services Total:						185200.60
Pharmacist Consultant Services	1 Day	163	230.00	4.94	185200.60	
GRAND TOTAL:					2229436.59	
Total Estimated Unduplicated Participants:					1300	
Factor D (Divide total by number of participants):					17099.57	
Average Length of Stay on the Waivers:					240	

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:						458994.96
Extended Medicaid State Plan Prescription Drugs	1 Month	163	9.00	312.88	458994.96	
Living Choices Assisted Living Services Total:						22245947.30
Tier Level 1	1 Day	432	230.00	68.82	6837955.20	
Tier Level 2	1 Day	392	230.00	73.28	6606924.80	
Tier Level 3	1 Day	351	230.00	79.51	6418842.30	
Tier Level 4	1 Day	125	230.00	82.86	2382225.00	
Pharmacist Consultant Services Total:						190824.10
Pharmacist Consultant Services	1 Day	163	230.00	5.09	190824.10	
GRAND TOTAL:						22895766.36
Total Estimated Unduplicated Participants:						1300
Factor D (Divide total by number of participants):						17612.13
Average Length of Stay on the Waiver:						240

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:						472770.09
Extended Medicaid State Plan Prescription Drugs	1 Month	163	9.00	322.27	472770.09	
Living Choices Assisted Living Services Total:						22913699.40
Tier Level 1	1 Day	432	230.00	70.89	7043630.40	

Tier Level 2	1 Day	392	230.00	75.48	6805276.80	
Tier Level 3	1 Day	351	230.00	81.89	6610979.70	
Tier Level 4	1 Day	125	230.00	85.35	2453812.50	
Pharmacist Consultant Services Total:						196447.60
Pharmacist Consultant Services	1 Day	163	230.00	5.24	196447.60	
GRAND TOTAL:					23582917.09	
Total Estimated Unduplicated Participants:					1300	
Factor D (Divide total by number of participants):					18140.71	
Average Length of Stay on the Waivers:					240	