

SECTION II - INDEPENDENTCHOICES

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200.000 INDEPENDENTCHOICES GENERAL INFORMATION

200.100 IndependentChoices

1-1-19

The IndependentChoices program is a state plan service under 1915(j) of the Social Security Act. IndependentChoices is operated by the Division of Provider Services and Quality Assurance (DPSQA) with support from the Division of Aging, Adult, and Behavioral Services (DAABHS). The program offers Medicaid-eligible individuals who are elderly and individuals with disabilities an opportunity to self-direct their personal assistant services.

IndependentChoices seeks to increase the opportunity for consumer direction and control for Medicaid beneficiaries receiving or needing personal assistant services. Personal Assistant services in IndependentChoices include state plan personal care for Medicaid beneficiaries and attendant care services for ARChoices in Homecare (ARChoices) beneficiaries. IndependentChoices offers an allowance and counseling services in place of traditional agency-provided personal assistance services and items related to personal assistance needs.

The participant or designee is the employer and accepts the responsibility in directing the work of their employee to the degree necessary to meet their individual needs for assistance with activities of daily living and instrumental activities of daily living.

If the participant needs someone to hire and supervise the personal assistant, make decisions about care and administer the cash expenditure plan as well as complete all forms, a Representative may be appointed.

IndependentChoices participants or their Representative must be able to assume the responsibilities of becoming an employer by hiring, training, supervising and firing if necessary their directly hired workers. In doing so the program participant accepts the risks, rights and responsibilities of directing their care and having their health care needs met.

The IndependentChoices program respects the employer authority of the participant who chooses to direct his or her care by hiring an employee who will be trained by the employer (the participant or Representative) to provide assistance how, when, and where the employer or Decision-Making Partner determines will best meet the participant's individual needs. The Medicaid beneficiary assumes the risks, rights and responsibilities of having their health care needs met in doing so.

NOTE: The IndependentChoices Program follows the rules and regulations of the State Plan approved Personal Care Program, unless stated otherwise in this manual.

200.200**Eligibility****1-1-19**

To be eligible for IndependentChoices, a participant must:

- A. Be 18 years of age or older
- B. Be eligible for Medicaid, as determined by the DHS Division of County Operations, in a category that covers personal care, or be eligible for Supplemental Security Income (SSI) through the Social Security Administration, or be eligible for ARChoices and determined in need of attendant care services or personal care by the DHS Registered Nurse (RN).
- C. Be receiving personal assistance services or be medically eligible to receive personal assistance services. Personal assistance services include state plan personal care and ARChoices attendant care services.
 1. **Personal Care:** In determining eligibility and level of need for personal care, IndependentChoices follows policy found in the Arkansas Medicaid Personal Care Provider Manual.
 2. **Attendant Care:** The DHS RN must determine and authorize attendant care services based on ARChoices policy.
- D. Not be living in a home or property owned, operated or controlled by a provider of services unless the provider is related by blood or marriage to the participant. This includes single

family homes, group homes, adult family homes, congregate settings, a living situation sponsored or staffed by an agency provider, etc.

- E. Be willing to participate in IndependentChoices and understand the rights, risks and responsibilities of managing his or her own care with an allowance; or, if unable to make decisions independently, have a willing Representative who understands the rights, risks and responsibilities of managing the care of the participant with an allowance.

202.000 Participation Requirements

202.100 Participants

1-1-19

Individuals meeting participant eligibility requirements may enroll in the program. Personal contact will be made by telephone and in person to determine the individual's ability to understand the requirements for directing his or her own personal assistance services. Individuals who are not comfortable with this responsibility or who are determined to be unable to understand this responsibility will be asked to identify a Representative. Individuals who are unable to understand the risks, rights and responsibilities of managing personal assistance services with an allowance and who do not have anyone to serve as a Representative will be discouraged from participating in IndependentChoices.

If the individual has a mental or cognitive limitation that restricts him or her from voicing his or her preferences and self-directing his or her care, the individual will not be able to participate in IndependentChoices without a Representative. Individuals able to voice their preferences and self-direct their care, but having limitations that hinder their ability to keep up with the paperwork involved, such as signing timesheets, etc., may have their Representative assist them. If at any time the individual's health and safety is jeopardized because of the inability to self-direct his or her care and there is no Representative available, the individual will be disenrolled from IndependentChoices.

202.200 Representative(s)

1-1-19

A Representative will be required if the individual interested in participating has a court-appointed legal guardian, other appointed representative, i.e., power of attorney, or an established payee of income. A Representative will also be required for any potential enrollee or participant who is:

- A. Unable to understand his or her own care needs
- B. Unable to make decisions about his or her care
- C. Unable to organize his or her life style and environment by making these choices
- D. Unable to understand how to recruit, hire, train and supervise personal assistants
- E. Unable to understand the impact of his or her decisions and assume responsibility for the results
- F. Noncompliant with project objectives when circumstances indicate a change of competency or ability to self direct

The enrollee, counseling staff, or a representative of the fiscal agency may request a Representative. A Representative may be a legal guardian, other legally appointed Representative, an income payee, family member, or friend. The Representative may not be paid for this service and may not be an employee of the participant. A Representative must be at least 18 years of age and demonstrate a strong personal commitment to the participant and be knowledgeable of the participant's preferences. The individual chosen as Representative must be willing and capable of complying with all program criteria and responsibilities.

202.300

Enrollment

1-1-19

The Division of Aging, Adult, Behavioral Services (DAABHS) is the point of entry for ARChoices waiver participants who choose self-direction via the IndependentChoices program. The counseling entity is the point of entry for Personal Care participants who choose self-direction. The IndependentChoices program is limited based on an approved number through the Medicaid State Plan.

The individual or their designee will first call the Counseling Entity's toll-free number at 866-710-0456. Information about the program is provided to the individual and verification made that the individual is currently enrolled in a Medicaid category that covers personal assistance services. If the individual is currently enrolled in an appropriate Medicaid category and has an assessed physical dependency need for "hands on" assistance with personal care needs, DPSQA will enter the participant's information into a DPSQA database. If the individual is not currently enrolled in an appropriate Medicaid category, the individual will be referred to the DHS County Office for eligibility determination.

The counseling entity's support coordinators and fiscal agent will then work with the individual to complete the enrollment forms either by mail and telephone contact or by a face-to-face meeting. The individual will be provided with a program manual, which explains the individual's responsibilities regarding enrollment and continuing participation. The individual must complete the forms in the Enrollment Packet, which consists of the Participant Responsibilities and Agreement, the Backup Personal Assistant (Caregiver) and the Authorization to Disclose Health Information. The individual must also complete the forms in the Employer Packet, which includes the Limited Power of Attorney, IRS and direct deposit forms related to being a household employer. Each caregiver/employee must complete the forms in the Employee Packet which include the standard tax withholding forms normally completed by an employee, the Employment Eligibility Verification Form (I-9), a Participant/Caregiver Agreement, Employment Application a Caregiver/Employee Agreement, as well as documents pertinent to a criminal background check including maltreatment registry requests and a consent form a release results of a criminal history report from the Arkansas Crime Information Center (Arkansas State Police). Each packet includes step-by-step instructions on how to complete the above forms. Assistance is available to the individual, Representative and the personal assistant to help complete the forms and answer any questions.

As part of the enrollment process, the DHS Independent Assessment contractor will complete an assessment. DHS professional staff or contractor(s) designated by DHS will use the Task and Hour Standards to determine the level of medical necessity. This determination creates the budget for self-directed services. Eligibility for personal care services is based on the same criteria as state plan personal care services. **NOTE:** For ARChoices beneficiaries, the DHS RN will determine the need for personal care and attendant care hours using the Task and Hour Standards, subject to the beneficiary's ARChoices Individual Services Budget. The ARChoices person-centered service plan will reflect that the beneficiary chooses IndependentChoices as the provider.

After the independent assessment, the counseling entity's support coordinators and the fiscal agent will process all of the completed enrollment forms. The assessment is sent to DHS professional staff or contractor(s) designated by DHS for authorization if the beneficiary is not authorized for services through a waiver person-centered service plan for ARChoices. State and IRS tax forms will be retained by the fiscal agent. Disbursement of funds to a beneficiary or their employee will not occur until all required forms are accurately completed and in the possession of the fiscal agent.

For beneficiaries under age 21, all personal care hours must be authorized through the designated DHS contractor.

IndependentChoices follows the rules and regulations found in the Arkansas Medicaid Personal Care Provider Manual in determining and authorizing personal care hours. For beneficiaries

receiving services through the ARChoices waiver program, the signature of the DHS RN is sufficient to authorize personal care services. After the service plan is authorized, the actual day services begin is dependent upon all of the following conditions:

- A. DAABHS issues a seven-day notice to discontinue service to any agency personal care, ARChoices provider currently providing services to the individual.
- B. The date the beneficiary's worker is able to begin providing the necessary care. It can be no earlier than the date DHS professional staff or contractor(s) designated by DHS authorized the service plan for the non-waiver eligible participant, if an agency provider is not providing the personal care services.
- C. The fiscal agent is in possession of all required employer and employee documents.

If the beneficiary is not also a beneficiary of ARChoices services, then continuation of personal assistance services requires reauthorization prior to the end of the current service plan end date.

The counseling entity's support coordinator will contact the participant/employer to develop the cash expenditure plan. Services may not commence prior to the date authorized by DHS professional staff or contractor(s) designated by DHS.

202.400 Current Medicaid Clients Not Receiving Personal Care 1-1-15

Referrals will be accepted from advocacy organizations, provider agencies or other interested parties for clients who are receiving Medicaid and have a need for personal care, but have not accessed the traditional personal care system. All referrals received follow the enrollment procedures as outlined in 202.300.

202.500 Personal Assistance Services Plan 1-1-18

All personal assistant services must be prior authorized in accordance with the procedures in the Personal Care Provider Manual.

202.600 Cash Expenditure Plan 1-1-19

The amount of the Cash Expenditure Plan (CEP) is determined by DHS professional staff or contractor(s) designated by DHS using the Task and Hour Standards to determine the level of medical necessity. For ARChoices beneficiaries, the CEP is subject to the beneficiary's ARChoices Individual Services Budget. The counseling entity's support contractor and the participant/employer or Representative will work together to develop the CEP, which may be updated and revised whenever a need arises. The CEP is intended to be a blueprint of how the monthly allowance may be spent to meet the needs identified in the service plan. The CEP may include ten percent of the amount of the participant's plan as a discretionary expenditure not to exceed \$75.00. The discretionary expenditure is used to purchase personal hygiene items and does not require the participant to maintain receipts for the purchases. For reporting purposes, discretionary purchases will be self-declared by the participant and will be part of the quarterly reporting requirement performed by the fiscal agent.

202.700 Savings Accounts 1-1-13

The fiscal agent may establish and maintain a savings account for individuals who want to save part of the monthly allowance for a more expensive personal assistant service item. The item must be approved by the IndependentChoices counselor and be listed on the Cash Expenditure Plan. These funds may be saved to purchase more expensive personal assistant services items or services. All savings must be spent on appropriate items by the end of the participant's eligibility for IndependentChoices services or returned to the Arkansas Medicaid program within 45 days of disenrollment from IndependentChoices.

202.800 Participant/Caregiver Agreements 1-1-19

The fiscal agent is responsible for obtaining the Worker Information and Qualification Form. The purpose of this form is to state the agreements to which both the employer and the employee(s) are in agreement. The agreement is signed by both the beneficiary or Representative and the employee.

202.900 Back-up Plans 1-1-19

Having a back-up worker is required for participation in IndependentChoices. The counseling entity will assist the participant/employer or Representative as the employer in developing a back-up plan to outline how the participant's needs will be met should the caregiver/employee be absent from the home for any reason. The back-up plan must identify a back-up caregiver. This back-up caregiver will need to enroll as a caregiver for the IndependentChoices program. The back-up plan may also identify an informal back-up caregiver.

203.000 Electronic Signatures 10-8-10

Medicaid will accept electronic signatures provided the electronic signatures comply with Arkansas Code § 25-31-103 et seq.

220.000 COVERED SERVICES**220.100 Cash Allowance 1-1-19**

- A. Purpose of Cash Allowance: The cash allowance allows the IndependentChoices participant to directly purchase personal assistance services and certain other goods and services that lessen the need for Medicaid-funded human assistance while increasing the participant's ability to maintain independence in the community. The cash allowance is primarily used to pay the salary or wages of the participant's employee. The other goods and services for which the cash allowance may be used to purchase are not widely used but in some cases may help further support a beneficiary's independence and need for paid personal assistance.
- B. Permissible Uses of Cash Allowance: An IndependentChoices participant's cash allowance may only be used for the following expenses if consistent with the individual's approved patient-centered service plan and service budget:
 1. Self-directed Personal Assistance Services: Salary or wages of self-hired personal assistant(s) to provide self-directed Personal Assistance Services, in lieu of State Plan personal care services and ARChoices attendant care services. Such Personal Assistance Services are covered for medically necessary human assistance with specific activities of daily living (ADL) tasks, instrumental activities of daily living (IADL) tasks, and health-related tasks to the extent covered under either the State Plan personal care services benefit or the ARChoices attendant care services benefit (if the individual is a ARChoices waiver participant). The ADL, IADL, and health-related tasks supported must also be consistent with the individual's assessed needs.
 2. Backup and Respite Personal Assistance: Purchasing Personal Assistance Services from a licensed home health agency or a licensed personal care agency to supplement or back up self-hired personal assistants or to provide respite care to relieve unpaid caregivers.
 3. Technology for Safety, Communication, and Independence: Purchase or rental of adaptive technology used to assist the beneficiary with completing activities of daily living, communicating with others, and residing safely and independently at home (i.e., augmentative and alternative communication devices, assistive listening or

- reading devices, captioned telephones, other sensory adaptive equipment, visual or audible alerting devices, and personal computer with accessibility technology and accommodations for the individual's physical or sensory limitations).
4. Service Animal: Purchase and maintenance of a service animal. This includes necessary food, veterinarian services, dog license, handling material (collar, harness, and leash), and training of beneficiary in proper care and handling of the service animal. "Service animal" is as defined under federal Americans with Disabilities Act (ADA) regulations at 28 CFR 35.104.
 5. Cost of a complete national fingerprint-based criminal background check on a self-hired personal assistant(s).
 6. Discretionary Cash used to purchase personal hygiene items for the beneficiary.
 7. With the prior written approval by the Division of Provider Services and Quality Assurance (DPSQA) director (or his/her designee):
 - a. Environmental Accessibility Adaptations: The purchase and installation of interior or exterior physical adaptations to the beneficiary's home necessary to ensure their health and safety, decrease the need for paid and unpaid human assistance, and enable the individual to function with greater independence in the community. Such adaptations must provide direct medical or remedial benefit to the beneficiary due to a disability(ies) and functional limitation(s). The ARChoices waiver provides similar coverage for Environmental Accessibility Adaptations. For ARChoices waiver participants, the Environmental Accessibility Adaptations available under IndependentChoices, ARChoices, or the two benefits in combination may not be used to provide Environmental Accessibility Adaptations in excess, duplication, or circumvention of what may be covered and reimbursed through IndependentChoices or ARChoices separately.
 - b. Emergency Goods and Services: On a time-limited basis, the following goods and services in the event of a documented emergency representing a risk to the beneficiary's health and welfare: food and clothing; housing for beneficiary (and their service animal, if any); household utilities (i.e., electricity, water, heating fuel, and telephone); and pest control.
 - c. Other goods and services on a case-by-case basis provided DPSQA determines such purchases (1) will likely increase the participant's independence and reduce the need for Medicaid-funded paid human assistance, (2) can be economically purchased and reliably provided, (3) will not result in funds in the individual's IndependentChoices budget being insufficient to meet the participant's needs, (4) are consistent with the participant's assessed needs, and (5) are consistent with the participant's person-centered service plan and self-directed services budget.

220.200 Personal Assistance (Caregiver) Services

1-1-19

Caregivers/employees will be recruited, interviewed, hired and managed by the participant as the employer or a designated Representative. Family members, other than those with legal responsibility to the beneficiary, may serve as personal assistants. A court appointed legal guardian, spouse, power of attorney or income payee may not serve as a caregiver/employee.

The participant/employer's caregiver/employee performs the services under the agreed upon terms of the Worker Information and Qualification Form and the Employee Responsibilities and Attestation Form.

220.205 Personal Care

1-1-19

The Arkansas Medicaid program covers up to 14.75 hours per week (64 hours per calendar month) of State Plan Personal Care Services for participants aged 21 and older assessed as

needing personal care. The hour limit does not apply to beneficiaries under age 21. Personal care is allowed in the home and outside the home, such as in the workplace.

IndependentChoices follows the policy in the Arkansas Medicaid Personal Care Provider Manual in determining eligibility and the level of assistance of personal care needed by the IndependentChoices participant. Participants needing personal care in the workplace must meet the requirements found at 213.540 of the Arkansas Medicaid Personal Care Provider Manual.

220.210 Personal Care/Hospice Policy Clarification

1-1-19

Medicaid beneficiaries are allowed to receive Medicaid personal care services, in addition to hospice aide services, if the personal care services are unrelated to the terminal condition or the hospice provider is using the personal care services to supplement the hospice aide and attendant care services.

- A. The hospice provider is responsible for assessing the patient's hospice-related needs and developing the hospice plan of care to meet those needs, implementing all interventions described in the plan of care, and developing and maintaining a system of communication and integration to provide for an ongoing sharing of information with other non-hospice healthcare providers furnishing services unrelated to the terminal illness and related conditions. The hospice provider coordinates the hospice aide with the services furnished under the Medicaid personal care program to ensure that patients receive all the services that they require. Coordination occurs through contact with beneficiaries or in home providers.
- B. The hospice aide services are not meant to be a daily service, nor 24-hour daily services, and are not expected to fulfill the caregiver role for the patient. The hospice provider can use the services furnished by the Medicaid personal care program to the extent that the hospice would routinely use the services of a hospice patient's family in implementing a patient's plan of care. The hospice provider is only responsible for the hospice aide and attendant care services necessary for the treatment of the terminal condition.
- C. Medicaid payments for personal care services provided to an individual also receiving hospice services, regardless of the payment source for hospice services, must be supported by documentation in the individual's personal care medical chart or the IndependentChoices Cash Expenditure Plan. Documentation must support the policy described above in this section of the Personal Care provider manual.

NOTE: Based on audit findings, it is imperative that required documentation be recorded by the hospice provider and available in the hospice record. Documentation must substantiate all services provided. It is the hospice provider's responsibility to coordinate care and assure there is no duplication of services. While hospice care and personal care services are not mutually exclusive, documentation must support the inclusion of both services and the corresponding amounts on the care plan. To avoid duplication and to support hospice care in the home that provides the amount of services required to meet the needs of the beneficiary, the amount of personal care services needed beyond the care provided by the hospice agency must meet the criteria detailed in this section. Most often, if personal care services are in place prior to hospice services starting, the amount of personal care services will be reduced to avoid any duplication. If those services are not reduced or discontinued, documentation in the hospice and personal care records must explain the need for both and be supported by the policy in this section.

220.300 Attendant Care Services

1-1-19

In-home services are designed to reduce or prevent inappropriate institutionalization by maintaining, strengthening or restoring an eligible participant's function in his or her own home.

IndependentChoices allows ARChoices participants the choice of self-directed attendant care services rather than receiving attendant care services through a certified agency.

The DHS RN will determine the number of hours of attendant care services needed by the participant, using the Task and Hour Standards as indicated on the ARChoices person-centered service plan. If the participant chooses to self-direct attendant care services, the DHS RN will refer the participant to the IndependentChoices program by sending the person-centered service plan to IndependentChoices, noting that IndependentChoices was selected.

220.400**Exclusions from Coverage and Reimbursement****1-1-19**

- A. Goods and services of any kind are not available (not covered and not reimbursable) under IndependentChoices, including through the use of the cash allowance, when and to the extent any of the following may apply:
1. When available to the participant from another source, including without limitation family members, a member of the participant's household, or other unpaid caregivers; a Medicaid State Plan covered service; the Medicare program (Medicare Part A, Part B, or Part D); the participant's Medicare Advantage plan (including targeted or other supplemental benefits offered by the plan); the participant's Medicare prescription drug plan; and private medical, long-term care, disability, or supplemental insurance coverage. This includes reasonably comparable or substitute goods and services;
 2. When not for the sole benefit of the participant or the maintenance of the participant's service animal;
 3. When provided contrary to any Arkansas scope of practice laws and regulations pertaining to nurses, physicians, skilled therapists, pharmacists, or other licensed professionals;
 4. When goods and services of any kind are acquired or received for re-sale, or otherwise re-sold or gifted, whether for cash, barter or in-kind trade, or other compensation or consideration, and regardless who may benefit; and
 5. When goods and services of any kind are acquired or received to substitute, or otherwise replace, other goods or services sold, traded, or gifted or intended to be sold, traded, or gifted.
- B. In addition, the following types of goods and services are not available (not covered and not reimbursable) under IndependentChoices, including through the use of the cash allowance:
1. Alcoholic beverages of any kind, including distilled spirits, wine, malt beverages, and alcoholic soft drinks;
 2. Tobacco products of any kind;
 3. Medical marijuana;
 4. Any controlled substance listed under 21 CFR Part 1308 or any controlled substance analogue as defined under 21 USC § 802(32)(A);
 5. Prescription drugs, non-prescription (over-the-counter) drugs, vitamins, minerals, or other dietary supplements;
 6. Illegal goods and services of any kind;
 7. Medical, skilled nursing, pharmacy, skilled therapy services, medical social services, or medical technician services of any kind, including without limitation aseptic or sterile procedures; application of dressings; medication administration; injections; observation and assessment of health conditions; insertion, removal, or irrigation of catheters; tube or other enteral feedings; tracheostomy care; oxygen administration; ventilator care; drawing blood; and care and maintenance of any medical equipment;

8. Services within the scopes of practice of licensed cosmetologists, manicurists, electrologists, or aestheticians, except for necessary assistance with personal hygiene and basic grooming;
9. Services provided for or goods used by any person other than the participant, including without limitation a provider, family member, household resident, or neighbor;
10. Companion, socialization, entertainment, or recreational services or activities of any kind, including without limitation game playing, television watching, arts and crafts, hobbies, and other activities pursued for pleasure, relaxation, or fellowship;
11. Cleaning of any spaces of a home or place of residence (including without limitation kitchen, bathroom, living room, dining room, family room, and utility or storage rooms, and the floors, furnishings, and appliances therein) shared by the participant with one or more adults who are, together or separately, physically able to perform housekeeping of these areas; and
12. Habilitation services, including without limitation assistance in acquiring, retaining, or improving self-help, socialization, and/or adaptive skills.

230.000 BENEFIT LIMITS AND DURATION OF SERVICES

230.100 Benefit Limits 1-1-19

Benefits are limited by the amount of the participant's allowance. Each individual participant has a maximum allowance based on his or her individual service plan. The Division of Provider Services and Quality Assurance will authorize the allowance. Payment is made prospectively by the Medicaid fiscal intermediary. The participant's allowance will be issued monthly directly from the Medicaid fiscal intermediary to the IndependentChoices fiscal agent as long as the individual remains Medicaid eligible and the individual is not receiving hospice or nursing facility services. The IndependentChoices fiscal agent will disburse the cash allowance in accordance with the approved cash expenditure plan and timesheets completed by the participant or Representative and signed by the personal attendant twice monthly in equal intervals.

231.000 Loss of Medicaid Eligibility 1-1-19

Participants must remain Medicaid eligible to continue participation in IndependentChoices. Participants will be advised to report any changes in the amount of household income or resources to the DHS county office. The DPSQA will notify the counseling entity, fiscal agent, and DHS RNs informing them of participants who have lost Medicaid eligibility. IndependentChoices staff will then take action to close the IndependentChoices case within the MMIS. Internal edits within the MMIS system prevent the Medicaid fiscal agent from adjudicating a claim for any person not Medicaid eligible on the date(s) of service.

231.100 Loss of Medical Eligibility for Personal Assistant Services 1-1-19

If at any time the IndependentChoices nurse determines that personal assistance services are not necessary for an IndependentChoices participant, the participant's IndependentChoices case will be closed after a 10-day notice and DPSQA staff will terminate the eligibility.

231.200 Temporary Absences from the Home or Workplace 1-1-18

IndependentChoices services are designed to be provided in the home or workplace of the participant. Services may be provided outside the participant's home or workplace if DHS professional staff or contractor(s) designated by DHS authorizes the services during a trip or vacation.

231.300 Hospitalization 1-1-19

An IndependentChoices participant's allowance paid prospectively during hospitalization must be returned to the Medicaid Program. The day of admission and day of discharge are allowable days when the participant receives personal assistance services prior to admission or after discharge from the hospital. The participant is instructed to provide supporting hospital documentation to the counseling entity's support coordinators and the fiscal agent to support receipt of personal assistance services on the day of admission. The fiscal agent will be responsible for calculating and collecting the refund.

231.400 Long-Term Care Placement

1-1-19

If at any time a participant requires placement in a long-term care facility, the DHS RN and IndependentChoices program specialist must be notified immediately by the counseling entity's support coordinators or fiscal agent. The IndependentChoices case will be closed on the date prior to entry into a facility. No monthly allowance is allowed during the time of institutionalization. The Medicaid fiscal intermediary will not disburse the cash allowance if Medicaid is currently making payment for long-term care facility services.

231.500 Voluntary Disenrollment

1-1-19

When the participant voluntarily elects to discontinue participation in IndependentChoices, DHS professional staff will discuss with the participant or their designated Representative the reason for disenrollment and assist the participant in resolving any barriers or problems that may exist in preventing continuation. If the participant wishes to continue with the option to disenroll, DHS staff will assist the participant by informing him or her of traditional agency personal care providers in the participant's area. The DHS staff will assist with the coordination of agency services to the degree requested by the participant. The participant or their designated Representative may also reach out to the Aging and Disability Resource Center (866-801-3435) for assistance in identifying available agency services. If the participant is an ARChoices waiver participant, the DHS RN may be contacted to assist with transitioning waiver clients to appropriate agency services.

IndependentChoices can continue until agency services are established or the participant may elect to use informal supports until agency services are established.

231.600 Involuntary Disenrollment

1-1-19

Participants may be disenrolled for the following reasons:

- A. **Health, Safety and Well-being:** At any time that DHS or the counseling entity determines that the health, safety and well-being of the participant is compromised by continued participation in the IndependentChoices Program, the participant may be returned to the traditional personal care program.
- B. **Change in Condition:** Should the participant's cognitive ability to direct his or her own care diminish to a point where he or she can no longer direct his or her own care and there is no Representative available to direct the care, the IndependentChoices case will be closed. DHS and the counseling entity will assist the participant with a referral to traditional services.
- C. **Misuse of Allowance:** Should a participant or the Representative who is performing all of their payroll functions (and not using the fiscal agent) use the allowance to purchase items unrelated to personal care needs, fail to pay the salary of a caregiver/employee, misrepresent payment of a caregiver/employee's salary, or fail to pay related state and federal payroll taxes, the participant or Representative will receive a warning notice that such exceptions to the conditions of participation are not allowed. The participant will be permitted to remain on the program, but will be assigned to the fiscal agent, who will provide increased oversight coordinated with the counseling entity's support coordinators. The participant or Representative will be notified that further failure to follow the expenditure plan could result in disenrollment. Should an unapproved expenditure or

oversight occur a second time, the participant or Representative will be notified that the IndependentChoices case is being closed and they are being returned to traditional personal assistance services. The Office of Medicaid Inspector General is informed of situations as required. DHS and the counseling entity will assist the participant with transition to traditional services. The preceding rules are also applicable to participants using the fiscal agent.

- D. **Underutilization of Allowance:** The fiscal agent is responsible for monitoring the use of the Medicaid funds received on behalf of the participant. If the participant is underutilizing the allowance and not using it according to the cash expenditure plan, the fiscal agent will inform the counseling entity's support coordinators and the IndependentChoices program specialists through weekly and monthly reports on request. The counseling entity's support coordinators will discuss problems that are occurring with the participant and their support network. The counseling entity's support coordinators will continue to monitor the participant's use of their allowance through both review of reports and personal contact with the participant. If underutilization continues to occur, future discussions will focus on what is in the best interest of the participant in meeting their ADL's even if the best solution is a return to agency services. Unused funds are returned to the Arkansas Medicaid program within 45 days after disenrollment. Funds accrued in the absence of a savings plan will be returned to Medicaid within a twelve-month filing deadline. Involuntary disenrollment may be considered if the participant has been hospitalized for more than 30 days and a discharge date is unknown to the participant or Representative. Participants with approval by DHS professional staff or contractor(s) designated by DHS for an out-of-state visit may be involuntarily disenrolled if their stay extends past the approval period. The participant is required to provide a copy of authorizations by DHS professional staff or contractor(s) designated by DHS to their support coordinator for monitoring purposes.
- E. **Failure to Assume Employer Authority:** Failure to Assume Employer Authority occurs when a participant fails to fulfill the role of employer and does not respond to counseling support. Disenrollment will not occur without guidance and counseling by counseling entity's support coordinator or by the fiscal agent. When this occurs, the counseling entity's support coordinator will coordinate agency personal care services to the degree requested by the participant. The participant may wish to self-advocate from a list provided by the DHS or the counseling entity, ask DHS or the counseling entity to coordinate or may simply wish to receive personal assistance services informally. The participant's wishes will be respected.

Whenever a participant is involuntarily disenrolled, the IndependentChoices program will mail a notice to close the case. The notice will provide at least 10 days but no more than 30 days before IndependentChoices will be discontinued, depending on the situation. During the transition period, DHS or the counseling entity will work with the participant or Representative to provide services to help the individual transition to the most appropriate services available.

250.000 COMPLAINTS/GRIEVANCES AND APPEALS

250.100 Complaint/Grievances

1-1-19

Grievances based on dissatisfaction with any service or level of service provided by the counseling entity's support coordinators, fiscal agent, or DHS staff may be made in writing to the Division of Provider Services and Quality Assurance (DPSQA), IndependentChoices Program, P.O. Box 1437, Slot S530, Little Rock, AR 72203-1437, or by telephone to IndependentChoices at 1-866-801-3435.

250.200 **Reserved**

6-1-25

250.300 **Administrative Reconsideration and Appeals**

6-1-25

If the Department issues any adverse action, the participant may request an Administrative Reconsideration according to Section 160.000 of Section I of the Medicaid Provider Manual. If the Department denies the request for administrative reconsideration or issues any adverse action, the participant may appeal and request a fair hearing in accordance with Sections 160.000, 190.000, and 191.000 of Section I of the Medicaid Provider Manual.

A request for a fair hearing may be filed by a participant or Representative based on actions or circumstances listed below:

- A. Dissatisfaction with action taken by an IndependentChoices Counselor or Fiscal Agent
- B. Involuntary case terminations including but not limited to:
 - 1. Loss of Medicaid eligibility
 - 2. Institutionalization
 - 3. Dissatisfaction with number of personal care hours
 - 4. Health, safety or well being of participant is compromised
 - 5. Duplication of services
 - 6. IndependentChoices case closure based on noncompliance with program requirements
- C. Loss of Medicaid eligibility and closure of the case.

250.400 Continuation of Benefits During an Appeal

6-1-25

When a participant is involuntarily disenrolled from the IndependentChoices program, the participant may be returned to the traditional personal care program. If the participant appeals this decision, the participant will continue to receive Medicaid personal care services through a personal care agency during the time of the appeal.

260.000 REIMBURSEMENT

260.100 Fiscal Support Services

1-1-19

Beneficiaries in IndependentChoices will be offered a monthly allowance in lieu of traditional agency-provided personal assistance services. The intended use of the monthly allowance is to purchase items or other medically necessary personal assistance services that are allowed. All payments are by electronic funds transfer (EFT). Use of the monthly allowance is determined by the beneficiary/representative exercising budget authority outlined on the Cash Expenditure Plan. Requests to purchase nontraditional or unusual items over \$50.00 will require the approval of the Counselor and DAAS. The fiscal agent, or bookkeeper, will receive the beneficiary's cash payment from the Arkansas Medicaid fiscal intermediary. The Medicaid fiscal intermediary will make monthly prospective payments to the fiscal agent based on active IndependentChoices participants as indicated on the MMIS.

Personal assistants will complete their timesheets and obtain the authorizing signature of the beneficiary. The timesheet will be submitted to the fiscal agent bi-weekly.

The fiscal agent will perform all payroll functions. This will include preparation and payment through EFT for assistants and compliance with applicable state and federal employer/employee laws.

260.200 Method of Reimbursement

7-1-20

The Cash Allowance will be quoted as a Monthly Cash Allowance, using thirty (30) as the days in a typical month. However, the amount of the allowance awarded will be based on the actual

number of days in each month. The Monthly Cash Allowance shall be calculated based on a maximum hourly rate of 78.11% of the personal care rate.

260.400 CONTRACTED SERVICES

260.410 DPSQA Responsibilities

1-1-19

IndependentChoices seeks to ensure that providers contracted by DPSQA are competent and experienced and possess the technical ability to perform all required functions. To assure this goal is met DPSQA will:

- Competitively procure a counseling entity and fiscal agent that understand the concepts of independent living and consumer direction and have experience providing counseling or fiscal services to participants
- Clearly identify performance standards, corrective action plans and consequences for deviations from the standards
- Provide a training curriculum that effectively conveys the philosophy of consumer direction and completely defines the performance standards and procedures that must be followed by IndependentChoices providers
- Monitor performance standards to assure that support coordinators and fiscal agents are providing the service and quality required
- Conduct on-site survey reviews of fiscal agents as needed, but no less than annually

260.420 Employer Authority

1-1-19

The IndependentChoices participant is the employer of record, and as such, hires a Personal Assistant who meets these requirements:

- A. Is a US citizen or legal alien with approval to work in the US
- B. Has a valid Social Security number
- C. Signs a Work Agreement with the participant/Representative
- D. Must be able to provide references if requested
- E. Submit to central registry checks and national and state criminal background checks in compliance with Ark. Code Ann. §§ 20-33-213 and 20-38-101 et seq. Criminal background checks shall be repeated at least once every five years. Central registry checks shall include the Child Maltreatment Central Registry; the Adult and Long-Term Care Facility Resident Maltreatment Central Registry; and the Certified Nursing Assistant/Employment Clearance Registry.
- F. Obtains a Health Services card from the Division of Health. if requested
- G. May not be an individual who is considered legally responsible for the client, e.g., spouse or guardian
- H. Must be 18 years of age or older
- I. Must be able to perform the essential job functions required

260.430 Counseling

1-1-19

Counseling is provided to beneficiaries statewide through a self-directed service budget (SDSB) contract. The counseling contractor must adhere to performance based contracting standards

and the Scope of Service established by DPSQA in addition to State and Federal requirements. The counselors representing the contract must have a minimum of three years experience working with the general public with experience in teaching, mentoring or coaching with outcome based expectations. Examples of potential counselors may include but are not limited to active or retired teachers, public servants, health professionals, social workers or non-professionals who have exceptional communication skills and pass the self-directed service budget delivered training offered by the SDSB counseling contractor.

A counseling contractor may not provide SDSB enrollment or monitoring activities to a family member. A family member is defined as an individual currently related to the counselor by virtue of blood, marriage, adoption or a relative of any degree.

Other job related education and/or experience may be substituted for all or part of these basic requirements with approval of DPSQA.

The current contract requires IndependentChoices counseling providers to perform the following:

- A. Enrollment of new beneficiaries
- B. Develop and implement beneficiary directed budget
- C. Coordinate with Financial Management Services (FMS) provider and DMS
- D. Orientation to IndependentChoices and the concept of consumer direction
- E. Skills training on how to recruit, interview, hire, evaluate, manage or dismiss assistants
- F. Consumer-directed counseling support services
- G. Monitor IndependentChoices participants/Representatives
- H. Monitor over and under expenditures of the Cash Expenditure Plan
- I. Provide monthly reports to DPSQA
- J. Use RNs to assess functional need for personal care
- K. Inform DAAS of beneficiaries' readiness to begin self-direction and when disenrollment occurs

260.440 Financial Management Services (FMS)

1-1-19

Financial management services (FMS) will be beneficiary directed and provided by the IndependentChoices fiscal agent. The FMS contractor must adhere to performance based contracting standards and the Scope of Service established by DMS in addition to State and Federal requirements. If FMS is provided by a Certified Public Accountant (CPA), the CPA must be licensed in the State of Arkansas. Subcontracts with FMS direct-service providers must be approved by DPSQA. The entity providing the direct FMS service must have an IRS FEIN (Federal Employer Identification Number) dedicated to fiscal agency services. The entity providing this service must have at least 3 years experience providing fiscal employer agency work to individuals with physical disabilities in Arkansas.

The FMS will provide the following supports and services:

- A. Collect and process timesheets of support workers
- B. Process payroll, withholding, filing and payment of applicable federal, state and local employment-related taxes and insurance
- C. Prepare and disburse IRS Forms W-2 and W-3 annually

- D. Receive and disburse funds for payment of beneficiary -directed services under an agreement with Medicaid and the Medicaid fiscal intermediary
- E. Assure that all expenditures match the written budget
- F. The current contract with the FMS requires the following:
 - 1. Creation of systematic processes, internal controls, policies and procedures to comply with FMS requirements
 - 2. Receiving and reviewing all necessary Federal and State forms required for enrolling the participant to be a "Household Employer," as well as New Hire Packets from the enrolling beneficiary's employee
 - 3. Obtaining individual FEIN number enabling FMS provider to act as a Household Employer Agent
 - 4. Communicating and assisting consumers in the completion of these forms if needed
 - 5. Resending and monitoring receipt of forms as needed
 - 6. Accepting the beneficiary's allowance from Medicaid's fiscal intermediary once monthly
 - 7. Accurately posting allowance income and expenditures and developing and submitting a monthly report on carry-over balance
 - 8. Disbursing the monthly allowance as directed on the Cash Expenditure Plan
 - 9. Withhold and pay State and Federal payroll taxes per regulations
 - 10. Informing the Counseling Agency and DAAS when a beneficiary has 30 days of their allowance (excluding savings directed toward a specific purchase) remaining at the end of the month on the Cash Expenditure Plan
 - 11. Notifying DPSQA and providing a corrective action plan in the event any beneficiary's allowance ever becomes less than zero
 - 12. Making refunds to Arkansas Medicaid within forty five days post disenrollment or sooner if no outstanding obligations are present upon disenrollment
 - 13. Providing monthly management reports to beneficiaries and DPSQA
 - 14. Respond to requests for income verification
 - 15. Providing to DPSQA, by the end of February, an annual report of the previous years' activity. The report will inform by beneficiary, by month, the amount of the allowance received, the wages paid to beneficiary's employee, taxes withheld, and, in descriptive terms, how the allowance was spent.
 - 16. Mail W-2s in January of each year if the employee's wages meet the earnings threshold per IRS Publication 926—Household Employer's Tax Guide