DHS Responses to Public Comments Regarding Arkansas Living Choices Assisted Living Waiver Rate Study Report

Missy Alsip

Comment: Per our observation of the data analysis and their conclusion we do not see adequate reimbursement for registered nurse which is an absolute requirement of DHS.

Response: Thank you for your comment.

The comprehensive cost study included all Medicaid participating assisted living facilities and required registered nurse labor data for inclusion under the indirect care category. This data was utilized in the development of the cost report final rate.

Tara Box, RN, BSN

Countryside Assisted Living

Comment: As a facility owner, I see the direct impact this has caused us over the last 7 years. When the waiver program started in 2009, they had a mission to make it sustainable. They gave rates that included cost of living adjustments because they knew how the program would grow. Somewhere along the way, that plan changed.

In 2014, the rate was $82.86 per day. In 2015, the rate was $88.20 per day. In 2021, the rate was reduced to $67.25 per day. With the cost of living increasing 30% in the last 10 years, this is not reflected in the proposed rates. We need to be at a minimum of $108.00 per day to be able to sustain all the increased costs that we've endured over the last 10 years.

Almost 1 in 4 Arkansans rely on Medicaid services to be able to live in assisted living facilities. They do not have the means to pay otherwise. With the increase in the number of elderly Arkansans with Alzheimer's Disease, this is something that needs to be on the forefront. We need to be planning; we need to be making sure we have enough Medicaid facilities, Medicaid beds, and an appropriate reimbursement rate. Facilities will continue to shut down. This is not an "if" situation, it is a "when" situation. What will then happen to the residents who will be displaced? Most probably won't qualify for a nursing home and do not have the option to live safely alone at home. If they did, they would still be there. This is a huge liability. Assisted living facilities are desperately needed.

One question is why are the available Medicaid beds not being utilized? It is a simple answer. Facilities cannot afford to fill those beds based on the current reimbursement rates.

I can give you statistics all day long, but in the end, the proposed rates are simply not sustainable. Facilities will shut down and residents will be homeless.

Response: Thank you for your comment.

When the Living Choices program began in 2001, DHS included in the daily rate an automatic escalator clause to increase the rate 3% annually. Medicaid rates for providers typically do not include an automatic annual increase. In 2015, CMS challenged the actuarial basis for the rate that was paid at the time. In order to secure renewal of the Living Choices waiver, DHS committed that it would conduct an actuarial rate review to establish a new rate, which was completed in 2018.

On January 1, 2019, assisted living facilities began being reimbursed on a fee-for-service basis according to a new single statewide per diem rate. Prior to this effective date, a four-tier payment model was used for waiver years 1-3 to reimburse facilities for services. Payment tiers were based on a participant's acuity. The rates were $70.89, $75.48, $81.89, and $85.35. The discontinued four-tier payment model was initially developed in 2002 prior to the use of comprehensive assessment instruments, was inconsistent with the newly adopted State assessment system, and potentially fostered unintentional incentives misaligned with the objectives of appropriate access and service use.

The state's actuary calculated a composite average of these four rates, adjusted to reflect the distribution of participants between the four tiers, of $80.33. The payment rate recommended by the actuary was $62.89, which was a 20.7% decrease from the $80.33 composite average rate. Because this was such a significant decrease, the state proposed to phase-in the new rate of $62.89 over the remaining two years of the waiver, to allow providers and participants time to adjust and adapt to the new rate. Beginning with the composite average rate of $80.33, the State planned to reduce the rate by $4.36 every six months: On July 1, 2019, the rate decreased to $75.97; on January 1, 2020, the rate decreased to $71.61; on July 1, 2020, the rate decreased to $67.25; and on January 1, 2021, for the final month of the waiver, the rate was scheduled to decrease to the actuary's recommended rate of $62.89. However, due to the impact of the COVID-19 pandemic, the state halted the rate reductions at $67.25 and prevented the final drop from occurring.

In 2021, DHS conducted an actuarial rate study, in conjunction with renewal of the Living Choices Medicaid waiver. The result of that study was a recommendation that DHS maintain the rate at $67.25 per day. Cost data reported by providers indicated that this rate was sufficient to cover the costs of all but three of the reporting providers, and that this rate was nearly 12% higher than the 75th percentile of per diem costs in CY2020. For this last study, a total of 18 providers submitted cost data. At the time of the study, DHS had no legal authority to compel assisted living providers to submit cost data and instead relied on voluntary cooperation from providers.

Near the end of CY 2021, DHS engaged with stakeholders and legislators and agreed to request a temporarily higher reimbursement rate for LCAL providers. On March 1, 2022, through a mechanism known as an Appendix K amendment to the Living Choices Medicaid Waiver, the state increased, with CMS approval, the LCAL daily per diem to $81.59 per person per day, with an additional five percent differential for rural facilities, which totals $85.67 per person per day. Adoption of these rates into the base waiver was approved by CMS and is effective on March 1, 2024.

In compliance with Act 198 of the 2023 Arkansas general legislative session, all Medicaid participating assisted living facilities are now required to submit cost report data to DHS annually. The review for 2023 is near conclusion with the closing of the public comment period. Recommendations will be made by utilizing comprehensive data in four areas: Direct Care, Indirect Care, Administrative and

General (A&G), and Rent, Utilities, and Food (RUF). The costs captured by the survey will also be evaluated to determine if they should be 100% waiver service costs (completely tied to providing waiver services), 100% non-waiver service related (not related to provider waiver services) or allocated between waiver service and non-waiver service related (partially tied to providing waiver services). Recommendations will reflect current costs as reported by providers.

The current rates of $81.59 per person per day for urban facilities and $85.67 per person per day for rural facilities will remain in place while the outcomes of the rate study are evaluated.

Lenora Riedel

Countryside Assisted Living

Comment: I have been in an administrative position at Countryside Assisted Living for the last 11 years. I have seen the good and bad of the Medicaid Waiver program, to say the least. I have studied the Myers and Stauffer rate study report, and I can see a lot of issues that it doesn't take account of.

The median staffing ratio for 2023 shows that each resident receives only 2.09 hours of care per day. This is the care that we are providing day in and day out and it's disheartening not to see that reflected as such. Just a reminder, the activities of daily living that we must perform to be compliant with Medicaid standards is bathing/skin care, shampoo/shave, toileting, dressing, grooming, mobility/transfer, eating/fluids, meal preparation, housework, laundry, shopping/errands, activities, medication administration, nursing services, and transportation. All of this. And only 2 hours per day? This doesn't even begin to include the electronic charting we have to do for each resident to document all services rendered. I'm not sure if you have been to an ASCU (Alzheimer's specialty care unit) or something similar, but I guarantee that those residents need supervision care 24 hours a day to ensure their safety. This is not reflective of the report.

The state says that the minimum staffing ratio during the day should be 1 employee to 15 residents. This is NOT just for direct care. This ratio is simply not feasible. According to this standard, for my 106 residents, I would only have 8 employees total on duty each day. This includes ALL care (administrative, dietary, housekeeping, maintenance, activities, aides, nurses, laundry, etc.) For my facility, we always have a minimum of 8-9 CNAs and PCAs during the day. We cannot function on anything less than that without compromising the safety of our residents without running the risks of increased falls, medication errors, skin breakdowns from residents not being toileted as frequently as they should be, as well as preventing employee burnout. Caring for the elderly is not an easy job and turnover rates are high.

Our facility is in Madison County, which is considered a rural part of Arkansas. We must compete with salaries of the larger neighboring cities around us and it's hard to do. Our facility is more than 50% Medicaid and with the reimbursement rates as low as they are, it's getting harder and harder to do. We've made cuts anywhere we can to ensure that we stay in operation as long as possible, but honestly, I'm not sure how long we can continue doing so.

With the rise in population, and more importantly Alzheimer's disease in our elderly Arkansans, we must be trying, at minimum, to sustain the program, but in reality, we should be planning for the future of the program. But instead, assisted living facilities are basically being forced to close because it's getting harder to sustain being open. The cost of living has gone up 30% over the last 10 years. So why is this

not reflected in our rates? Instead, we have only received rate cuts the last 5 years. This is absolutely not sustainable.

Response: Thank you for your comment.

When the Living Choices program began in 2001, DHS included in the daily rate an automatic escalator clause to increase the rate 3% annually. Medicaid rates for providers typically do not include an automatic annual increase. In 2015, CMS challenged the actuarial basis for the rate that was paid at the time. In order to secure renewal of the Living Choices waiver, DHS committed that it would conduct an actuarial rate review to establish a new rate, which was completed in 2018.

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The state's actuary calculated a composite average of these four rates, adjusted to reflect the distribution of participants between the four tiers, of $80.33. The payment rate recommended by the actuary was $62.89, which was a 20.7% decrease from the $80.33 composite average rate. Because this was such a significant decrease, the state proposed to phase-in the new rate of $62.89 over the remaining two years of the waiver, to allow providers and participants time to adjust and adapt to the new rate. Beginning with the composite average rate of $80.33, the State planned to reduce the rate by $4.36 every six months: On July 1, 2019, the rate decreased to $75.97; on January 1, 2020, the rate decreased to $71.61; on July 1, 2020, the rate decreased to $67.25; and on January 1, 2021, for the final month of the waiver, the rate was scheduled to decrease to the actuary's recommended rate of $62.89. However, due to the impact of the COVID-19 pandemic, the state halted the rate reductions at $67.25 and prevented the final drop from occurring.

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The current rates of $81.59 per person per day for urban facilities and $85.67 per person per day for rural facilities will remain in place while the outcomes of the rate study are evaluated.

Mike Akin

Grand Manor Independent and Assisted Living

Comment: I co-own Grand Manor Independent and Assisted Living in Monticello. We participated in above subject.

The current daily reimbursement rate of $85.67 would be sufficient for us if we could bill for everyday of the month. When a resident is out of the facility for hospital, rehab, therapy etc. we cannot bill for those days. We still maintain staff just like they were there. Expenses like utilities, property taxes, insurance, maintenance stay the same or even go up.

The rate study has been done and reflects a daily cost of our current reimbursement rate but doesn't compensate for days we can't bill but the cost is still there. In my opinion the most straight forward approach would be to let the facilities bill for the entire month.

Response: Thank you for your comment.

The Department of Human Services will take your comment regarding total month billing under advisement.

Comments presented at Arkansas Legislative Council Hospital and Medicaid Study Subcommittee, February 7, 2024

Access the Arkansas Legislative Council – Hospital and Medicaid Study Subcommittee Hearing that was held on Wednesday, February 7, 2024 at 1:30 PM

Comment: How will any of the 4 recommended rates ensure increased access to assisted living services in Arkansas for Medicaid eligible elderly and disabled individuals, including disadvantaged and minority populations?

Response: Thank you for your comment.

In compliance with Act 198 of the 2023 Arkansas general legislative session, all Medicaid participating assisted living facilities are required to submit cost report data to DHS annually. A review for 2023 is presently underway. Recommendations will be made by utilizing comprehensive data in four areas: Direct Care, Indirect Care, Administrative and General (A&G), and Rent, Utilities, and Food (RUF). The costs captured by the survey will also be evaluated to determine if they should be 100% waiver service costs (completely tied to providing waiver services), 100% non-waiver service related (not related to provider waiver services), or allocated between waiver service and non-waiver service related (partially tied to providing waiver services). Recommendations will reflect current costs as reported by providers. Recommendations will reflect current costs as reported by providers.

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Comment: Many providers are still not currently being reimbursed for costs, is there anything preventing DHS from requesting the rate effective date of 07/01/23 instead of the report recommendation date of 07/01/24?

Response: Thank you for your comment.

Amendments to the Living Choices waiver submitted and approved by CMS will become effective at the beginning of the quarter in which they receive final Federal approval.

Comment: Have LCAL expenditures increased/decreased since 2018? Have any other Arkansas HCBS programs decreased expenditures in the same timeframe? It's notable that CPI has increased 20% since then but provider costs reimbursement has not.

Response: Thank you for your comment.

When the Living Choices program began in 2001, DHS included in the daily rate an automatic escalator clause to increase the rate 3% annually. Medicaid rates for providers typically do not include an automatic annual increase. In 2015, CMS challenged the actuarial basis for the rate that was paid at the time. In order to secure renewal of the Living Choices waiver, DHS committed that it would conduct an actuarial rate review to establish a new rate, which was completed in 2018.

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instruments, was inconsistent with the newly adopted State assessment system, and potentially fostered unintentional incentives misaligned with the objectives of appropriate access and service use.

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Comment: How were the changes in Rent, Utilities, and Food (RUF) allowances determined?

Response: Thank you for your comment.

For RUF, an allocation of total facility costs was calculated using building area square footage data to allow for the portion of building costs associated with administrative functions and resident activities. This resulted in an allocation of 6.28 percent of eligible building costs which came to a weighted average of $1.79.

Scott Kingsborough

The Manor Assisted Living Facility

Comment: We have been kicking this can down the road for over three years now and based on the current recommendations from DHS, we do not feel that the current rate study structure addresses the issue at hand. Arkansas Assisted Living providers are not being reimbursed for their costs and the current rate environment, engineered by DHS, has resulted in a 20% decrease in Assisted Living providers in our state, in direct contrast to what should be happening as our adult populations are growing at a 25% rate since 2010.

The Arkansas Assisted Living Act directs DHS to seek provider participation to serve, at a minimum 1000 Arkansas low- and moderate-income residents with Assisted Living alternatives (and that figure is from legislation 23 years ago). I believe this Act specifically addresses the gap that our seniors have in care alternatives as they age to continue to lead productive lives without the need to enter a nursing home before their care needs dictate that level of care, their last alternative. Stop and consider that last sentence and put yourself in that situation – there is a lot of grace involved in that endeavor.

Based on where we are I offer the following recommendations for your consideration:

- The current study does not include the 5% add on that was in the 2022 study – Reinstate that reimbursement.

  The add-on was not intended to be reflective of any census or vacancy component but an add-on to entice providers to participate in the program by providing more reimbursement.

- Provide a facility specific rate for each facility. Currently there are small providers that don't require administrative staffing like our more robust, urban and larger facilities. By taking an average or median rate approach, you overpay the small facilities and penalize or underpay the larger facilities. Again, resulting in not reimbursing those larger facilities for their costs directly from the report commissioned by DHS.

- Perform an analysis of Urban vs Rural rate structures so that our rural providers can stay in business with a near 100% Medicaid population, accounting for the fact that other payor source populations are not readily available in those counties. We make these recommendations with the sincere hope that our seniors can maintain their current residences, provider participation in the program can be expanded and our waiver program can start on a path of sustainability vs closing or ceasing to exist, which is where the program is headed if some adjustment isn't made to the proposed report.

Response: Thank you for your comment.

The Department of Human Services will take your comments regarding access add on and facility specific rate structures and reimbursements under advisement.

Casey Kleinhenz, Executive Director

Community Development Corp. of Bentonville/Bella Vista, Inc.

Comment: We operate an AL2 in Northwest Arkansas called Osage Terrace Gardens. It provides great service to residents. The cost to provide the service is greater than the payments we receive from

residents and DHS. We cover the operating gap internally because we are a nonprofit and the project is an important part of our mission.

The project operated sustainably until about 2018 when DHS began the changes that devalued the waiver.

It's frustrating to know that a change as small as retroactively paying waiver rates to the date that the resident entered the facility could stabilize our program.

I'd expect even constituents adamantly opposed to entitlement spending understand that compensation should be given for services rendered. Do they realize you are requiring us to give a free ride? Please consider restoring waiver payments retroactive to the date the resident enters the facility.

Response: Thank you for your comment.

The Department of Human Services will take your comment regarding retroactive eligibility under advisement.

E.J. Garland, MBA

APEX Senior Care & Consulting, LLC

Comment: As a provider in the Southeast Delta of Arkansas, it is imperative that our rates reflect the cost of providing care 24 hours a day, seven days a week.

That rate should be around $95-$100.

Response: Thank you for your comment.

In compliance with Act 198 of the 2023 Arkansas general legislative session, all Medicaid participating assisted living facilities are required to submit cost report data to DHS annually. A review for 2023 is presently underway. Recommendations will be made by utilizing comprehensive data in four areas: Direct Care, Indirect Care, Administrative and General (A&G), and Rent, Utilities, and Food (RUF). The costs captured by the survey will also be evaluated to determine if they should be 100% waiver service costs (completely tied to providing waiver services), 100% non-waiver service related (not related to provider waiver services), or allocated between waiver service and non-waiver service related (partially tied to providing waiver services). Recommendations will reflect current costs as reported by providers.

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Ed Holman

Indian Rock Village

Comment: We have been a waiver provider since 2006. In the early days of the program the rates were woefully too low and few facilities even bothered to participate. After long discussions with providers, DHS did implement a rate increase that would actually cover costs and encourage providers to participate in the program. This all changed with a rate freeze in 2015 and the subsequent rate reduction after that which forced many providers out of business. As a result of this, numerous people were forced from their homes and either had to travel long distances to other AL facilities, or to move into the local nursing home.

Our 2022 rate study gave us hope that the program would survive, but the new administration put a hold on this and called for a new study with new assumptions and different criteria. As a result, more providers are backing out, or even worse, are closing permanently. This is terrible for the elderly in Arkansas and casts a black eye over the State's programs and policies. With this week's closing in Forrest City, there is not a single provider east of Little Rock and Cabot, all the way to West Memphis. Going to the NE, with St Bernards in Jonesboro exiting the program, there is a huge desert in that direction too. Pulaski County has fifteen facilities with 1113 beds, yet only 46 are available for waiver residents. This program is failing due to lack of support from DHS and the administration. This is especially sad when other states are supporting and encouraging HCBS services instead of forcing people into a nursing home.

The fix is not difficult. Go to individual facility-based rates to pay for the care for residents and offer an Optional State Supplement to help defray the extra costs of room and board that Social Security does not cover. If these changes are not made, affordable assisted living will quickly cease to exist! I have been involved in senior living and healthcare for 44 years and these actions are forcing me to get out of the business as well.

Response: Thank you for your comment.

The Department of Human Services will take your comments regarding facility specific rate structures and reimbursements under advisement.

Phyllis Bell

Executive Director

Arkansas Residential Assisted Living Association (ARALA)

Comment: Attached are public comments submitted on behalf of the Arkansas Residential Assisted Living Association (ARALA).

ARALA LCAL Public Comments 02.16.24.

According to the Arkansas Assisted Living Act passed in 2001, the Department of Human Services (DHS) was required to seek federal financial participation to **increase** access to home and community-based

services provided in assisted living communities. The law required DHS to seek permission to serve a **minimum** of one thousand persons at a time. The purpose and intent of the law was to provide the least restrictive home-like environments for elderly persons and adults with disabilities **particularly for persons with low to moderate incomes.** According to DHS 2023 data, the assisted living facility recipient count ending SFY23 is 918 and the number of providers had declined to 51. There were 61 in 2018.

Census numbers show Arkansans aged 65 years and over have increased from 419,981 to 528,867 from 2010 to 2020. The number of Arkansans receiving care through the Living Choices Assisted Living Waiver isn't trending with the increased aging population in our state. The number of Arkansans needing assistance with daily living activities continues to increase. According to the most current DHS Arkansas State Plan on Aging:

> *Just over 21.6 percent of Arkansas residents are aged 60 or older. There are more seniors in Region V, which represents central Arkansas, but they are closely followed by northwest Arkansas, Region 1. Of these seniors 75,423 are considered low income, that is 10 percent of Arkansas seniors.*

The DHS assisted living facility II (ALF2) provider map shows locations of all ALF2 providers. When LCAL providers are highlighted, there are identifiable "deserts" in the state where living choices services are not accessible to qualifying Arkansans. This week, a Living Choices Assisted Living (LCAL) provider submitted a closure letter to the agency in an area already in need of LCAL services with concerns of more provider closures across the state.

According to The Arkansas Health Services Permit Commission SFY2024 report there is a significant assisted living bed need across the state. Pulaski County is the state's most populous county and has 15 facilities containing 1,113 beds, yet only approximately 4% are accessible to waiver residents. Craighead County has 2 facilities with 191 and only a few are waiver beds. Benton County has 10 facilities with 652 beds and limited waiver accessibility.

In the 2022 Myers and Stauffer report, a 5% Access add-on was put in place to encourage provider participation, to ensure program sustainability, and improving access for low-income elderly and disabled Arkansans. Communication from the state agency on 01/06/2023 regarding the 2022 report stated, "They (CMS) are still telling us they expect to approve the waiver amendment imminently. We will let you know what we hear." On 01/10/2023 follow-up DHS communication stated, "We have asked for a 1-1-23 effective date, and we expect CMS to grant that." The 2022 recommended rate was not implemented by the state. In the 2023 legislative session, Act 198 was passed mandating all LCAL providers to submit cost data annually. During a DHS meeting on December 7, 2023, providers were told "the methodology has not changed" and "Myers and Stauffer is using the same process". In the 2023 draft report the methodology was changed by not including the Access add-on (page 29). It is worth noting that when all waiver providers submitted cost data for the 2023 report, the recommended reimbursement rate decreased from $96.76 in 2022 to $86.73 in 2023. Comparing the two reports validates the point that a statewide cookie cutter approach leads to decreased access in many areas of the state. This is particularly true for black Arkansans regarding access when reviewing waiver service availability in counties more densely populated with black Arkansans.

The 2023 Myers and Stauffer rate review shows that room and board costs for providers was $40,846,633, or on average $48.29 per day. DHS does assist with $3.44 of this amount via payments for administrative space, but the rest must come from the resident's social security with any remaining

balance coming from the facility itself. Social security payments are restricted to the current maximum rate of $28.60 per day if the resident earns $943 per month. If the resident's Social Security is less than $943/month the facility must absorb this loss. In every case, the facility is losing a minimum of $16.25 per day per resident for their room and board. The $84.17 - $86.73 proposed new waiver rates will require providers to allocate at minimum 19% of their total reimbursement just to cover room and board, leaving them with inadequate revenue to comply with staffing requirements. The 2023 report shows that provider costs in urban areas are substantially more than rural provider costs.

According to data received from DHS, LCAL expenditures have decreased since 2018. It's notable that the Consumer Price Index has increased 20% since then but provider costs reimbursement has not.

In summary, to ensure access and sustainability of the LCAL Waiver for eligible Arkansans, thoughtful consideration should be given to reimbursing providers based on their individualized allowable costs instead of an average or median rate. If a sustainable rate determination process is not implemented encouraging provider participation, access will continue to decrease for Medicaid eligible elderly and disabled individuals, including disadvantaged and minority populations, making the situation worse not better for those who need assistance with daily living activities.

Response: Thank you for your comment.

The Department of Human Services will take your comments regarding access add on and facility specific rate structures and reimbursements under advisement.

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