DHS Responses to Public Comments Regarding Living Choices Assisted Living Home and Community-Based Services Medicaid Waiver and Living Choices Assisted Living Medicaid Provider Manual

**Commenter’s Name:** Michael W. Mitchell for Mitchell, Blackstock, Ivers & Sneddon, PLLC on behalf of The Arkansas Residential Assisted Living Association (ARALA)

**Comment:** The Arkansas Residential Assisted Living Association (ARALA) hereby supplies public comments to the proposed rule changes pertaining the revised payment rate for WYS in accordance with the new cost survey and actuarial analysis conducted by the operating agency which revised the phase-in of the new final rate.

ARALA officially provides its objections to the decrease in payment rate and the phase-in schedule for WYS. The phase-in reduction of the payment rate amounts to an approximate 20% decrease in reimbursement. This decrease is having an adverse effect on access, given that existing facilities have closed, and will have an adverse effect on new facilities being established. Specifically, there will be limited access in minority communities. The decrease represented by the proposed rule is especially troubling in view of the minimum wage increase that is occurring in Arkansas. The payment rate decrease coupled with the limitation on the number of Assisted Living slots are combining to have an adverse effect on the Assisted Living industry and those qualified residents in Arkansas.

**Response:** Comment considered. The proposed rule actually implements an increase in the rate for assisted living services, not a decrease. In 2016, when CMS approved the 5-year renewal of the Living Choices waiver program, it was on the condition that DHS would implement a rate that was based on evidence and actuarial soundness. In the summer of 2018, DHS had an actuary review the costs of providing assisted living services, and that actuary developed a recommended rate. DHS then implemented that rate in a rule that was approved by CMS and by the Arkansas Legislative Council in December 2018. Because the recommended rate was less than the then-current rate, DHS agreed to phase-in the rate reduction over the two years remaining on the waiver. DHS also agreed to conduct another rate study in the first quarter of 2019. DHS did so, and a total of 29 assisted living providers responded to the cost survey conducted by the actuaries. That rate study resulted in a proposed rate that was higher than the rate approved in December 2018. This proposed rule increases the payment amounts in the phase-in schedule to reflect this newer rate. If this rule is not approved, providers will continue to receive the lower rate.

**Commenter’s Name:** David Cook, Public Policy Manager for Alzheimer's Association, Arkansas Chapter

**Comment:** In regards to the proposed reimbursement rate changes proposed in Appendix I: Financial Accountability section A subsection 2:

The Arkansas Chapter of the Alzheimer’s Association is concerned that the proposed rate decreases, though implemented over time, could potentially result in a reduction in the number of assisted living facilities that serve Medicaid enrollees. The proposed reimbursement rates will place additional financial obligations on these facilities which may make it harder for them to both maintain and increase the quality of care, retain qualified health care professionals,
and meet the other requirements and regulatory standards imposed by Arkansas State Law. Low reimbursement rates can be a barrier to the provision of high quality residential care in facilities that serve a high proportion of Medicaid beneficiaries. We are concerned that if providers begin to exit the Medicaid market due to lower reimbursement rates, many of our state’s medically frail, including individuals with Alzheimer’s or other dementias, will be left with limited choices as they age.

We recommend that a subsequent rate study be conducted that includes a larger pool of providers so as to accurately capture the needs of the state so that every Arkansan regardless of income level has an option to age in place as long as medically possible.

Response: Comment considered. The proposed rule actually implements an increase in the rate for assisted living services, not a decrease. In 2016, when CMS approved the 5-year renewal of the Living Choices waiver program, it was on the condition that DHS would implement a rate that was based on evidence and actuarial soundness. In the summer of 2018, DHS had an actuary review the costs of providing assisted living services, and that actuary developed a recommended rate. DHS then implemented that rate in a rule that was approved by CMS and by the Arkansas Legislative Council in December 2018. Because the recommended rate was less than the then-current rate, DHS agreed to phase-in the rate reduction over the two years remaining on the waiver. DHS also agreed to conduct another rate study in the first quarter of 2019. DHS did so, and a total of 29 assisted living providers responded to the cost survey conducted by the actuaries. That rate study resulted in a proposed rate that was higher than the rate approved in December 2018. This proposed rule increases the payment amounts in the phase-in schedule to reflect this newer rate. If this rule is not approved, providers will continue to receive the lower rate.

Comment: In regards to Section 211.100 Section C Subsection 2:
The Current eligibility language is as follows:

The individual has a primary or secondary diagnosis of Alzheimer’s disease or related dementia and is cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or others;

We are concerned that the current language could potentially limit access for individuals who exhibit symptoms of Alzheimer’s or another dementia in the following ways:

- An individual must have a primary or secondary diagnosis of Alzheimer’s disease or related dementia. We would like more clarification as to what the term “secondary diagnosis” refers to.

We are also concerned that upon meeting the threshold of a diagnosis of Alzheimer’s Disease, the individual must also engage in “inappropriate behaviors.” This language may not be indicative of an individual with Alzheimer’s. Many individuals with Alzheimer’s disease or another dementia do not necessarily exhibit behaviors as described in the current waiver language. We recommend the following changes to this subsection.
The individual has a primary or secondary diagnosis of Alzheimer’s disease or related
dementia and is cognitively impaired so as to require substantial supervision from another
individual because he or she engages in inappropriate behaviors that pose serious health or
safety hazards to himself or others; or

This amendment language would not have a significant fiscal impact on the state’s
Medicaid budget.

Thank you for your consideration of our comments. Please do not hesitate to contact me
if you have any questions.

Response: Comment considered. This proposed rule only addresses the payment rate for the Living
Choices Assisted Living Medicaid waiver and technical clean up language. Revising the eligibility
criteria for the waiver is outside the scope of the proposed rule changes. However, DHS will
consider these comments for future changes to the waiver.