

## ARChoices—Fighting the 4,000 Cuts

Legal Aid of Arkansas: (800) 967-9224

### **BACKGROUND**

- ARChoices is a Medicaid “waiver” program, which means the federal government removes some usual requirements to help states serve specific groups with particular needs.
- ARChoices combined two previous waiver programs—Elder Choices and Alternatives for Adults with Physical Disabilities (AAPD). There were some minor differences in services, but the major difference was just the population served. Elder Choices served people 65 and over, regardless of disability. AAPD served people under 65 with a disability.
- ARChoices is not the same as the “DD waiver.” ARChoices is handled by Division of Aging and Adult Services (DAAS).
- ARChoices has a cap of 8,176 people now, which will rise to 8,608 in 2020. If more people apply, waiting lists are possible.
- The stated purpose of the programs is to avoid institutionalization by providing “Home and Community-Based Services” (HCBS).
- **DHS estimates that waiver-specific services cost \$8,504.21 on average. Nursing home-specific services cost \$47,580 on average (if the waiver were not granted).**
- DHS estimates the total average cost of serving an ARChoices beneficiary is \$18,170.21. The total average cost of serving a person in a nursing facility or other institution is \$50,100.00.

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### **FUNDING**

- For every dollar spent on ARChoices, \$0.70 comes from the federal government and \$0.30 comes from the state.
- Does NOT come from the same place as Medicaid Expansion (Arkansas Works). Before 2017, the federal government assumed the full cost for Medicaid Expansion. Right now, for every dollar spent on Expansion, \$0.95 comes from the federal government and \$0.05 comes from the state. Starting in 2020, for every dollar spent on Expansion, \$0.90 will come from the federal government and \$0.10 from the state.
- Current data suggests that Medicaid Expansion does NOT result in cuts for waiver services:
  - 20 out of 30 states that expanded Medicaid experienced reductions in waiver waitlists; only 7 out of 21 states that did not expand Medicaid experienced waitlist reductions.
  - The 10 expansion states that saw growth in waiver waitlists experienced less growth in waiver waitlists than the 14 non-expansion states whose waitlists grew.
  - The rate of growth of waiver waitlists in non-expansion states was 4 times the rate of growth in waiver waitlists in expansion states.
- Of all the Medicaid money in Arkansas spent on long-term care, 65% goes to nursing home care and only 35% goes to community-based care. Nat'l average is 50%.

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### **ASSESSMENT/HOURS**

- Up until 2013, a DHS nurse would go to an applicant's house, ask a limited number of questions (30 questions), and determine the number of hours to give someone.
- Elder Choices technically had a maximum of 52 hours of care per week (really 48). AAPD had a maximum of 56 hours of care per week.
- Starting in 2013, DHS started using the "ArPath," a 280+ question assessment tool. The nurse would ask all the questions and then determine the number of hours to give someone.
- Starting in 2016, the nurse would still ask the 280+ questions but NO LONGER could determine the number of hours. Instead, the number of hours is determined by a set of algorithms called RUGs ("Resource Utilization Groups").
- RUGs sorts the person into 1 of 23 different groups:

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<b>RUG</b>	<b>Ontario F+I CMI</b>	<b>RUG-specific base allocation per day</b>	<b>RUG-specific base allocation per week</b>
<b>RB</b>	2.56	5	36
<b>RA2</b>	1.58	3	22
<b>RA1</b>	0.89	2	13
<b>SE3</b>	5.75	12	81
<b>SE2</b>	3.28	7	46
<b>SE1</b>	2.50	5	35
<b>SSB</b>	2.63	5	37
<b>SSA</b>	1.83	4	26
<b>CC</b>	2.33	5	33
<b>CB</b>	1.54	3	22
<b>CA2</b>	1.12	2	16
<b>CA1</b>	0.58	1	8
<b>IB</b>	1.89	4	27
<b>IA2</b>	1.33	3	19
<b>IA1</b>	0.62	1	9
<b>BB</b>	1.93	4	27
<b>BA2</b>	1.02	2	14
<b>BA1</b>	0.49	1	7
<b>PD</b>	2.24	5	32
<b>PC</b>	1.61	3	23
<b>PB</b>	1.33	3	19
<b>PA2</b>	0.86	2	12
<b>PA1</b>	0.45	1	6

- Each group has a set number of hours attached to it. DHS determined these numbers of hours and has admitted in court documents that it lost the data on which it based the hours.

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- Under ARChoices, the maximum amount of care hours technically is 81. **However, as of September 2016, nobody had qualified for 81 hours per week.**
- As of November 2016, only 158 people on the program were placed in the group receiving 46 hours per week.
- DHS stated in court that it does not regularly keep statistics on the number of people cut under the RUGs. DHS conducted a review in May 2016 and found that 47% of program beneficiaries had been cut. This is approximately 4,000 people.
- DHS has not provided any data on the size of the cuts or the increases. So, it **could be** that the people who were increased got an average increase of only 2 hours per week while the people who were reduced got an average cut of 6 hours per week (these numbers are just hypothetical).
- DHS has not provided any data on who has been particularly helped or hurt under the RUGs system.
- Around 100 people have come to Legal Aid in the last year. Of those, most had been receiving 40 hours or more under the old system and had been cut by 20 to 60%. Based on this, it seems the people who are most severely limited have been hurt the worst.

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## ALGORITHM DETAILS

```
IF ( ( (iL1 = 3 OR iL1 = 4) AND (iN2n = 2 OR iN2n = 3) )
OR ( (iK3 = 6 OR (iK3=5 AND x_intake = 1)) AND
      (iJ2j = 2 OR iJ2j = 3 OR iJ2j = 4) )
OR ( (iL4 = 1 OR iL5 = 1) AND (iN2k = 2 OR iN2k = 3) )
OR (x_cpal=1 AND x_adlsum >= 10)
OR ( (iJ2q = 2 OR iJ2q = 3 OR iJ2q = 4)
      AND
      ( (iJ2n = 2 OR iJ2n = 3 OR iJ2n = 4)
        OR
        iK2a = 1
        OR
        (iK3 = 6 OR (iK3=5 AND x_intake = 1))
        OR
        (iI1q = 1 OR iI1q = 2 OR iI1q = 3 OR iK2c=1) ) ) )
OR ( (iI1f = 1 OR iI1f = 2 OR iI1f = 3) AND x_adlsum >= 10)
OR ( (iI1i = 1 OR iI1i = 2 OR iI1i = 3) AND x_adlsum >= 10)
OR ( iN2f = 2 OR iN2f = 3) )
THEN
      x_spec = 1;
```

- The algorithm is 16 pages like this.
- DAAS Director Craig Cloud and high-ranking members of his staff have testified that they do not understand the algorithm, cannot explain the algorithm, and are not aware of anyone at DHS who can explain the algorithm.
- Nurses don't know how it works.
- DHS contracts with a third-party software vendor to implement the algorithm. DHS's software and the founder of the RUGs system came up with different results for the same client last year in a federal court trial.

### **What Beneficiaries Need to Know for Assessment**

- Give a realistic sense of what you can do.
- Ask questions if you do not understand what a word means or what the nurse is asking you. Also, nurse will watch you.
- Ask what the possible scores are:

GENERALLY: (0) independent; (1) setup; (2) supervision; (3) limited assistance; (4) extensive assistance; (5) maximal assistance; (6) total dependence

- Try to get recent medical records (from the last year) before the assessment. Ask for extra time in order to get the records.
- Ask for disability-related accommodations or translation (sign language, interpreter).
- Ask for someone to be present with you (family or caregiver).
- Don't give in to pressure to be rushed.
- Keep track of falls and trips to the hospital. Write the date and time and what happened.
- Before the assessment, write down things that are important to say that you might forget.

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- Take a look at last year's assessment if you have it.
- Factors (**there are more than these that are important**):

**Devices:** IV feeding or meds, ventilator, respirator, tracheostomy

### **Pressure Sores and Skin Problems**

**Diagnosis:** MS, cerebral palsy, UTI, pneumonia, quadriplegia/hemiplegia, diabetes

**Treatments:** Speech/physical/occupational therapy, respirator treatment, dialysis, radiation

**Other:** diarrhea, weight loss, fever, vomiting  
dehydration

**Bed Mobility:** up and down, turning, positions body

**Toilet Use:** cleaning, changing pad, catheter, clothes

**Transfer Toilet:** getting on and off toilet/commode

**Eating:** getting food/drink into mouth (NOT meal prep)



### **After the Assessment**

- DHS will complete Plan of Care with the hours assigned. DHS will send a “Notice of Action” with the Plan of Care and an 18-page report called “Comprehensive Assessment Report.”
- **CALL LEGAL AID: (800) 967-9224.** Intake is open Monday to Thursday from 9 to 11 a.m. and 1 to 3 p.m. and on Tuesday night from 5:15 to 7:15 p.m.
- File an appeal within 30 days. **IF YOU APPEAL WITHIN 10 DAYS OF GETTING THE NOTICE, YOUR SERVICES CONTINUE AT THE SAME LEVEL UNTIL THE HEARING (example attached).**
  - If you lose at the hearing, you will owe DHS for the cost of the services you received. DHS **cannot** take your Social Security or Medicaid if you do not pay it, so you can pay what your budget allows.
- If your services get reduced even though you requested a hearing, contact the DHS nurse who did the assessment. Your caregiver or care agency can get back pay.
- You will get a letter with the hearing date. If you need a different date, request it as soon as possible and explain why.
- Hearing rights: (1) review the full file; (2) subpoena witnesses; (3) submit evidence that supports you (doctor statements, medical records, etc.); (4) in-person if you want it; (5) reasonable accommodations for your disability.

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### **At the Hearing**

- The hearing officer acts like a judge. Listen carefully.
- Before the hearing, send in by mail, fax, or email all the written evidence you want to use that DHS does not have.
- If you did not get the Notice of Action or the 18-page report or if the Notice does not explain why you got cut in a way that you can understand, **start the hearing by stating**, “Your Honor, I move to dismiss the reduction of my hours because I did not get sufficient notice. DHS did not explain to me why my hours are reduced, and I do not know what I must prove in order to keep my hours at their prior level.”
- Say “I object” if DHS is trying to use information that it did not give you before the hearing
- Show that the hours you would receive are not enough to meet your care needs. Show what kinds of things you would go without if your hours are cut (bathing, cleaning, laundry, appointments, meals, getting outside, etc.)
- Review the 18-page report that DHS sent. Sometimes, the nurse records answers wrong, puts you as more capable than you are, or rushes the assessment. If these are true, prove it with your testimony, other witnesses, and doctor statements.
- The hearing officer will send you a written decision.

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- If you win, your hours will stay at the pre-reduction amount. If you did not choose to keep your hours at the same level while waiting for your hearing, your caregiver can get back pay.
- If you lose, you have 30 days from the date you receive the decision to appeal to Circuit Court. It costs \$165 and requires some special writing.

### **Final Thoughts**

- Use fax or certified mail when you can (proof of sending)
- If you went into or are likely to go into a nursing home because of the cuts, **CALL LEGAL AID IMMEDIATELY.**
- If you are making up for the reduced hours with extra family help, privately paying someone, or volunteer hours from a friend or caregiver, **MAKE A LOG OF WHAT THEY DO FOR YOU, HOW LONG IT TAKES, AND WHAT KINDS OF THINGS YOU ARE NOT ABLE TO GET DONE.**
- Legal Aid won a federal lawsuit against DHS in November 2016. The lawsuit fixes some issues, but not everything. Legal Aid offered to negotiate our clients' remaining problems three separate times, but DHS refused.
- Legal Aid sued in state court in January 2017. Legal Aid won the initial stage of the 2017 lawsuit. DHS appealed. Due to the appeal, trial has been delayed from July 2017 until, most likely, early 2018.

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## EXAMPLE APPEAL LETTER

June 7, 2017

Office of Appeals and Hearings  
P.O. Box 1437, Slot N401  
Little Rock, AR 72203-1437

SENT VIA FAX to (501) 682-6605

PAGES (including this cover): 2

Re: Notice of Appeal, Request for Hearing File  
Request for Continuation of Benefits

My name is \_\_\_\_\_. Please accept this as notice that I am appealing the reduction in my ARChoices Attendant Care hours. This appeal request is filed within 10 days of receipt of the notice of action, and I **specifically request that my benefits be continued at the pre-reduction level pending the outcome of the appeal**, as required by 42 C.F.R. § 431.230. [You can delete this part if you don't want to have your benefits continued while you wait for the hearing]

Please send me the full hearing file as soon as possible, including all ArPath assessments and plans of care for 2015, 2016, and 2017.

If you have any questions, please contact me at (XXX)XXX-XXXX. Thank you for your prompt attention to this matter.

Sincerely,

\_\_\_\_\_  
[Your Name]

[Your Address]