



# ADMINISTRATIVE POLICY STATEMENT

## Arkansas PASSE

Policy Name & Number	Date Effective
Relatives or Guardians as Paid Providers-AR PASSE-AD-1225	11/01/2023
Policy Type	
<b>ADMINISTRATIVE</b>	

Administrative Policy Statement prepared by CareSource and its affiliates are derived from literature based on and supported by clinical guidelines, nationally recognized utilization and technology assessment guidelines, other medical management industry standards, and published MCO clinical policy guidelines. Medically necessary services include, but are not limited to, those health care services or supplies that are proper and necessary for the diagnosis or treatment of disease, illness, or injury and without which the patient can be expected to suffer prolonged, increased or new morbidity, impairment of function, dysfunction of a body organ or part, or significant pain and discomfort. These services meet the standards of good medical practice in the local area, are the lowest cost alternative, and are not provided mainly for the convenience of the member or provider. Medically necessary services also include those services defined in any Evidence of Coverage documents, Medical Policy Statements, Provider Manuals, Member Handbooks, and/or other policies and procedures.

Administrative Policy Statements prepared by CareSource and its affiliates do not ensure an authorization or payment of services. Please refer to the plan contract (often referred to as the Evidence of Coverage) for the service(s) referenced in the Administrative Policy Statement. If there is a conflict between the Administrative Policy Statement and the plan contract (i.e., Evidence of Coverage), then the plan contract (i.e., Evidence of Coverage) will be the controlling document used to make the determination.

According to the rules of Mental Health Parity Addiction Equity Act (MHPAEA), coverage for the diagnosis and treatment of a behavioral health disorder will not be subject to any limitations that are less favorable than the limitations that apply to medical conditions as covered under this policy.

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## A. Subject

### **Relatives or Guardians as Paid Providers**

## B. Background

Medicaid provides health coverage to millions of Americans, including eligible low-income adults, children, pregnant women, elderly adults, and people with disabilities. Medicaid is administered by states according to federal requirements and is funded jointly by states and the federal government. Individual state programs govern staff requirements and member eligibility for reimbursement.

Many factors impact the provision of services to members with complex care needs who receive long term services and supports (LTSS) or home and community-based services (HCBS), particularly the COVID-19 pandemic, which strained congregate care facilities and led to home-based care workforce shortages. States have expanded consumer direction programs over the past decades to allow members an alternative to institutionalization and payment to relatives and family members for providing care. Some of these program options assist in promoting equity and access to services in underserved communities and addressing growing work force shortages.

Although Medicaid generally prohibits the hiring of legally responsible relatives as providers, states have discretion to allow payment to relatives for personal care services, including legally responsible relatives, spouses, and parents of minor children. State policies on the provision of HCBS services vary across states and by program populations served. Although HCBS services often allow relative providers (i.e., self-direction option), state plan personal care services prohibit payment for services by a family member.

## C. Definitions

- **AR Choices Services** - Home and community-based outpatient services to prevent nursing home placement among ages 21 through 64 with a physical disability, those requiring an intermediate level of care in a nursing facility, or 65 years of age or older requiring an intermediate level of care in a nursing facility.
- **Caregiver** - An individual who has responsibility for the protection, in-home care, or custody of a beneficiary as a result of assuming the responsibility by contract.
- **Direct Support Staff or Professional** - An individual paid to provide direct care services to a member.
- **Independent Choices** - Personal assistance services provided by caregivers who are recruited, interviewed, hired, and managed by the beneficiary or a designated representative.
- **Legally Responsible Person** - A person with legal obligation under law to supervise and make decisions on behalf of a member.
  - **Parent** - Natural or adoptive, legal guardian, or person otherwise responsible for care of a minor (e.g., foster parent, relative appointed by court).

- **Individual** - Legal guardian of a vulnerable adult person granted by court order to “provide care, comfort, and maintenance of the disabled person” and other duties related to the provision of daily needs.
- **Living Choices Assisted Living** - HCBS waiver program for persons aged 21 and older with physical disabilities and eligible for nursing home admission at the intermediate level of care to live in his/her own home or in certain types of congregate settings.
- **Person Centered Service Plan (PCSP)** - The total plan of care made in accordance with the planning process as described in the 1915(c) waiver requirements for Home and Community-Based Services (42 CFR § 441.301(c)) and 1915(i) State Plan Services (42 CFR § 441.725).
- **Personal Care Services** - Medically necessary services authorized by Department of Human Services (DHS) professional staff or designated contractor(s) and individually designed to assist beneficiaries with physical dependency needs.
- **Private Duty Nursing** - Medically necessary medical care services provided to a member by a registered nurse or licensed practical nurse under the direction of a physician in a place of residence, a Division of Developmental Disabilities Services (DDS) community provider facility, or a public school.
- **Professional Guardian (Conservator)** - An individual, agency, organization, or business entity providing guardianship or conservatorship services for a fee.
- **Spouse** - An individual legally married under applicable law to a member.

#### D. Policy

##### I. General Provisions

- A. All providers, including relatives, are required to meet all Arkansas provider certification requirements, including training requirements and all Arkansas Medicaid enrollment requirements.
- B. Services provided must be according to the member’s PCSP and any established benefit limits for that specific service.
- C. The provider on file with Arkansas Medicaid is the biller of services. The family member is an employee of that provider and must adhere to rules for billing services according to provider policies and procedures and Arkansas Medicaid certification and enrollment requirements.
- D. Relatives and legally responsible individuals of members cannot provide more than 40 hours per week (7-day period) of support/care. No more than 40 hours per week will be paid to one or both parents and/or legal guardians of minors regardless of the following:
  - 1. number of children in the household
  - 2. number of households in which the member(s) receive supportive living and/or personal care services
  - 3. number of parents in the household(s)
  - 4. actual number of hours of care each parent provides
- E. Individuals providing services will not be paid for more than 40 hours per week despite providing personal assistance as both a paid parent/guardian of a minor member and a paid spouse.

The ADMINISTRATIVE Policy Statement detailed above has received due consideration as defined in the ADMINISTRATIVE Policy Statement Policy and is approved.

- F. It is recommended that guardians use respite at least monthly.
  - G. Providers employing relatives and legally responsible individuals must have a staffing back up plan in place for the member.
  - H. Relatives and legally responsible individuals should not provide services for a member unless a different individual is the member's designated representative.
  - I. Guardians (conservators) cannot be paid to provide professional waiver services.
- II. Programs with specific provisions regarding family members employed by servicing providers include the following:
- A. ARChoices
    - 1. All ARChoices services may be provided by a beneficiary's relative, unless stated otherwise in the ARChoices Provider Manual. A relative or family member is any person related to the beneficiary by virtue of blood, marriage, or adoption.
    - 2. Travel time is not reimbursable if any other adult person accompanying (or driving) the participant is a family member and is reasonably able to assist the participant in transit if needed.
    - 3. Respite care is provided for unpaid caregivers. An individual living in the home with the member is not allowed to serve as a respite services provider for that member.
    - 4. Reimbursement is not permitted for ARChoices services, including respite care, for the following:
      - a. beneficiary spouse
      - b. legal guardian of the member
      - c. attorney-in-fact granted authority to direct the member's care
  - B. IndependentChoices
    - 1. 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.
    - 2. 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 years and older assessed as needing personal care. The hour limit does not apply to members under age 21.
    - 3. IndependentChoices follows the policy in the Arkansas Medicaid Personal Care Provider Manual in determining eligibility and level of assistance of personal care the ARChoices Provider Manual regarding attendant care services needed by the IndependentChoices member.
    - 4. A member's representative, who is at least 18 years of age, 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 member.
  - C. Living Choices Assisted Living

Living Choices attendant care services may only be provided by a certified personal care aide who is not a legally responsible family member or legally responsible caregiver (i.e., a spouse, a legal guardian of the member, or an attorney-in-fact authorized to direct care for the member).

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- D. Personal Care Services (PCS)
  - 1. PCS are provided by a personal care aide primarily based on the assessed physical dependency need for "hands-on" services specific to the member's activities of daily living (ADL).
  - 2. PCS are furnished to beneficiaries who are not inpatients or residents of a hospital, nursing facility, Level II assisted living facility, intermediate care facility for persons with intellectual disabilities, or institution for mental disease. Services are provided in the beneficiary's home and, at the State's option, in another location by an individual qualified to provide such services who is not a member of the beneficiary's family, defined as:
    - a. a beneficiary spouse
    - b. a minor's parent, stepparent, foster parent, or anyone acting as a minor's parent
    - c. legal guardian of the beneficiary
    - d. attorney-in-fact granted authority to direct the beneficiary's care
  - 3. Travel time is not reimbursable if any other adult person accompanying (or driving) the beneficiary is a family member and is reasonably able to assist the beneficiary in transit if needed.
- E. Private Duty Nursing Services  
 The following family members, or persons acting as family members, cannot provide care to a beneficiary through the Arkansas Medicaid Private Duty Nursing (PDN) program:
  - 1. a spouse
  - 2. a minor's parent or anyone acting as a minor's parent
  - 3. a minor's guardian or anyone acting as a minor's guardian
  - 4. an adult's guardian or anyone acting as an adult's guardian
  - 5. anyone, regardless of relationship, who resides with the beneficiary

E. Conditions of Coverage  
 NA

F. Related Policies/Rules  
 Medical Necessity Determinations  
 Nonmedical Community Supports and Services  
 Person Centered Service Plans

G. Review/Revision History

DATE		ACTION
<b>Date Issued</b>	8/31/2022	New policy.
<b>Date Revised</b>	07/19/2023	Annual review. Changed name from <i>Provider Billing for Services by a Family Member</i> to <i>Relatives or Guardians as Paid Providers</i> . Added D. I. D-I. Added PCSP as Related Policy. Approved at Committee.
<b>Date Effective</b>	11/01/2023	
<b>Date Archived</b>		

The ADMINISTRATIVE Policy Statement detailed above has received due consideration as defined in the ADMINISTRATIVE Policy Statement Policy and is approved.

## H. References

1. *ARChoices In Home Care Home and Community-Based 2176 Waiver Provider Manual, Sections I, II and IV*. Arkansas Department of Human Services. Accessed July 13, 2023. [www.humanservices.ar.gov](http://www.humanservices.ar.gov)
2. Centers for Medicaid & Medicare Services (CMS). State Medicaid plans and waivers. Accessed July 13, 2023. [www.cms.gov](http://www.cms.gov)
3. Community and Employment Support Waiver, AR.0188.R06.01. Accessed July 13, 2023. [www.humanservices.arkansas.gov](http://www.humanservices.arkansas.gov)
4. Health and Human Services. Home & Community Based Services Authorities. Accessed July 13, 2023. [www.medicaid.gov](http://www.medicaid.gov)
5. *Independent Choices Provider Manual, Section II*. Arkansas Department of Human Services. Accessed July 13, 2023. [www.humanservices.ar.gov](http://www.humanservices.ar.gov)
6. *Living Choices Assisted Living Provider Manual, Section II*. Arkansas Department of Human Services. Accessed July 13, 2023. [www.humanservices.ar.gov](http://www.humanservices.ar.gov)
7. Person-Centered Service Plan. 42 C.F.R. § 441.540 (2022).
8. *Personal Care Provider Manual, Section II*. Arkansas Department of Human Services. Accessed July 13, 2023. [www.humanservices.ar.gov](http://www.humanservices.ar.gov)
9. *Private Duty Nursing Provider Manual, Section II*. Arkansas Department of Human Services. Accessed July 13, 2023. [www.humanservices.ar.gov](http://www.humanservices.ar.gov)