

3007.0.0 OPTIONS COUNSELING

3007.0.1 Authority

Ark. Code Ann. § 20-10-2101 through 2107.

3007.1.0 Purpose: This rule implements long-term care Options Counseling. The Options Counseling Program provides information regarding long-term care options to an individual (or the individual's representative) who:

- A. Seeks an Options Counseling consultation;
- B. Seeks admission to a long term care facility, regardless of payment source; or
- C. Resides in a long-term care facility and applies for Medicaid reimbursement.

3007.2.0 Long-Term Care Options Counseling Consultation

- A. Each long-term care Options Counseling consultation shall include information about:
 - 1. Factors to consider when arranging for care, including methods for maximizing independence and self-reliance;
 - 2. Available options;
 - 3. Costs and potential payment sources;
- B. Each long-term care Options Counseling consultation may include an assessment of the individual's functional capabilities.

3007.3.0 Offering Long-Term Care Options Counseling Consultations

- A. Nursing Facility Responsibilities
 - 1. Nursing Facility Admissions
 - (a) Nursing facilities must inform new admissions of the opportunity for a long-term care Options Counseling consultation at admission regardless of the admittee's payment source.
 - (b) When admitting a resident the nursing facility must:
 - (1) Complete and obtain the signature of each resident or the resident's representative on a separate Form DHS-9571.
 - (2) Transmit the form to the Arkansas Department of Human Services (DHS), Division of Medical Services, Office of

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Long-Term Care (OLTC) via FAX no later than 5:00 p.m. of the next business day following the admission;

- (3) Maintain the original DHS-9571 in the resident's file at the nursing facility until completion of the next standard survey or for 18 months, whichever is longer; and
- (4) Make these records available for audit purposes as requested by DHS, its representatives, or designees.

2. Previously Admitted Nursing Facility Residents Who Apply For Long-Term Care Medicaid

Effective March 1, 2008, each nursing facility must:

- (a) Offer the opportunity for an Options Counseling consultation to previously admitted residents who apply for long-term care Medicaid reimbursement;
- (b) Offer the opportunity for an Options Counseling consultation to each resident before the Medicaid application is filed if possible; and
- (c) Transmit the form to OLTC via FAX no later than 5:00 p.m. of the next business day following the offer;
- (d) Maintain the original DHS-9571 in the resident's patient file at the nursing facility until completion of the next standard survey or for eighteen months, whichever is longer; and
- (e) Make these records available for audit purposes as requested by DHS, their representatives, or designees.

B. DHS Division of County Operations ("DCO") Responsibilities.

DCO will offer information on Options Counseling to each applicant who files an application for long-term care Medicaid.

C. Declined Offers for an Options Counseling Consultation.

When a person or the person's representative declines an offer for an option counseling consultation, the nursing facility must complete Form DHS-9571 documenting that the individual refused an Options Counseling consultation.

3007.4.0 OLTC shall:

- A. Deliver to DAAS all DHS-9571 forms received from nursing facilities.
- B. Impose fees in accordance with Ark. Code Ann. § 20-77-2107(a):

1. OLTC shall provide written notice to nursing facilities that a fee is imposed.
2. Notice shall state the reason or reasons for imposition of the fee and explain the nursing facility's appeal rights.

3007.5.0 Appeal.

- A. A nursing facility may appeal a fee by sending a written request for a hearing to the Director of the Department of Human Services ("Director")
- B. The Director must receive the appeal within sixty calendar days after OLTC mails the notice of fee to the nursing facility by regular mail to the most recent address provided by the facility in facility license records.
- C. The Director shall assign the appeal to a fair and impartial hearing officer who shall not be a full-time DHS employee. The hearing officer shall preside over the hearing and make findings of fact and conclusions of law in the form of a recommendation to the Director.
- D. DHS shall commence each hearing within forty-five days of receipt of a timely request for hearing. The hearing officer shall notify the OLTC Director of the date, time, and place of the hearing. Such notification shall be in writing sent by regular mail to the appealing nursing facility at least twenty days before the hearing date.
- E. The appealing facility may agree in writing to resolve the appeal without a hearing, or to waive any Administrative Procedure Act requirement or deadline.
- F. If the facility waives the time limit under subdivision (d) of this section, the hearing officer shall begin the hearing at a time agreed to by the parties.
- G. Hearing Officers shall conduct the appeal hearing in accordance with the Administrative Procedure Act and DHS Policy 1098.
- H. Upon written request of a facility, OLTC shall provide copies of all documents, papers, reports, and other information that relate to the appeal. OLTC must make such disclosure within ten working days of receipt of the written request unless the hearing officer specifies a different date.
- I. Upon failure of a person without lawful excuse to obey a subpoena or to give testimony, the aggrieved party may apply to the circuit court in the county where the hearing will be held for a court order compelling compliance.

3007.6.0 Appeal Decision

- A. The hearing officer shall issue a recommended decision within ten working days after the close of the hearing, the receipt of the transcript, or the submission of post-trial briefs requested or approved by the hearing officer, whichever is latest.
- B. The Director shall review each recommendation and make the final decision. He or she may:
 - 1. Approve the recommendation; or
 - 2. Modify the recommendation in whole or in part; or
 - 3. Remand the appeal to the hearing officer for further proceedings. On remand the hearing officer shall conduct further proceedings as set forth in the Notice of Remand and shall submit a new recommended decision to the Director.
- C. If the Director modifies a recommendation, in whole or in part, or remands the decision, he or she shall state in writing the reasons for the remand or modification, including statutory, regulatory, factual, or other grounds.
- D. If the Director takes no action on the hearing officer's recommendation for sixty calendar days of receiving the recommendation, the recommendation shall be the final agency disposition as defined at Ark. Code Ann. § 25-15-202(5).
- E. The Director's modification or approval of a hearing officer's recommendation is the final agency disposition as defined at Ark. Code Ann. § 25-15-202(5).

3007.7.0 Payment of Fees

- A. Unless the Director denies a stay for good cause, a written request for a hearing shall stay any fee pending the hearing and the final decision of the Director of the Department of Human Services.
- B. Nursing facilities must pay fees to OLTC within thirty working days of receipt of the notice of fee, or if stayed pending appeal, within thirty working days of receipt of the final agency disposition unless the disposition has been timely appealed to circuit court.