3007.0.0 OPTIONS COUNSELING AND MDS REFERRALS TO THE DEPARTMENT OF HUMAN SERVICES (DHS)

3007.1.0 Authority

Options Counseling: Ark. Code Ann. § 20-10-2101 through 2107.

Minimum Data Set Section Q: 42 U.S.C. § 1395i–3 and 42 C.F.R. § 483.20.

3007.2.0 **Purpose:** This rule implements both the long-term care Options Counseling and the Minimum Data Set (MDS) Section Q referral processes that are made to the Department of Human Services (DHS). In both programs, long-term care facilities are required to refer to DHS residents who are interested in other care alternatives. State law requires that referrals be made for Options Counseling by the day after admission. Federal law and regulations require facilities to refer those interested within 10 days of completion of the MDS.

3007.3.0 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.

3007.3.1 For the purposes of Options Counseling, "Long-Term Care Facility" means a nursing facility or a licensed level II assisted living facility. For the purposes of the referral through Section Q, "Long-Term Care Facility" means any nursing facility required by federal law to complete an MDS on residents.

3007.3.2 When completing **Section Q of the MDS,** the long-term care facility shall be required to refer the individual to the "local contact agency" (DHS) if the care plan process determines that it is feasible that the individual may be able to return to the community, or if the individual or representative responds positively to the question, "Do you want to talk with someone about the possibility of returning to the community?"

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2010 OCT -1 PM 2:03
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3007.4.0 Long-Term Care Options Counseling Consultation

3007.4.1 Regardless whether the individual is referred to DHS through the Options Counseling Program or through the MDS, for administrative ease, the individual will be referred in the same manner and will receive the same type of consultation. For the purposes of this policy, the consultation for both programs will be referred to as Options Counseling.

3007.4.2 Each long-term care Options Counseling consultation shall include information about:

A. Factors to consider when arranging for care, including methods for maximizing independence and self-reliance;

B. Available options;

C. Costs and potential payment sources;

3007.4.3 Each long-term care Options Counseling consultation may include an assessment of the individual's functional capabilities.

3007.5.0 Offering Long-Term Care Options Counseling Consultations

3007.5.1 Long-Term Care Facility Responsibilities

A. Long-Term Care Facility Admissions

1. Long-term care facilities must inform new admissions of the opportunity for a long-term care Options Counseling consultation at admission regardless of the individual's payment source.

2. When admitting a resident, the long-term care facility must:

a. Complete and obtain the signature of each resident or the resident's representative on a separate Form DHS-9571;

b. Transmit the form to the Arkansas Department of Human Services (DHS), Division of Medical Services, Office of Long-Term Care (OLTC) via online submission at https://dhhs.arkansas.gov/wa_NursingHome/Default.aspx no later than 5:00 p.m. of the next business day following the admission. Due to the one-day timeline for submission that is required by law, if the facility is having connectivity problems, it may fax the form in order to meet the timeline; but once connectivity returns, the facility must follow-up and enter the information that had previously been faxed, via the website;

Note: There are two methods for obtaining a signed DHS-9571. The long-term care facility may complete the form manually, obtain the signature of the individual or representative, and then key the information into the website; or, key the information into the website, print the completed form from the website, and then obtain the signature of the individual or representative.

c. Maintain the original DHS-9571 in the resident's file at the long-term care facility until completion of the next standard survey or for 18 months, whichever is longer; and

d. Make these records available for audit purposes as requested by DHS, its representatives, or designees.

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

Each long-term care facility must:

1. Offer the opportunity for an Options Counseling consultation to previously admitted residents who apply for long-term care Medicaid reimbursement;

2. Offer the opportunity for an Options Counseling consultation to each resident before the Medicaid application is filed if possible; and

3. Transmit the form to OLTC via online submission at https://dhhs.arkansas.gov/wa_NursingHome/Default.aspx no later than 5:00 p.m. of the next business day following the offer;

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

5. Maintain the original DHS-9571 in the resident's patient file at the long-term care facility until completion of the next standard survey (for nursing homes) or licensure survey (for Level II Assisted Living Facilities), or for 18 months, whichever is longer; and

6. Make these records available for audit purposes as requested by DHS, its representatives, or designees.

C. For Long-Term Care Facilities completing an MDS either at admission or at reassessment, the facility shall:

1. Complete section Q of the MDS. The long-term care facility shall be required to refer the individual to the "local contact agency" (DHS) if the care plan process determines that it is feasible that the individual may be able to return to the community, or if the individual or representative responds positively to the question, "Do you want to talk with someone about the possibility of returning to the community?";

2. If a referral is appropriate, the long-term care facility will transmit the information on the individual via the same online submission as Options Counseling at https://dhhs.arkansas.gov/wa_NursingHome/Default.aspx no later than 10 days from the time the MDS is completed;

3005.5.2 DHS, Division of County Operations, (DCO), Responsibilities.

DCO will offer information on Options Counseling to each long-term care Medicaid applicant.

3007.6.0 OLTC shall:

3007.6.1 Deliver to Division of Aging and Adult Services (DAAS) all DHS-9571 forms received from long-term care facilities.

3007.6.2 After the first three (3) failures of a long-term care facility to complete the form required under § 20-10-2106 in any calendar year, the Department of Human Services, through the Office of Long Term Care, shall assess a fee against the long-term care facility of twenty-five dollars ($25.00) for each failure beyond three (3), with an annual maximum fee of one thousand two hundred dollars ($1,200).

A. OLTC shall provide written notice to long-term care facilities that a fee is imposed.

B. Notice shall:

1. State or list the specific failures leading to the imposition of the fine, including the dates on or about which the failure occurred, the names of residents for whom the failure occurred, and the amount of the fine imposed; and,

2. Set forth the long-term care facility's appeal rights.

3007.6.3 While state level penalties are not applicable to a failure to refer under MDS Section Q, federal deficiencies and penalties may be applicable.

3007.7.0 Appeal

A. A long-term care 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 60 calendar days after OLTC mails the notice of fee to the long-term care 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 45 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 long-term care facility at least twenty days before the hearing date.

E. The appealing facility may agree in writing to resolve the appeal without a hearing.

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 10 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.

3007.8.0 Appeal Decision

A. The Hearing Officer shall issue a recommended decision within 10 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. 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, the Director 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 within 60 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).

3007.9.0 Payment of Fees

A. Unless the Director denies a stay, 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. Long-term care facilities must pay fees to OLTC within 30 working days of receipt of the notice of fee, or if stayed pending appeal, within 30 working days of receipt of the final agency disposition unless the disposition has been timely appealed to circuit court.

3007.10.0 Originating Section/Department Contact:

DHS has designated the following entity as the Local Contact Agency:

Aging and Disability Resource Center
700 Donaghey Plaza South
P. O. Box 1437, Slot S-530
Little Rock, AR 72203-1437
Contact: 501-682-8509