

DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH

SUBJECT: Rules for Private Care Agencies in Arkansas

DESCRIPTION: The purpose of this rule promulgation is to amend the aide training requirement to include Alzheimer’s disease and dementia (Act 70); to require posting of a written notice that attacking a healthcare professional is a felony (Act 313); and to amend the patient right to know regarding licensure of a healthcare provider. The following changes have been made:

- Section 10.E. – added requirement for written notice for attacking a healthcare professional.
- Section 10.F. – added requirement regarding healthcare provider not misleading the public regarding licensure.
- Table 1-1. – added training requirements for Alzheimer’s disease and dementia for Personal Care Aides.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on February 28, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: “The State Board of Health shall promulgate rules necessary to implement” Title 20, Chapter 10, Subchapter 23 of the Arkansas Code, regarding personal care service providers. Ark. Code Ann. § 20-10-2304(a). This rule implements Acts 70, 313, and 830 of 2023.

Act 70, sponsored by Representative Julie Mayberry, required a specific number of hours of dementia training for home caregivers.

Act 313, sponsored by Senator Kim Hammer, required posting of a written notice that attacking a healthcare professional is a felony and allowed a healthcare professional to use a work address when reporting certain offenses.

Act 830, sponsored by Representative Lee Johnson, amended the Patient Right-to-Know Act.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
 Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
 Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency’s statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**Cover Summary of Proposed Administrative Rules/Regulation
Arkansas Department of Health**

DIVISION Center for Health Protection; Licensing and Regulation Branch;
 Health Facility Services Section
ADDRESS 5800 W. 10th Street, Suite 400 Little Rock, AR 72204
CONTACT Paula Day
PHONE NUMBER 501-661-2201
DATE September 12, 2023

SHORT TITLE OF THIS RULE: *Rules for Private Care Agencies in Arkansas*

1. Subject: Rule revisions for Acts 70, 313, 830
2. Amends existing rules
3. Authority: Ark. Code Ann. § 20-7-109 *et seq.*
4. Purpose:
 - *To amend the aide training requirements to include Alzheimer’s disease and dementia (Act 70)*
 - *To require posting of a written notice that attacking a healthcare professional is a felony (Act 313)*
 - *To amend the patient right to know regarding licensure of a healthcare provider (Act 830)*
5. Changes as listed:
 - Section 10.E. – added requirement for written notice for attacking a healthcare professional.
 - Section 10.F. – added requirement regarding healthcare provider not misleading the public regarding licensure.
 - Table 1-1. – added training requirements for Alzheimer’s disease and dementia for Personal Care Aides.
6. Financial impact: No financial impact.
7. Public Hearing: *N/A; Public comment period 12/01/2023 to 12/31/2023(est.)*
8. Proposed effective date: *March 1, 2024*

A strike-through copy of the proposed changes is attached.

NOTICE OF PUBLIC COMMENT PERIOD

The Arkansas Department of Health (ADH) is accepting public comments on the Rules for Private Care Agencies in Arkansas from January 29, 2024 to February 28, 2024. The comment period is provided to allow interested parties and the public to provide any comments. The proposed rule revision with a summary of changes can be viewed online at <https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules> or you may request a copy from our office at 501-661-2201.

Comments on the proposed changes can also be mailed to Arkansas Department of Health, Attention: Paula Day, Section Chief, 5800 West 10th Street, Ste 400, Little Rock, Arkansas, 72204, or emailed to paula.day@arkansas.gov.

ARKANSAS
STATE BOARD OF HEALTH

**RULES FOR
PRIVATE CARE AGENCIES IN ARKANSAS**



ARKANSAS DEPARTMENT OF HEALTH
HEALTH FACILITY SERVICES

Effective Date: 2020

RENEE MALLORY, RB, BSN

SECRETARY OF HEALTH

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

SECTION 1. PREFACE

These rules have been prepared for the purpose of establishing a criterion for minimum standards for the licensure of private care agencies providing Medicaid Personal Care in Arkansas. By necessity they are of a regulatory nature but are considered to be practical minimal design and operational standards for these agencies. These standards are not static and are subject to periodic revisions in the future as new knowledge and changes in home care become apparent. However, it is expected that agencies will exceed these minimum requirements and that they will not be dependent upon future revisions in these standards as a necessary prerequisite for improved services. Each private care agency has a strong moral responsibility for providing optimum home care and services for the clients it serves.

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SECTION 2. AUTHORITY

The following Rules for Private Care Agencies in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas in Ark. Code Ann. § 20-10-2301 et seq.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

SECTION 3. PURPOSE

These rules are established to ensure high quality care and services for clients in their homes.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

SECTION 4. DEFINITIONS

The following words and terms, when used in these sections, shall have the stated meanings, unless the context clearly indicates otherwise.

- A) Administrator - A person who is an agency employee and is a physician, registered nurse, or an individual with at least one year of supervisory or administrative experience in home health care or in related health provider programs.
- B) Aide Service Plan - written assignments developed and supervised by a qualified supervisor for the tasks to be completed by the aide.
- C) Client - Eligible recipient of Medicaid Services.
- D) Client Note -A dated, written or electronic and signed notation by agency personnel of a contact with a client including a description of services provided, and any changes in circumstances that impact the client's services or welfare.
- E) Client Record - An accurate account of services provided for each client and maintained by the agency.
- F) Contractor -An entity or individual providing services for the agency who does not meet the definition of employee.
- G) Department- The Arkansas Department of Health, Health Facility Services.
- H) Employee -Any individual for whom the agency is required to issue a form W-2.
- I) Health - The condition of being sound in body, mind and spirit, especially freedom from physical disease or pain.
- J) Health Assessment-A determination of a patient's physical and mental status performed by medical professionals .
- K) Personal Care Services -assistance in activities of daily living, hygiene, or grooming.
- L) Personal Care Aide - A person who provides personal care/personal services for a client in their place of residence.
- M) Place of Business -Any office of a private care agency that maintains client records or directs services.
- N) Private Care Agency- a provider that is, certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as a provider of home- and community-based health services and that:
 - 1) furnishes in-home staffing services for personal and attendant care services; and

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- 2) retains liability insurance of not less than one million dollars (\$1,000,000.00) to cover its employees and independent contractors while its employees and independent contractors are engaged in providing personal and attendant care services.
- O) Quality of Services -competent care which are supported and directed in a planned pattern to achieve well-being, dignity and comfort, and self-management.
- P) Residence - A place where a person resides, including a home, nursing home, residential care facility or convalescent home for the disabled or aged.
- Q) Supervision -Authoritative procedural guidance by a qualified person, acting within his or her applicable scope of practice, to a function or activity.
- R) Supervisor - A licensed nurse or one who has completed two years of full-time study at an accredited institution of higher education. An individual who has a high school diploma or GED may substitute one (1) year of full time employment in a supervisory capacity in a healthcare facility or community-based agency for one (1) year at an institution of higher education.
- S) Telenursing - the use of [distance) technology to deliver nursing care and conduct nursing practice.
- T) Visit-A face to face meeting in the client's residence or by the use of information Technology.

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SECTION 5. AGENCY LOCATION

A private care agency shall maintain:

- A) a licensed fully operational primary office physically located within the State of Arkansas; and
- B) a sufficient number of licensed regional offices to adequately service the administrative needs of the agency and the clients.

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SECTION 6. APPLICATION FOR LICENSE

- A) Annual license applications shall be on forms prescribed by the Department and shall be effective on a calendar year basis with an expiration date of December 31.
- B) Each agency shall receive a license for Medicaid Personal Care.
- C) The agency shall notify Health Facility Services of any of the following:
 - 1) Change of name;
 - 2) Change of location;
 - 3) Agency closing;
 - 4) Change in contact information, including correspondence address, telephone number, email; FAX; and
 - 5) Change of ownership.;
- D) Agency closure. If a licensed agency closes, it shall:
 - 1) Notify Health Facility Services in writing of:
 - (a) the effective date;
 - (b) plans for transfer of current clients and records; and
 - 2) Return original license to Health Facility Services.

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SECTION 7. INSPECTIONS

- A) A review and/or inspection shall be conducted before the license is issued.
- B) Once the initial inspection is conducted and the agency becomes licensed, periodic inspections shall be conducted no less than every three (3) years.
- C) If the inspection is conducted in order to determine compliance with standards, the agency shall come into compliance within 60 days. If the agency fails to comply, the Director may propose actions to suspend or revoke the license in accordance with the section relating to License Denial, Suspension, or Revocation .

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SECTION 8. DENIAL, SUSPENSION, REVOCATION OF LICENSE

- A) A private care agency license may be denied, suspended, or revoked for one or more of the following reasons:
- 1) Violation of the provisions of the statute or any of the standards in these rules;
 - 2) Misstatement of a material fact on any documents required to be submitted to Health Facility Services or requirements to be maintained by the agency pursuant to these rules;
 - 3) Commission by the agency or its personnel of a false, misleading, or deceptive act or practice;
 - 4) Materially altering any license issued by the Department.
 - 5) An intentional or negligent act by the agency or its employees which materially affects the health and safety of a client.
- B) If the Director of Health Facility Services of the Department proposes to deny, suspend, or revoke a license, the Director shall notify the agency of the reasons for the proposed action and offer the agency an opportunity for a hearing. The agency may request a hearing within 30 days after the date the agency receives notice. The request shall be in writing and submitted to the Director, Health Facility Services, Arkansas Department of Health, 5800 West Tenth, Suite 400, Little Rock, Arkansas, 72204. A hearing shall be conducted pursuant to the Administrative Procedures Act. If the agency does not request a hearing in writing after receiving notice of the proposed action, the agency is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.
- C) Health Facility Services may suspend or revoke a license to be effective immediately when the health and safety of clients are threatened. Health Facility Services shall notify the agency of the emergency action and shall notify the agency of the date of a hearing, which shall be within seven days of the effective date of the suspension or revocation. The hearing shall be conducted pursuant to the Administrative Procedures Act.

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SECTION 9. TRAINING

- A) Training provided to agency employees shall be approved by Health Facility Services with the Arkansas Department of Health and:
- 1) Include all items listed in the attached TABLE 1;
 - 2) Be supervised by a registered nurse;
 - 3) Be minimum of 40 hours to include:
 - (a) classroom; and
 - (b) clinical instruction related to the home setting;
 - 4) Have written:
 - (a) course objectives;
 - (b) expected outcomes; and
 - (c) method(s) of evaluation.
- B) Unless the agency has been properly authorized by the Department of Higher Education to operate a School, training shall be limited to agency employees.

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SECTION 10. GENERAL REQUIREMENTS

A) Policies and Procedures The agency shall have written policies including:

- 1) Organizational
 - (a) A description of the structure showing ownership and line of authority down to the client service level;
 - (b) The services offered;
 - (c) Hours of operation; and
 - (d) Criteria for client acceptance and termination.
- 2) Orientation of all personnel to the policies and objectives of the agency.
- 3) Procedures for all tasks.
- 4) Infection control program;
 - (a) which has as its goal the prevention and control of infections and communicable diseases.
 - (b) Work restrictions for employees shall be according to CDC Recommendations;
 - (c) Measures for prevention of communicable disease outbreaks, especially Mycobacterium tuberculosis (TB). All plans for the prevention of transmission of TB shall conform to the most current CDC guidelines for preventing the transmission of Mycobacterium Tuberculosis in Health Care Facilities.
- 5) Personnel records shall be maintained for each employee and/or contracted individual. A current personnel record shall include:
 - (a) job description, signed by employee;
 - (b) qualifications, education, and/or training;
 - (c) application for employment;
 - (d) verification of licenses, certifications, and work history;
 - (e) evidence of orientation and competency for the topics listed in TABLE 1; and
 - (f) criminal history determination of eligibility for employment.
- 6) An agency wide Quality Assurance and Improvement Program that includes all services for the purpose of monitoring the safety and effectiveness of services and quality of care. The program will include:

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- (a) client satisfaction surveys;
 - (b) supervision of services;
 - (c) results of inspections, surveys and audits from outside entities; and
 - (d) performance improvement projects as applicable.
- 7) Complaints and incidents. Each agency shall keep a record of complaints received. Documentation shall include:
- (a) the names of involved individuals
 - (b) the relationship to the client;
 - (c) the nature of the complaint;
 - (d) date of incident; and
 - (e) the action taken to resolve the complaint (including referrals to other entities).
- B) Governing Board.
- 1) A Private Care Agency shall have an organized Governing Board, consisting of at least one member, which may be the owner, who shall be legally responsible for maintaining quality client services and establishing policies for the agency, shall be legally responsible for the conduct of the agency, and shall establish a mechanism to:
- (a) Adopt and periodically review written bylaws or an acceptable equivalent;
 - (b) Approve written policies and procedures related to safe, adequate services and operation of the agency;
 - (c) Appoint an administrator and approve a plan for an alternate in the absence of the administrator; and
 - (d) Oversee the management and fiscal affairs of the agency, including approving the agency's annual budget.
- C) Administrator Responsibilities. The Administrator shall:
- 1) Manage the agency's daily ongoing functions;
 - 2) Ensure all persons providing services on behalf of the agency are qualified and receive ongoing education;
 - 3) Ensure the accuracy of public information materials and activities;
 - 4) Implement and monitor budgeting and accounting systems

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- 5) Implement quality assurance and infection control programs; and
- 6) Conduct annual review of the changes to the policies and procedures.

D) Client Rights-

- 1) The agency shall provide each client or representative with a copy of the Bill of Rights affirming the client's right to:
 - (a) Be informed of the services offered by the agency and those being provided to the client;
 - (b) Participate in the development of the plan of care and to be informed of the dates and approximate time of service;
 - (c) Receive an explanation of any responsibilities the client may have in the care process;
 - (d) Be informed of the name of agency and how to contact that agency during all hours of operation;
 - (e) Be informed of the process for submitting and addressing complaints to the agency and be notified of the State Home Health Hotline number.
 - (f) Be informed orally and in writing of any charges which insurance might not cover and for which the client would be responsible;
 - (g) Courteous and respectful treatment, privacy and freedom from abuse and discrimination;
 - (h) Confidential management of client records and information;
 - (i) Access information in the client record upon request
 - (j) Receive prior notice and an explanation for the reasons of termination, referral, transfer, discontinuance or change of service; and
 - (k) Control access to the client's home.
- 2) The agency shall provide each client and family with a written list of responsibilities affirming the client's responsibility to:
 - (a) Assist in developing and maintaining a safe environment;
 - (b) Treat all agency staff with courtesy and respect;
 - (c) Participate in the development and update of services; and
 - (d) Adhere to the plan of care or services as developed by the agency and to assist in the care as necessary.

E) Records and Documentation

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- 1) The private care agency shall maintain records of all services provided to clients which are orderly, intact, legibly written and available and retrievable either in the agency or by electronic means and suitable for photocopying or printing.
- 2) Records shall be stored in a manner which:
 - (a) Prevents loss or manipulation of information;
 - (b) Protects the record from damage; and
 - (c) Prevents access by unauthorized persons.
- 3) Records shall be retained for a minimum of five years after discharge of the client or two years after the age of majority.
- 4) Each record shall include:
 - (a) Initial assessment performed by a qualified supervisor;
 - (b) Plan of care which shall detail the services;
 - (c) Aide service plan;
 - (d) Physician or licensed practitioner orders, if any;
 - (e) Records of supervisory visits;
 - (f) Date and time service providers are in the home; and
 - (g) Tasks completed.
- 5) Client notes are to be written the day the service is rendered and incorporated into the record no less than every 14 days.

6) Provisions shall be made for the records in the event an agency ceases operation.

F) A written notice of the felony status under A.C.A §5-13-202 of attacking a healthcare worker shall be posted in all public entrances and patient waiting area of the healthcare facility utilizing the digital poster available on the Arkansas Department of Health website.

~~F)G)~~ A healthcare provider shall not mislead any patient regarding the healthcare provider's licensure status.

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SECTION 11. SERVICES

A) All Services

1) The agency shall:

(a) Perform an initial evaluation visit and determine;

(i) the needs and condition of the client;

(ii) the services to be provided; and

(iii) the personnel to provide the services.

(b) Develop the Aide Service Plan which shall;

(i) outline the services;

(ii) determine scope and frequency of visits;

(iii) assign appropriate delegation of services consistent with the Arkansas State Board of Nursing; and

(iv) determine supervision scope and frequency. Frequency shall be at least annually.

B) Personal Care Services shall be rendered by a person who has completed an approved 40-hour aide training course that meets the requirements set forth in Section 9 and:

1) Delegate through the use of an Aide Service Plan;

2) Each aide shall receive a copy of the Aide Service Plan;

3) A copy of the Aide Service Plan will be accessible in the home;

4) The Aide Service Plan shall be individualized and specific;

5) Aides shall receive a minimum of 12 hours of in-service training per 12 months. The in-services provided shall address areas that directly relate to the client care aspect of the aide's job.

6) The agency is responsible for evaluating the competency of any Personal Care aide. At a minimum, the aide shall be observed by a registered nurse performing the skills required to care for a client according to Table 1. There shall be documentation by the agency to show evidence of this evaluation.

C) Services Provided by Contractors

A contracted entity or contracted individual conforms to all applicable agency policies including those described in Section 10.A.

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SECTION 12. SEVERABILITY

If any provision of these Rules, or the application thereof to any person or circumstances is held invalid, such provisions or applications of these Rules that can give effect without the invalid provisions or applications will be enforced, and to this end the provisions hereto are declared to be severable.

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TABLE 1

Aide training for employees course and clinical work topics shall include, but not be limited to:

A) Body Functions;

B) Body Mechanics & Safety Precautions;

C) Communication Skills;

D) Health conditions;

E) ~~including Dementia and~~ Alzheimer's disease and dementia (4 hours) to include:

1) Communication Skills;

2) Problem solving with challenging behaviors;

3) Assistance with daily living; and

4) explanation of Alzheimer's disease and other dementia;

~~D)F) _____;~~

~~E)G) _____~~ Emergency recognition and procedures;

~~F)H) _____~~ Household safety and fire;

~~G)I) _____~~ Infection control;

~~H)J) _____~~ Ethical considerations and state law regarding Nurse delegation;

~~I)K) _____~~ Nutrition;

~~J)L) _____~~ Ambulation;

~~K)M) _____~~ Household services for healthcare to include basic housekeeping procedures and laundry;

~~L)N) _____~~ Bathing, shampooing, shaving;

~~M)O) _____~~ Personal grooming to include dressing and undressing;

~~N)P) _____~~ Meal preparation and clean up;

~~O)Q) _____~~ ~~0.~~ Oral hygiene;

~~P)R) _____~~ Normal range of motion;

~~Q)S) _____~~ Toileting;

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~~R~~T Transfer techniques;

~~S~~U Recordkeeping and documentation to include reporting changes to appropriate supervisor;

~~T~~V Role of caregiver in team; and

~~U~~W Nail and skin care.

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CERTIFICATION

This will certify that the foregoing revisions to the Rules for Private Care Agencies in Arkansas were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the ____ day of _____, 2023.

Jennifer Dillaha, MD
Secretary of Arkansas State Board of Health
Director of the Arkansas Department of Health

ARKANSAS
STATE BOARD OF HEALTH

**RULES FOR
PRIVATE CARE AGENCIES IN ARKANSAS**



ARKANSAS DEPARTMENT OF HEALTH
HEALTH FACILITY SERVICES

Effective Date:

RENEE MALLORY, RB, BSN

SECRETARY OF HEALTH

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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SECTION 1. PREFACE

These rules have been prepared for the purpose of establishing a criterion for minimum standards for the licensure of private care agencies providing Medicaid Personal Care in Arkansas. By necessity they are of a regulatory nature but are considered to be practical minimal design and operational standards for these agencies. These standards are not static and are subject to periodic revisions in the future as new knowledge and changes in home care become apparent. However, it is expected that agencies will exceed these minimum requirements and that they will not be dependent upon future revisions in these standards as a necessary prerequisite for improved services. Each private care agency has a strong moral responsibility for providing optimum home care and services for the clients it serves.

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SECTION 2. AUTHORITY

The following Rules for Private Care Agencies in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas in Ark. Code Ann. § 20-10-2301 et seq.

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SECTION 3. PURPOSE

These rules are established to ensure high quality care and services for clients in their homes.

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SECTION 4. DEFINITIONS

The following words and terms, when used in these sections, shall have the stated meanings, unless the context clearly indicates otherwise.

- A) Administrator - A person who is an agency employee and is a physician, registered nurse, or an individual with at least one year of supervisory or administrative experience in home health care or in related health provider programs.
- B) Aide Service Plan - written assignments developed and supervised by a qualified supervisor for the tasks to be completed by the aide.
- C) Client - Eligible recipient of Medicaid Services.
- D) Client Note -A dated, written or electronic and signed notation by agency personnel of a contact with a client including a description of services provided, and any changes in circumstances that impact the client's services or welfare.
- E) Client Record - An accurate account of services provided for each client and maintained by the agency.
- F) Contractor -An entity or individual providing services for the agency who does not meet the definition of employee.
- G) Department- The Arkansas Department of Health, Health Facility Services.
- H) Employee -Any individual for whom the agency is required to issue a form W-2.
- I) Health - The condition of being sound in body, mind and spirit, especially freedom from physical disease or pain.
- J) Health Assessment-A determination of a patient's physical and mental status performed by medical professionals .
- K) Personal Care Services -assistance in activities of daily living, hygiene, or grooming.
- L) Personal Care Aide - A person who provides personal care/personal services for a client in their place of residence.
- M) Place of Business -Any office of a private care agency that maintains client records or directs services.
- N) Private Care Agency- a provider that is, certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as a provider of home- and community-based health services and that:
 - 1) furnishes in-home staffing services for personal and attendant care services; and

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- 2) retains liability insurance of not less than one million dollars (\$1,000,000.00) to cover its employees and independent contractors while its employees and independent contractors are engaged in providing personal and attendant care services.
- O) Quality of Services -competent care which are supported and directed in a planned pattern to achieve well-being, dignity and comfort, and self-management.
- P) Residence - A place where a person resides, including a home, nursing home, residential care facility or convalescent home for the disabled or aged.
- Q) Supervision -Authoritative procedural guidance by a qualified person, acting within his or her applicable scope of practice, to a function or activity.
- R) Supervisor - A licensed nurse or one who has completed two years of full-time study at an accredited institution of higher education. An individual who has a high school diploma or GED may substitute one (1) year of full time employment in a supervisory capacity in a healthcare facility or community-based agency for one (1 year at an institution of higher education.
- S) Telenursing - the use of [distance) technology to deliver nursing care and conduct nursing practice.
- T) Visit-A face to face meeting in the client's residence or by the use of information Technology.

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SECTION 5. AGENCY LOCATION

A private care agency shall maintain:

- A) a licensed fully operational primary office physically located within the State of Arkansas; and
- B) a sufficient number of licensed regional offices to adequately service the administrative needs of the agency and the clients.

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SECTION 6. APPLICATION FOR LICENSE

- A) Annual license applications shall be on forms prescribed by the Department and shall be effective on a calendar year basis with an expiration date of December 31.
- B) Each agency shall receive a license for Medicaid Personal Care.
- C) The agency shall notify Health Facility Services of any of the following:
 - 1) Change of name;
 - 2) Change of location;
 - 3) Agency closing;
 - 4) Change in contact information, including correspondence address, telephone number, email; FAX; and
 - 5) Change of ownership.;
- D) Agency closure. If a licensed agency closes, it shall:
 - 1) Notify Health Facility Services in writing of:
 - (a) the effective date;
 - (b) plans for transfer of current clients and records; and
 - 2) Return original license to Health Facility Services.

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SECTION 7. INSPECTIONS

- A) A review and/or inspection shall be conducted before the license is issued.
- B) Once the initial inspection is conducted and the agency becomes licensed, periodic inspections shall be conducted no less than every three (3) years.
- C) If the inspection is conducted in order to determine compliance with standards, the agency shall come into compliance within 60 days. If the agency fails to comply, the Director may propose actions to suspend or revoke the license in accordance with the section relating to License Denial, Suspension, or Revocation .

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SECTION 8. DENIAL, SUSPENSION, REVOCATION OF LICENSE

- A) A private care agency license may be denied, suspended, or revoked for one or more of the following reasons:
- 1) Violation of the provisions of the statute or any of the standards in these rules;
 - 2) Misstatement of a material fact on any documents required to be submitted to Health Facility Services or requirements to be maintained by the agency pursuant to these rules;
 - 3) Commission by the agency or its personnel of a false, misleading, or deceptive act or practice;
 - 4) Materially altering any license issued by the Department.
 - 5) An intentional or negligent act by the agency or its employees which materially affects the health and safety of a client.
- B) If the Director of Health Facility Services of the Department proposes to deny, suspend, or revoke a license, the Director shall notify the agency of the reasons for the proposed action and offer the agency an opportunity for a hearing. The agency may request a hearing within 30 days after the date the agency receives notice. The request shall be in writing and submitted to the Director, Health Facility Services, Arkansas Department of Health, 5800 West Tenth, Suite 400, Little Rock, Arkansas, 72204. A hearing shall be conducted pursuant to the Administrative Procedures Act. If the agency does not request a hearing in writing after receiving notice of the proposed action, the agency is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.
- C) Health Facility Services may suspend or revoke a license to be effective immediately when the health and safety of clients are threatened. Health Facility Services shall notify the agency of the emergency action and shall notify the agency of the date of a hearing, which shall be within seven days of the effective date of the suspension or revocation. The hearing shall be conducted pursuant to the Administrative Procedures Act.

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SECTION 9. TRAINING

- A) Training provided to agency employees shall be approved by Health Facility Services with the Arkansas Department of Health and:
- 1) Include all items listed in the attached TABLE 1;
 - 2) Be supervised by a registered nurse;
 - 3) Be minimum of 40 hours to include:
 - (a) classroom; and
 - (b) clinical instruction related to the home setting;
 - 4) Have written:
 - (a) course objectives;
 - (b) expected outcomes; and
 - (c) method(s) of evaluation.
- B) Unless the agency has been properly authorized by the Department of Higher Education to operate a School, training shall be limited to agency employees.

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SECTION 10. GENERAL REQUIREMENTS

A) Policies and Procedures The agency shall have written policies including:

- 1) Organizational
 - (a) A description of the structure showing ownership and line of authority down to the client service level;
 - (b) The services offered;
 - (c) Hours of operation; and
 - (d) Criteria for client acceptance and termination.
- 2) Orientation of all personnel to the policies and objectives of the agency.
- 3) Procedures for all tasks.
- 4) Infection control program;
 - (a) which has as its goal the prevention and control of infections and communicable diseases.
 - (b) Work restrictions for employees shall be according to CDC Recommendations;
 - (c) Measures for prevention of communicable disease outbreaks, especially Mycobacterium tuberculosis (TB). All plans for the prevention of transmission of TB shall conform to the most current CDC guidelines for preventing the transmission of Mycobacterium Tuberculosis in Health Care Facilities.
- 5) Personnel records shall be maintained for each employee and/or contracted individual. A current personnel record shall include:
 - (a) job description, signed by employee;
 - (b) qualifications, education, and/or training;
 - (c) application for employment;
 - (d) verification of licenses, certifications, and work history;
 - (e) evidence of orientation and competency for the topics listed in TABLE 1; and
 - (f) criminal history determination of eligibility for employment.
- 6) An agency wide Quality Assurance and Improvement Program that includes all services for the purpose of monitoring the safety and effectiveness of services and quality of care. The program will include:

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- (a) client satisfaction surveys;
 - (b) supervision of services;
 - (c) results of inspections, surveys and audits from outside entities; and
 - (d) performance improvement projects as applicable.
- 7) Complaints and incidents. Each agency shall keep a record of complaints received. Documentation shall include:
- (a) the names of involved individuals
 - (b) the relationship to the client;
 - (c) the nature of the complaint;
 - (d) date of incident; and
 - (e) the action taken to resolve the complaint (including referrals to other entities).
- B) Governing Board.
- 1) A Private Care Agency shall have an organized Governing Board, consisting of at least one member, which may be the owner, who shall be legally responsible for maintaining quality client services and establishing policies for the agency, shall be legally responsible for the conduct of the agency, and shall establish a mechanism to:
- (a) Adopt and periodically review written bylaws or an acceptable equivalent;
 - (b) Approve written policies and procedures related to safe, adequate services and operation of the agency;
 - (c) Appoint an administrator and approve a plan for an alternate in the absence of the administrator; and
 - (d) Oversee the management and fiscal affairs of the agency, including approving the agency's annual budget.
- C) Administrator Responsibilities. The Administrator shall:
- 1) Manage the agency's daily ongoing functions;
 - 2) Ensure all persons providing services on behalf of the agency are qualified and receive ongoing education;
 - 3) Ensure the accuracy of public information materials and activities;
 - 4) Implement and monitor budgeting and accounting systems

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- 5) Implement quality assurance and infection control programs; and
- 6) Conduct annual review of the changes to the policies and procedures.

D) Client Rights.

- 1) The agency shall provide each client or representative with a copy of the Bill of Rights affirming the client's right to:
 - (a) Be informed of the services offered by the agency and those being provided to the client;
 - (b) Participate in the development of the plan of care and to be informed of the dates and approximate time of service;
 - (c) Receive an explanation of any responsibilities the client may have in the care process;
 - (d) Be informed of the name of agency and how to contact that agency during all hours of operation;
 - (e) Be informed of the process for submitting and addressing complaints to the agency and be notified of the State Home Health Hotline number.
 - (f) Be informed orally and in writing of any charges which insurance might not cover and for which the client would be responsible;
 - (g) Courteous and respectful treatment, privacy and freedom from abuse and discrimination;
 - (h) Confidential management of client records and information;
 - (i) Access information in the client record upon request
 - (j) Receive prior notice and an explanation for the reasons of termination, referral, transfer, discontinuance or change of service; and
 - (k) Control access to the client's home.
- 2) The agency shall provide each client and family with a written list of responsibilities affirming the client's responsibility to:
 - (a) Assist in developing and maintaining a safe environment;
 - (b) Treat all agency staff with courtesy and respect;
 - (c) Participate in the development and update of services; and
 - (d) Adhere to the plan of care or services as developed by the agency and to assist in the care as necessary.

E) Records and Documentation

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- 1) The private care agency shall maintain records of all services provided to clients which are orderly, intact, legibly written and available and retrievable either in the agency or by electronic means and suitable for photocopying or printing.
- 2) Records shall be stored in a manner which:
 - (a) Prevents loss or manipulation of information;
 - (b) Protects the record from damage; and
 - (c) Prevents access by unauthorized persons.
- 3) Records shall be retained for a minimum of five years after discharge of the client or two years after the age of majority.
- 4) Each record shall include:
 - (a) Initial assessment performed by a qualified supervisor;
 - (b) Plan of care which shall detail the services;
 - (c) Aide service plan;
 - (d) Physician or licensed practitioner orders, if any;
 - (e) Records of supervisory visits;
 - (f) Date and time service providers are in the home; and
 - (g) Tasks completed.
- 5) Client notes are to be written the day the service is rendered and incorporated into the record no less than every 14 days.
- 6) Provisions shall be made for the records in the event an agency ceases operation.
- F) A written notice of the felony status under A.C.A §5-13-202 of attacking a healthcare worker shall be posted in all public entrances and patient waiting area of the healthcare facility utilizing the digital poster available on the Arkansas Department of Health website.
- G) A healthcare provider shall not mislead any patient regarding the healthcare provider's licensure status.

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SECTION 11. SERVICES

A) All Services

1) The agency shall:

(a) Perform an initial evaluation visit and determine;

(i) the needs and condition of the client;

(ii) the services to be provided; and

(iii) the personnel to provide the services.

(b) Develop the Aide Service Plan which shall;

(i) outline the services;

(ii) determine scope and frequency of visits;

(iii) assign appropriate delegation of services consistent with the Arkansas State Board of Nursing; and

(iv) determine supervision scope and frequency. Frequency shall be at least annually.

B) Personal Care Services shall be rendered by a person who has completed an approved 40-hour aide training course that meets the requirements set forth in Section 9 and:

1) Delegate through the use of an Aide Service Plan;

2) Each aide shall receive a copy of the Aide Service Plan;

3) A copy of the Aide Service Plan will be accessible in the home;

4) The Aide Service Plan shall be individualized and specific;

5) Aides shall receive a minimum of 12 hours of in-service training per 12 months. The in-services provided shall address areas that directly relate to the client care aspect of the aide's job.

6) The agency is responsible for evaluating the competency of any Personal Care aide. At a minimum, the aide shall be observed by a registered nurse performing the skills required to care for a client according to Table 1. There shall be documentation by the agency to show evidence of this evaluation.

C) Services Provided by Contractors

A contracted entity or contracted individual conforms to all applicable agency policies including those described in Section 10.A.

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SECTION 12. SEVERABILITY

If any provision of these Rules, or the application thereof to any person or circumstances is held invalid, such provisions or applications of these Rules that can give effect without the invalid provisions or applications will be enforced, and to this end the provisions hereto are declared to be severable.

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TABLE 1

Aide training for employees course and clinical work topics shall include, but not be limited to:

- A) Body Functions;
- B) Body Mechanics & Safety Precautions;
- C) Communication Skills;
- D) Health conditions;
- E) Alzheimer's disease and dementia (4 hours) to include:
 - 1) Communication Skills;
 - 2) Problem solving with challenging behaviors;
 - 3) Assistance with daily living; and
 - 4) explanation of Alzheimer's disease and other dementia;
- F) ;
- G) Emergency recognition and procedures;
- H) Household safety and fire;
- I) Infection control;
- J) Ethical considerations and state law regarding Nurse delegation;
- K) Nutrition;
- L) Ambulation;
- M) Household services for healthcare to include basic housekeeping procedures and laundry;
- N) Bathing, shampooing, shaving;
- O) Personal grooming to include dressing and undressing;
- P) Meal preparation and clean up;
- Q) Oral hygiene;
- R) Normal range of motion;
- S) Toileting;

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- T) Transfer techniques;
- U) Recordkeeping and documentation to include reporting changes to appropriate supervisor;
- V) Role of caregiver in team; and
- W) Nail and skin care.

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CERTIFICATION

This will certify that the foregoing revisions to the Rules for Private Care Agencies in Arkansas were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the ____ day of _____, 2023.

Jennifer Dillaha, MD
Secretary of Arkansas State Board of Health
Director of the Arkansas Department of Health



Arkansas Department of Health

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Governor Sarah Huckabee Sanders

Renee Mallory, RN, BSN, Secretary of Health

Jennifer Dillaha, MD, Director

PUBLIC COMMENT REPORT **Proposed Rules for Private Care Agencies in Arkansas**

PUBLIC COMMENTS:

Public comment period expired February 28, 2024.
No comments received.

AGENCY RESPONSE:

Proceed to adoption.