

DEPARTMENT OF HEALTH, HEALTH FACILITY SERVICES

SUBJECT: Rules for Home Health in Arkansas

DESCRIPTION: The following changes have been made to the Rules for Home Health in Arkansas:

- Updated Table of Contents.
- Updated Section 4: Definitions to defer to ASBN, specify only Class A agencies, specify service area, expand flexibility, define terms, update language, remove unnecessary language, and align with CoP, CMS regulation, and Act 811 of 2019.
- In Section 5: Agency Location, added language in compliance with Act 811 of 2019, removed duplicate language, clarified and simplified, and amended language to align with CoP requirements.
- Updated Section 6: Exemptions to clarify language and comply with HFS requirements.
- Updated Section 7: Application for License to clarify, clean up, and consolidate language, maintain continuity, and add requirements for agency closing.
- Updated Section 8: Inspections to clarify and simplify, allow for technology used to expedite initial inspections, delete duplicate language, and match CoP requirements.
- Updated Section 9: Denial, Suspension, Revocation of License by deleting unnecessary language and simplifying other language to provide focus and clarity for agencies and surveyors.
- Renamed Section 10 from “Branch Offices” to “Training.” Specified intra-agency training requirements, moved content regarding branch offices, added home health aide and personal care aide training requirements, and added Department approval requirement.
- Amended language in Section 11: General Requirements to clarify, eliminate duplication, assure safe care, reorganize licensure and record requirements, assist in fraud reduction, and increase accuracy.
- Updated Section 12: Standards for Skilled Care Services to consolidate and clarify.
- Reorganized and removed duplicate language in Section 13: Standards for Extended Care Services.
- Updated Section 14: Standards for Personal Care Services to consolidate and simply in accordance with Act 811 of 2019.
- Amended language in Section 15: Conditional Emergency Service per Health Services Permit Agency request for specific populations, i.e. pediatric.
- Added Section 16: Severability.
- Updated Tables 1 and 2 to add required topics for training.

PUBLIC COMMENT: A public hearing was held on this rule on March 31, 2020. The public comment period expired March 31, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter’s Name: Karen Henry, ACH

COMMENT: Thrive Pediatric Nursing & Home Health should have a state-wide license to serve pediatric patients due to complexity and specialization. See attached.

RESPONSE: Geographic area is defined by the Health Services Permit Agency (HSPA). See §7(C), "Application for License." Licenses are statutorily limited by the Permit of Approval (POA), granted by HSPA (ACA §§ 20-8-103, 106). If Thrive is providing a service not otherwise available, proposed change in "Conditional Emergency Permit" language to "Skilled Services," Section 15(A), will allow Thrive to provide such care.

Commenter's Name: Advisory Private Care Agency and Home Healthcare Services Agency Rule Working Group

COMMENT SUMMARY: Written report details work group process, conclusions. Supports proposed changes. **RESPONSE:** N/A

Commenter's Name: Kathy Frames, RN, EAAAA

COMMENT: Section 15 regarding Conditional Emergency Service, since this is an entirely new section added in the draft, should this entire section have been in red? Also, this appears to be only to refer to Skilled Care. Is this correct? On pg 11-11 at the top letter (d)- not sure why this wasn't put on page 11-10 but regardless, it references the "patient's medical record." Should this be client's and also we don't have Medical records. Just a little confused on this.

In Section 14 Standards for Personal Care Services several changes appear. Can you verify that I understand this correctly? The 5 day limit is removed for a referral to be done. Is this correct? The missed visit has been removed. Is this correct? Documentation as to why a task was not performed if on the aide assignment sheet appears to be removed also. Is this correct? The Supervisory Visit no longer has to be < every 62 days. Is this correct?

RESPONSE: [The agency did not indicate any changes were made to the proposed rules in response to these comments.]

Commenter's Name: Luke Mattingly, Arkansas Association of Area Agencies on Aging

COMMENT #1 SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

COMMENT #2 SUMMARY: Agrees with changes to Table 1. **RESPONSE:** N/A

Commenter's Name: Kelly Gadison, Amedisys Home Health

COMMENT SUMMARY: Supports the rules and appreciates ADH work. Requests assurance that proposed changes will extend beyond the present Covid-19 emergency measures. **RESPONSE:** Rule promulgation began in 2019 – not in response to emergency measures. Advised the commenter.

Commenter's Name: Kimmela Steed, Kindred at Home

COMMENT #1 SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

COMMENT #2 SUMMARY: Agrees with changes to Table 1. **RESPONSE:** N/A

Commenter's Name: Misty Chansley, AmCare Senior Life Partners, Inc.

COMMENT SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

Commenter's Name: Matt McClure, Home Instead

COMMENT SUMMARY: Agrees with changes to Table 1. **RESPONSE:** N/A

Commenter's Name: Shannon McGuffee

COMMENT SUMMARY: Agrees with changes to Table 1. **RESPONSE:** N/A

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: What is the statutory basis for the new language regarding branch offices (Section 5(B)-(F))? **RESPONSE:** Reorganized Rules – relocated “Branch Offices” to “Agency Location”. Medicare branch requirements are found at SOM 2182.2. Class A HHA must be Medicare certified.

QUESTION #2: Why was the provision in Section 6(D) requiring Health Facility Services to notify a person in writing upon the completion of an evaluation removed? **RESPONSE:** CMS requires such notification to certified HHAs, but not all HHAs are certified. Therefore, language was removed. Also, ADH responses are properly determined by ADH (not by rules for licensed HH agencies).

QUESTION #3: What is the statutory authority for requiring an agency to notify Health Facility Services of a change in name, location, contact information, or ownership (Section 7(E))? **RESPONSE:** Authority to administer licensing standards 20-10-806(b)(1) necessarily includes such information as necessary. Also Medicare SOM 2003.

QUESTION #4: Where do the closure procedures in Section 7(F) come from? **RESPONSE:** Added to assure continued access to care through for advance notice of closings. Previously, a “policy” was required (§ 10.1(f)), but lacked specificity for ADH to follow-up when it received word of a HHA agency closing. Information necessary to administer accurate licensee files.

QUESTION #5: Ark. Code Ann. § 20-10-810(2) allows Health Facility Services to deny, suspend, or revoke a license for commission of any unlawful act in connection with the operation of a home health agency. By listing specific grounds for denial/suspension/revocation in Section 9(A), has HFS chosen to limit the instances in which denial/suspension/revocation may occur? **RESPONSE:** No.

QUESTION #6: Why is tuberculosis singled out in the section on prevention of communicable diseases? **RESPONSE:** Rule was added to mirror ADH Tuberculosis Rule update.

QUESTION #7: Is there specific statutory authority for the "Quality Assurance and Improvement Program" and "Complaints and Incidents" subsections of Section 11? **RESPONSE:** No specific statutory language – measures reduce medical errors and improve quality of care in verifiable way. Authority for licensing standards 20-10-806.

QUESTION #8: What is the statutory authority for holding the members of an agency's governing board legally responsible for that agency (Section 11(B))? **RESPONSE:** Authority for licensing standards; also Medicare 484.105(a).

QUESTION #9: Why was the language requiring written contracts between agencies and contractors removed (Sections 11(D)(2) and 13(F))? **RESPONSE:** HFS looks exclusively to licensee for compliance.

QUESTION #10: Is there specific statutory authority for including "Control access to the patient's home" in the list of patients' rights in Section 11(E), or was this a policy decision? **RESPONSE:** Policy decision based on complaints.

QUESTION #11: Where do the timeframes for assessments in Section 12(B)(2)(a) and (b) come from? **RESPONSE:** These requirements are for Skilled Services and found in Medicare 484.55(a)(1) and 454.55(d)(1)

QUESTION #12: Is there statutory authority for the 60-day timeframe in Section 12(B)(3)(d)? **RESPONSE:** This requirement is for Skilled Services and found in Medicare 484.60(c)(1).

QUESTION #13: Section 12(E)(1) requires home health aides to complete 75 hours of training. Ark. Code Ann. § 20-77-2303 requires in-home assistants to receive “not less than 40 hours” of training and states that “the number of hours of training shall not be modified.” What is the difference between a home health aide and an in-home assistant? If they are the same, is the Department comfortable that the proposed training requirement comports with § 20-77-2303? **RESPONSE:** Home health aides provide care to patients receiving “skilled services” and therefore medically compromised and under close supervision of every 14 days. Medicare 484.80. Caregiver or personal care aides provide assistance in activities of daily living (ADLs). [As to the second question,] yes, with revised training table.

QUESTION #14: Do the requirements in Section 12(E)(3)-(7) have a statutory basis, or did these requirements originate somewhere else? **RESPONSE:** Moved from §11(G)

QUESTION #15: Are the visits referenced in Section 12(E)(8) “supervisory visits”? If so, is the Department comfortable that the proposed language comports with Act 811's requirement that the frequency of supervisory visits be established by a qualified supervisor? **RESPONSE:** 484.80(h)(2) (required for Medicaid reimbursement) requires aide services for individuals who are NOT receiving skilled care to be supervised every 60 days.

QUESTION #16: Section 10 indicates that the Personal Care Aide must complete a minimum of 40 hours of training. Ark. Code Ann. § 20-77-2303 lists topics in which in-home caregivers must be trained. These topics are reflected in Table 1. However, Ark. Code Ann. § 20-77-2303(b)(3)(J) indicates that at least 16 of the required 40 hours must "cover physical skills and competent demonstration of such skills for" several of those topics. Does the Department believe that the proposed rules reflect the 16-hour skills training requirement? **RESPONSE:** Upon consideration, Department reconfigured the training requirements in Table 1 and specified those items which must comprise 16 hours of the 40-hour training as required in ACA 20-77-2303(b)(3)(J).

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The Department of Health, Division of Health Facilities Services has authority to administer the law governing home healthcare services. Ark. Code Ann. § 20-10-806(a). The State Board of Health has authority to “adopt, promulgate, and enforce such rules and standards as may be necessary for the accomplishment of the purposes of” Ark. Code Ann. § 20-10-801 to -813. *See* Ark. Code Ann. § 20-10-806(b)(1), *as amended* by Act 811 of 2019. Some of these proposed changes implement Act 811 of 2019, sponsored by Senator Bill Sample, which amended the requirements for a personal care service provider, private care agency, and home healthcare services agency regarding visits to a patient’s home and the distance of a private care agency office from a patient’s home.

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Health Facility Services
DIVISION DIRECTOR Connie Melton, Branch Chief
CONTACT PERSON Becky Bennett, Section Chief
ADDRESS Freeway Medical Building, 5800 W. 10th Street, Suite 400, Little Rock AR 72204
PHONE NO. (501) 280-4374 **FAX NO.** (501) 661-2165 **E-MAIL** rebecca.bennett@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Laura Shue, JD, General Counsel
PRESENTER E-MAIL laura.shue@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule?

2. What is the subject of the proposed rule?

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

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

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No

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

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

please see attached summary

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Ark. Code Ann. § 20-10-801 et. seq.

7. What is the purpose of this proposed rule? Why is it necessary?

Comply with Act 811 of 2019 and cleanup provisions in proposed amendments to the rules. Also, change Director title to Secretary of Health per Act 910 of 2019 and eliminate "regulation" per Act 315 of 2019.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.healthy.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

01/01/2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health

DIVISION Health Facility Services

PERSON COMPLETING THIS STATEMENT

TELEPHONE NO. (501) 280-4374

FAX NO. (501) 661-2165

EMAIL: laura.shue@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

Rules for Home Health in Arkansas

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 an agency is proposing a more costly rule, please state the following:

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 more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

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

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and 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.