

**DEPARTMENT OF HEALTH, HEALTH FACILITY SERVICES**

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**SUBJECT:** Rules for Private Care in Arkansas

**DESCRIPTION:** The Rules for Private Care in Arkansas have been amended as follows:

- Eliminated the term “regulation” throughout in accordance with Act 910 of 2019.
- Updated Table of Contents.
- Removed citations to acts throughout. The Arkansas Code incorporates citations to authorized acts and is more user-friendly.
- Amended Section 1: Preface to comport with standard industry language.
- Amended Section 4: Definitions to remove definitions of terms not used in the rules, define additional terms, clarify language, accord with CMS and Act 811 of 2019, and for consistency.
- Amended Section 5: Agency Location to specify that PCAs have a physical location within the state.
- Amended Section 6: Application for License to add closing requirements, delete unnecessary language, clarify, simplify, maintain continuity, and reduce fraud.
- Amended Section 7: Inspections to allow for technology use to expedite initial inspections. Clarified, simplified, and deleted language.
- Amended Section 8: Denial, Suspension, Revocation to simplify language and for consistency.
- Renamed Section 9 from “Branch Offices” to “Training.” Deleted content regarding branch offices and added requirements for intra-agency training including subjects, supervision, amount, and form.
- Amended Section 10: General Requirements to improve clarity, eliminate duplication, reorganize, assure safe assistance, indicate that PCAs deliver non-medical care, and comply with ASBN and Act 811 of 2019.
- Amended Section 11: Services to delete unnecessary information per Act 811 of 2019.
- Added Section 12: Severability.
- Added a table of 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: 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: 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:** Agree with changes to table. **RESPONSE:** N/A

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:** Agree with changes to table. **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:** Agree with changes to table. **RESPONSE:** N/A

Commenter's Name: Shannon McGuffee

**COMMENT SUMMARY:** Agree with changes to table. **RESPONSE:** N/A

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

**QUESTION #1:** Where do the new definitions of “aide service plan,” “quality of services,” and “visit” come from? **RESPONSE:** Aide service plan: Updated language to more closely align with Medicaid. Requested by work group. Quality of service is updated to reflect language consistent with Personal Care Services for Medicaid. Visit added for clarification and update for use of telehealth. Provider request addition of telehealth.

**QUESTION #2:** What is the statutory authority for requiring an agency to notify Health Facility Services of a change in name, location, contact information, or ownership or agency closing (Section 6(C))? **RESPONSE:** Granted Authority in Statute 20-10-2304.

**QUESTION #3:** Where do the closure procedures in Section 6(D) come from?  
**RESPONSE:** See answer, Question 2.

**QUESTION #4:** Section 7(B) requires periodic inspections no less than every three years. Where does this timeframe come from? **RESPONSE:** This requirement aligns with CMS (Federal) survey frequency of every 3 years. Personal care is now covered by CMS.



**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. Are private care agencies considered home health agencies? **RESPONSE:** No.

**QUESTION #6:** By listing specific grounds for denial/suspension/revocation in Section 8(A)(2)-(4), has HFS chosen to limit the instances in which denial/suspension/revocation may occur? **RESPONSE:** No.

**QUESTION #7:** Why is tuberculosis singled out in the section on prevention of communicable diseases (Section 10(A)(4)(c))? **RESPONSE:** Rule was added to mirror ADH Tuberculosis Rule update.

**QUESTION #8:** Are the recordkeeping requirements in Section 10(A)(5) statutory, or do they come from somewhere else? **RESPONSE:** See answer, Question 2.

**QUESTION #9:** Is there specific statutory authority for the "Quality Assurance and Improvement Program" and "Complaints and Incidents" subsections of Section 10? **RESPONSE:** See answer, Question 2.

**QUESTION #10:** What is the statutory authority for holding the members of an agency's governing board legally responsible for that agency (Section 10(B))? **RESPONSE:** See answer, Question 2.

**QUESTION #11:** Why was the language requiring written contracts between agencies and contractors removed (Section 10(C))? **RESPONSE:** Rule is specific enough. Will look to the licensed agency, not the contracted entity.

**QUESTION #12:** Is there specific statutory authority for including "Control access to the client's home" in the list of clients' rights in Section 10(D), or was this a policy decision? **RESPONSE:** See answer, Question 2. Added based on complaints received from clients.

**QUESTION #13:** Where does the 12-hour inservice training requirement in Section 11(B)(5) come from? **RESPONSE:** Historical. Keeping PCA (unskilled) rules in line with HHA rules so Class B (unskilled) agencies are not treated differently/penalized.

**QUESTION #14:** Section 9 indicates that agency employees 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 (listed as (J) through (R)). 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 State Board of Health has authority to promulgate rules necessary to implement Arkansas law on personal care service providers. Ark. Code Ann. § 20-10-2304(a), (c)(2)(A) *as amended by* Act 811 of 2019. The Board also has authority to implement its rules and “supervise the conduct of the private care agencies as defined” in Ark. Code Ann. § 20-10-2301 to -2304. *See* Ark. Code Ann. § 20-10-2304(d). 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 Rule" below.
- 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

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1. What is the short title of this rule? Rules for Private Care in Arkansas

2. What is the subject of the proposed rule? standards for licensed Private Care Agencies

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.

§ 20-10-2301 et seq.

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

Update to comply with Act 591 of 2017 and Ark. Code Ann. §20-10-2302.  
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:**

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 Private Care 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.



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091119  
Index Summary of Proposed Changes

Title page	Change Director title to Secretary of Health	Act 910 of 2019
throughout	Eliminate <del>regulation</del>	Act 315 of 2019
throughout	Change “patient” to “client”	
	<b>Table of Contents</b>	
TOC	Eliminate “Unregulated Agency”	Unregulated agency is a criminal offense. License is the linkage to administrative oversight
§5 p. i		
§5 p. i	Rename as Agency Location	Section specifies that PCAs have a physical location in the state
§9	Eliminate “Branch Offices”	Branch offices not applicable to PCAs
§9	Rename as “TRAINING” (references Table 1)	For Agency training its own aides
§11	<del>“standards for Personal Care Services”</del>	Reorganized content
§12	Add “Severability”	Protect remaining rules if any section invalid
table	Add Table 1	Required training topic
	<b>§1 Preface</b>	
p. 1-1	<del>patient trends to “home care”</del> <del>patients to “clients”</del>	Uses standard industry language
	<b>§2 Authority</b>	
p. 2-1	Remove citations to Acts - leave citations to the Arkansas code	Arkansas Code incorporates citations to authorizing acts & is more user friendly
	<b>§3 Purpose</b>	
p. 3-1	Remove citations to Acts - leave citations to the Arkansas code  eliminated excess language throughout	Arkansas Code incorporates citations to authorizing acts & is more user friendly

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Index Summary of Proposed Changes

	<b>§4 Definitions</b>	
p.4-1 <del>B</del>	Eliminate “ <del>Assistance with Medication</del> ”	Defer to ASBN – nursing scope of practice term
<del>C</del>	Eliminate “ <del>Branch Office</del> ”	Unnecessary to PCAs
B	Add “Aide Service Plan”	Term used in rules
C	Add “Client”	Distinguish rules apply to Medicaid only
D	Changed “Clinical note” to “Client note”	Consistent with changing “patient” to “client” throughout rules
E	Changed to “Client Record”	Consistent with changing “patient” to “client” throughout rules
<del>G</del>	Eliminate <del>coordinating</del>	PCAs are not multi-disciplinary
<del>I</del> p.4-2	Eliminate <del>discharge summary</del>	unnecessary
<del>K</del>	<del>Geographic area</del>	Unnecessary – no POA
<del>N</del>	<del>Licensed prescriber</del>	Term not used in rules
<del>P</del>	<del>maintenance</del>	Term not used in rules
<del>Q</del>	<del>Parent agency</del>	Term not used in rules
<del>R</del>	<del>Patient care conference</del>	Term not used in rules
J	Personal Care <u>Services</u> – struck “health-related” and “sick and debilitated”	Simplified to reflect services provided by PCAs
<del>Θ</del>	Personal care aide	clarified
<del>Ʀ</del>	<del>Physician</del>	unnecessary
K	Struck additional location language	inapplicable
L	Updated physician to qualified practitioner	Consistent with CMS language

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W	preventive	Unnecessary – not used
p. 4-3 X	Primary agency	Described in § 5 Location
M	Returned to statutory definition of PCA <b>Changes certifying entity:</b> -removes DOL certification -specifies certification by (DHS) Division of Aging and Adult services; <b>Changes certification type:</b> from ElderChoices provider to providers of home and community-based health services <b>Changes names of services:</b> from respite, chore and homemaker to personal and attendant care	Changed in Act 591 of 2017; Ark. Code Ann. §20-10-2302
N	<del>Care</del> -services	Updated; PCAs don't deliver skilled care
AA	<del>Registered Nurse</del>	unnecessary
BB	<del>Rehabilitative</del>	Term not used in rules
DD	<del>Restorative</del>	Term not used in rules
EE	<del>Service Area</del>	Term not used in rules
FF	<del>subunit</del>	Inapplicable to PCAs
p. 4-2 P	Supervision definition updated	Accord with CMS
Q	Add definition of supervisor	Act 811 of 2019-specific definition
R	Visit defined	
	<b>§5 Agency Location</b>	
§5 p. 5-1	Rename §5 <del>Unauthorized</del> Agency <u>Location</u>	Section specifies that PCAs have a physical location in the state



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Index Summary of Proposed Changes

	Strike authorizing language	Authorized by statute – see §2 Authority
	<b>§6 Application for license</b>	
p. 6-1	¶A Delete ‘private care agency’	PCA is understood
	¶B Delete	Acquisition notice of 60 days unnecessary
	¶C Delete	Service area not involved with PCAs Clarify & simplify
¶ B(1-2, 4-5)	Clean up and consolidate notice requirements;	Moved and improved from §9(A)(1)
B(3)	Add notice for agency closing	Maintain continuity and reduce fraud
¶C(1-2)	List requirements for closing agency	
	<b>§7 Inspections</b>	
p. 7-1 ¶ A	Strike “onsite” [initial] inspection, clarify and simplify initial review/inspection required before license is issued	Allow for technology use to expedite initial inspections; focus/save resources
¶ B	Consolidate and simplify inspection schedule to “no less than” every 3 years. Eliminate subparts.	Clarify & simplify
¶ C p.	Delete middle sentence	See §8 – denial, suspension, revocation
	<b>§8 Denial, suspension, revocation</b>	
p. 8-1 A & C(1)	Delete ¶A & C-1	No “suspensions”
¶A(1-4)	Simplify language	Adds focus and clarity for agencies and surveyors
¶ A(5), D	Change <u>patient</u> to <u>client</u>	PCA services are non-skilled
	<b>§9 Training</b>	
p. 9-1	Rename section <del>Branch Offices</del> to <u>Training</u> and delete old content regarding branch offices	language from home health rules is inapplicable to PCAs
A(1-4)	Specify for intra-agency training requirements for subjects, supervision, amount, and form.	Moved from §10H(9) p. 10-8

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B p. 10-1	Specify that PCAs must be authorized by Dept. of Higher Ed. to offer training to non-employees	Resource for PCAs
	<b>§10 General requirements</b>	
10-1 A	Change “Policies” to Policies & Procedures  Reorder – improve clarity and brevity Change <del>patient care</del> to <u>client services</u>	PCAs deliver non-medical care
	Non-substantive language eliminated	
	Remove excess content	Eliminate duplication
	Change <del>patient care</del> to <u>services delivery</u>	PCAs deliver non-medical care
	Change <del>patients</del> to <u>clients</u>  Strike subsequent requirements inapplicable to PCAs (branch offices, dissolution, etc)  move Governing body oversight of budget - §B(1)(e) “Governing Body”	PCAs deliver non-medical care  Eliminate duplication
A3	Add procedures for client tasks Add report changes  Eliminate detailed personnel policies requirements	Substantive add to assure safe assistance  Personnel policies not required in other agencies
A(4) 10-1,2	(a) Infection control program description  (b) Work restrictions  (c) TB control language	Consolidate for ease of use by agencies and surveyors. Uses language similar to Medicare  Simplify

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Index Summary of Proposed Changes

		Uniform throughout all ADH regulated facilities
35	Eliminate excess requirements for personnel record.	Streamline and simplify
5(f)	Criminal history checks	
10-3 6	Moved QI from 10(D); simplified	Clinical QI made specific to PCAs
<del>10</del> 7	Complaints moved from p. 10-10	simplified
p. 10-3 B Gov. <del>Body</del>	<del>Body</del> <u>Board</u>	Change title in response to PCA education meetings
p. 10-4 B(1)	Add explanatory language Remove QA to Section 10(A)(6) Add annual budget approval to governing body functions (moved from A(4)(c) ¶2)	reorg Promote understanding by PCAs Consolidate
10(C) p.10-4	Reworked language to clarify and simplify administrators implementation responsibilities as distinguished from governing <del>body</del> board	
<del>10(C)</del> contractor reqs p. 10-5	Moved to 11(B)	reorganize
<del>10(D)</del> -QI p. 10-5,6	Moved to 10(A)(6)	reorganize
(D)(1)(k) p.10-7	Add “control access to client’s home”	Provider to restrain from bringing others to client home
<del>10(F)</del> p. 10-7,8	Eliminate Advance Directive provisions	Not applicable to PCAs § 20-6-102



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p.10-8 <del>10(G)</del>	Moved "Services Provided" and consolidated in Section 11	reorganize
	Remove the 62 day requirement	Act 811 of 2019
	Delete <del>coordination with other agencies</del>	
<del>10(H)</del>	Moved Personal Care Aide Services and consolidated in Section 11	
<del>10(H)(1)</del> 10(H)(1)(c)	Delete <del>requirements</del> other than 40 hr. Moved qualification requirement to Section 11(B)	Replaced by caregiver training law, ACA 20-77-2301 et seq reorg
<del>10(H)(2)</del>	Moved competency to Section 11(A)(9)	reorg
p. 10-9 <del>10(H)(3-4)</del>	Move to Section 11(A)(10-12)	reorg
<del>10(H)(5)</del>	Remove <del>62-day requirement</del>	Act 811 of 2019
<del>10(H)(6)</del>	Delete <del>Aide no write orders</del>	ASBN
<del>10(H)(7)</del>	Delete <del>Aide assistance with Medication</del>	ASBN
<del>10(H)(8)</del>	Move duties to Section 11(A)(13)	Reorg
<del>10(H)(8)(a-e)</del>	unnecessary; kept important part (f) below	cleanup
<del>10(H)(8)(f)</del>	Move to Section 11(A)(14)	reorg
<del>10(H)(8)(g)</del>	Delete duplication	redundant
p. 10-10 <del>10(H)(8)(h-i)</del>	Delete duplication now in Section 9 Training	redundant
<del>10(H)(9-11)</del>	Moved to Section 9 Training	
10(E) 4.a	Added language to clarify. <del>Registered Nurse</del> qualified supervisor	"all services" replace RN with Qualified supervisor
p. 10-11 10(E)(4)(b)	Simplify	

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10(E)(4)(c)	Change to “Aide Assignment sheet service plan” – more specific	See definitions
<del>10(E)(4)(e)</del>	Delete reference to <del>Advance directives</del>	PCA not included in 20-6-102 (advance directive facilities)
<del>10(E)(5)</del>	Remove duplicate language below	
10(E)(5)(a)	Add “if any”	Clarify – not required but if any
<del>10(E)(5)(e)</del>	Delete <del>ease conference</del>	Not multi-disciplinary
<del>10(E)(5)(d)</del>	Delete <del>Discharge Summary</del>	Goal of PCA is not discharge
10(E)(5)(e)	Moved from Section 11(F)	reorg
10(E)(5)(f)	Add “tasks completed”	clarify, and more complete record
<del>10(E)(6)</del> 10-11	Change “clinical” to “client” notes	Task documentation added in 10(E)(5)(f)
<del>10(J)</del>	<del>Remove Discharge planning</del>	Goal of PCA is not discharge
<del>10(K)</del>	Move complaints to Section 10(A)(7)	reorganize
	<b>§11 Services</b>	
SERVICES p. 11-1	Deleted A-H. Reorganized/deleted unnecessary information per Act 811 of 2019  Consolidated and Simplified per Act 811 of 2019.	
	<b>§12 Severability</b>	
p. 12-1	Add severability clause	
	<b>§ TABLES</b>	
TABLE	Add Required topics for training	For agency-provided training

Summary/Index  
Home Health Rules  
09052019

Section, page	Change	Source of specific authority with page & line or reason for change
<b>Table of Contents</b>		
TOC		
§5	Rename as Agency Location Eliminate Unregulated Agency	Section specifies physical location, regional offices ACT 801 and Branch offices for Medicare Certified agencies. Unregulated agency is a criminal offense. License is the linkage to administrative oversight.
§10	Rename as Training Eliminate Branch Office	Clarify rules for aide training Branch office moved to Agency Location
§15	Move from Section 13 to Conditional Emergency Permits	Moved from Extended Care so services may be available for all skills and all populations. Requested by POA. e.g. respiratory therapy for pediatrics
§16	Add "Severability"	Protect remaining rules if any section invalid
	<b>§1 Preface</b>	
	<b>§2 Authority</b>	
	<b>§3 Purpose</b>	
	<b>§4 Definitions</b>	
p.4.1	Eliminate " <del>assistance with medication</del> "	Defer to ASBN – nursing scope of practice term
B	Add "aide assignment sheet/aide service plan"	Term used in Rules
B	Add Medicare certified	To specify only Class A agencies
C	Add contiguous counties of the POA	To specify service area
C	Delete portion of " <del>total geographic area...</del> "	Unnecessary language
C	Delete " <del>within a 50-mile radius</del> "	Remove unnecessary mileage requirement, technology advances
E	Add clinical manager	Term defined in CoP
G	Delete " <del>in accordance with acceptable medical standards</del> "	To be applicable to all services



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p. 4.3	Delete "geographic area"	Remove unnecessary mileage requirement, technology advances
P.	Delete "personal care aide"	Separately defined
R,S,T,W,X, BB,FF,GG LL,RR,SS	Delete licensed type professionals	Consolidated in "skilled professional"
T	Added, "Medicare certified"	Specify Class A agency for Branch office supervision
AA	Removed "sick and debilitated"	Updated language
BB	Personal Care Aide definition	To differentiate from Home Health Aide
DD	Removed unnecessary language	
EE	Added "by a qualified practitioner"	To expand flexibility
II	Moved to §5 Agency Location	
JJ	Deleted "psychiatric nurse"	Term not used in Rules
KK	Deleted 50 mile radius requirement	Unnecessary mileage requirement, technology advances
LL	Clarified skilled care services	To align with CoP
MM	Added "skilled professional"	Term used in Rules and aligns with CMS regulation
TT	Removed	No longer a licensed category; aligns with CoP and Act. 811 of 2019
p. 4.7		
NN	Simplified to "within scope of practice"	Add flexibility and Act 811 of 2019
OO	Added definition of Supervisor	Align with CoP and Act 811 of 2019
PP	Added definition of Visit	For clarity and flexibility
	<b>§5 Agency Location</b>	
p.5-1	Add "sufficient number of licensed regional offices to adequately service	ACT 801

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§A	the administrative needs of the agency and the patients. A Regional Office is required for non-contiguous counties.	Establish service area based on agency POA
<del>§B</del>	Delete	Already stated in Section 6. Duplicate language
<del>§C</del>	Delete	Already stated in Section 6. Duplicate language
p. 5-1 p. 5-2 B	Branch office	Moved to clarify and simplify. CoP requirements. For Medicare certified only. See definition.
	<b>§6 Exemptions</b>	
p.6-2 §C	Clarify	
<del>§D</del>	Delete	HFS requirement
	<b>§7 Application for License</b>	
p. 7-1 §C	Remove 50 mile radius. Clarify Conditional Emergency Services	
<del>§D</del>	Remove Temporary License	
p.7-3 §G §H 1-8	Clean up and consolidate notice requirements;	
p.7-4 §F	Add notice and requirements for Agency closing	Maintain continuity and reduce fraud
	<b>§8 Inspections</b>	
p.7-1 §A	Strike "on-site" [initial] inspection, clarify and simplify initial review/inspection required before license is issued	Allow for technology used to expedite initial inspections; focus/save resources
§B	Clarify and remove unnecessary language	Clarify and simplify
§B	Consolidate and simplify inspection schedule to "no less than" every 3 years. Eliminate sub-parts.	Clarify and simplify; match CoP

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§C	Delete duplicate language	See Section §9 Denial, Suspension, Revocation
	<b>§9 Denial, Suspension, Revocation of License</b>	
p. 9-1 §A,C1	Delete unnecessary language	Simplify No "suspensions"
§B 1-4	Simplify language	Adds focus and clarity for agencies and surveyors
	<b>§10 Training</b>	
p. 10-1 §A-E §A §B	Rename Section <del>Branch Offices</del> to <u>Training</u> Delete and move content regarding Branch offices Add "home health aide training" requirements Add "personal care aide training"	Specify for intra-agency training requirements  Moved to §5 Agency Location  CoP; specify for intra-agency training requirements for subjects, supervision, amount, and form  specify for intra-agency training requirements for subjects, supervision, amount, and form
p. 10-2 §C	Add approval by Department	All services must be approved
§D	Specify that HHA must be authorized by Higher Ed to offer training to non-employees	Resource for HHA
	<b>§11 General Requirements</b>	
p. 11-1 §A	Change "policies" to policies <u>and procedures</u>  Reorder-improve clarity and brevity  Non-substantive language eliminated	To clarify



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	Remove excess content  Add procedures for all tasks and patient care  Eliminate detailed personnel policy requirements  Add reporting changes in patient condition	To eliminate duplication  Substantive add to assure safe care  Personnel policies not required in other agencies  To assure safe care
p. 11-2 A6.a-c  A7a.i. 7a.ii.  7 a.vii  3	Infection control program description  Add "signed by employee" Add "education and/or training"  Remove letters of commendation Add verification of work history  Consolidated into §6, Infection Control	Consolidate for ease of use by agencies and surveyors. Uses Medicare language.  Accountability of employee. Verification of qualifications.  Unnecessary language. Verification of qualifications.  Simplified and updated
p. 11-3 8  9	Add QA  moved from §11P and added requirements for documentation	Moved from §11D; simplified and consolidated.  Clarified and consolidated
p. 11-4 B  B1  B1c-f  2-C p.4-6	<del>Body</del> to Board  Added explanatory language  Clarified governing board requirements Removed language  Reworked language to clarify and simplify administrator's implementation responsibilities as distinguished from governing <del>body</del> board	Simplify  Clarify  clarity duplication
p. 11-6 D2 2	Consolidated requirement.  Removed excessive language	Clarify  Simplify. All language is in current CoP

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⊖ p11.6-8	Moved to §11.A.8	Clarify
p. 11-9 E.k	Add "control access to client's home"	Provider to refrain from bringing others to client's home
E.l	Add "be free from... abuse including injury..., neglect and misappropriation of property"	Patient safety; matches CoP
p. 11-15 <del>G-M</del>	Consolidated and moved content to § 12 Skilled Services	Reorganization of Licensure requirements
p. 11-17 H.1	Add "all services provided"	Ensure complete record
H.3	Struck specific requirements, added according to laws	Define authority
H.4.a-f	Reorganized record requirements	Clarity, fraud reduction, accuracy
p. 11-18 ⊖	Moved to §12	Skilled services requirement
⊕	Moved to §11.A	Reorganization of policy requirements
	<b>§Section 12 Standards for Skilled Care Services</b>	
p. 12-1 B	Consolidated from §11.G Services and added scope of practice by licensing board	Clarify skilled services and supervision
B.2-3	Reorganized new headings, "Assessment/Plan of Care"; clarified time-frames for differing assessments	Consolidated and clarified from §11: Services
p. 12-3&4 E.1-9	Moved from §11.G: Services	Home Health Aides are part of "skilled" services
E.2.a-e	Specified requirements for competency evaluation	CoP

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	<b>§Section 13 Standards for Extended Care Services</b>	
p. 13-2 E	Deleted "Contracting for Extended Care"	Duplicated (§11.D)
p.13.3-5	Moved to new §15: Conditional Emergency Services	Reorganization
	<b>§Section 14 Standards for Personal Care Services</b>	
p. 14.1 A-G A-B	Per Act 811  Consolidated original language; removed RN, 62 day supervision	Consolidate and simplify  Consolidate and simplify per Act. 811
	<b>§Section 15 Conditional Emergency Service</b>	
p. 15-1 A.1.a	Removed "extended". Added "skilled"	Per Health Services Permit Agency request for specific populations, i.e. pediatric.
	<b>§Section 16 Severability</b>	
p. 16.1	Added severability language	Protect remaining rules if any section invalid
	<b>§TABLES</b>	
TABLES 1&2	Add required topics for training	For agency provided training



1 State of Arkansas As Engrossed: S3/13/19 S3/25/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

SENATE BILL 468

4

5 By: Senator B. Sample

6 By: Representative Penzo

7

8

## For An Act To Be Entitled

9

AN ACT TO AMEND 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; AND FOR OTHER  
PURPOSES.

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## Subtitle

18

TO AMEND 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 AN OFFICE FROM  
THE PATIENT'S HOME.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. Arkansas Code § 20-10-2304(c), concerning the rules by the  
State Board of Health regarding personal care service providers and private  
care agencies, is amended to read as follows:

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(c) The board shall:

32

(1) establish Establish a separate licensure category for  
private care agencies that provide personal care services twenty-four (24)  
hours a day and seven (7) days a week;

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35

(2)(A) Adopt, promulgate, and enforce rules and standards as  
necessary to implement this subchapter.

36



1 (B) A rule adopted to implement this subchapter shall be  
2 amended or repealed by the board as in the interest of the public through the  
3 Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

4 (3) Require that:

5 (A)(i) A qualified supervisor shall establish the  
6 frequency of in-person supervisory visits as part of the patient’s plan of  
7 care based on the specific needs of the patient and the recommendations of  
8 the registered nurse.

9 (ii) The frequency of in-person visits shall be at  
10 least annually.

11 (iii)(a) A qualified supervisor shall be a licensed  
12 nurse or have completed two (2) years of full-time study at an accredited  
13 institution of higher education.

14 (b) An individual who has a high school  
15 diploma or general equivalency diploma may substitute one (1) year of full-  
16 time employment in a supervisory capacity in a healthcare facility or  
17 community-based agency for one (1) year at an institution of higher  
18 education; and

19 (B) A private care agency maintain a primary location in  
20 Arkansas and a sufficient number of regional offices to adequately service  
21 the administrative needs of the private care agency and the patients of the  
22 private care agency; and

23 (4) Not require:

24 (A) A registered nurse to visit a patient every sixty-two  
25 (62) days to supervise services; or

26 (B) A branch office of a private care agency to be within  
27 a one-hundred-mile radius of a patient’s home.

28  
29 SECTION 2. Arkansas Code § 20-10-806(b), concerning the administration  
30 and rules of home healthcare services agencies, as amended by Acts 2019, No.  
31 315, is amended to read as follows:

32 (b)(1) The State Board of Health shall adopt, promulgate, and enforce  
33 such rules and standards as may be necessary for the accomplishment of the  
34 purposes of this subchapter.

35 (2) The rules and standards shall be ~~modified,~~ amended, or  
36 rescinded from time to time by the board as may be in the public interest,

1 after first complying with the Arkansas Administrative Procedure Act, § 25-  
2 15-201 et seq.

3 (3) Rules under this subchapter shall:

4 (A)(i) Require that a qualified supervisor shall establish  
5 the frequency of in-person supervisory visits as part of the patient's plan  
6 of care based on the specific needs of the patient and the recommendations of  
7 the registered nurse.

8 (ii) The frequency of in-person visits shall be at  
9 least annually.

10 (iii)(a) A qualified supervisor shall be a licensed  
11 nurse or have completed two (2) years of full-time study at an accredited  
12 institution of higher education.

13 (b) An individual who has a high school  
14 diploma or general equivalency diploma may substitute one (1) year of full-  
15 time employment in a supervisory capacity in a healthcare facility or  
16 community-based agency for one (1) year at an institution of higher  
17 education; and

18 (B) Not require:

19 (i) A registered nurse to visit a patient every  
20 sixty-two (62) days to supervise services; or

21 (ii) A branch office of a home healthcare services  
22 agency that only provides unskilled home healthcare services to be within a  
23 an one-hundred-mile radius of a patient's home.

24  
25 SECTION 3. DO NOT CODIFY. Advisory Private Care Agency and Home  
26 Healthcare Services Agency Rule Working Group.

27 (a) There is created the Advisory Private Care Agency and Home  
28 Healthcare Services Agency Rule Working Group within the Department of  
29 Health.

30 (b) The group shall consist of the following individuals appointed by  
31 the Director of the Department of Health:

32 (1) One (1) member from a list of individuals provided by the  
33 HomeCare Association of Arkansas;

34 (2) Three (3) members from a list of individuals provided by  
35 private care agencies; and

36 (3) Three (3) members from a list of individuals provided by



1 home healthcare services agencies that provide unskilled home healthcare  
2 services.

3 (c)(1) The director shall call the first meeting of the group.

4 (2) The group shall select a chair from the membership at the  
5 first meeting.

6 (d) Within sixty (60) days of the effective date of this act, the  
7 group shall review the rules regarding private care agencies and make  
8 recommendations to the Department of Health for changes to the rules  
9 regarding private care agencies and home healthcare services agencies that  
10 provide unskilled home healthcare to make the rules consistent with rules  
11 regarding private care agencies in the surrounding states.

12 (e)(1) On or before November 1, 2019, the group shall provide a report  
13 on their review and recommendations described in subsection (d) of this  
14 section to:

15 (A) The director;

16 (B) The Governor; and

17 (C) The Legislative Council.

18 (2) The recommendations by the group shall not relate to contract  
19 labor laws that are related to business models for personal care service  
20 providers, private care agencies, or home healthcare services agencies.

21 (f) The members shall not receive expense reimbursement, per diem, or  
22 stipends.

23 (g) This section shall expire on November 1, 2019.

24  
25 SECTION 4. DO NOT CODIFY. Legislative intent.

26 It is the intent of the General Assembly to address and require  
27 amendments to rules concerning nonskilled, nonmedical personal care and  
28 private care services without making any alternations to skilled home  
29 healthcare services or the provision of medical home care services.

30

31 /s/B. Sample

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34 APPROVED: 4/9/19

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