

## DEPARTMENT OF HUMAN SERVICES, DIVISION OF PROVIDER SERVICES & QUALITY ASSURANCE

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**SUBJECT:** Licensure Update Pursuant to Acts 135 and 746

**DESCRIPTION:**

Statement of Necessity

The Director of the Division of Provider Services and Quality Assurance amends the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program to incorporate Acts 135 and 746 of the 93<sup>rd</sup> General Assembly.

Rule Summary

The 93<sup>rd</sup> General Assembly enacted Acts 135 and 746. Act 746 directs occupational and licensing entities to grant licenses to individuals who hold a Federal Form I-766 United States Citizenship and Immigration Services-issued Employment Authorization Document, known as a “work permit,” who fulfill the professional licensing requirements. Act 135 directs occupational and licensing entities to provide automatic or expedited professional licensing to uniformed service members, veterans, and their spouses. DPSQA oversees the licensing of long-term care nursing assistants. To comply with these acts, DPSQA amends the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program to incorporate these requirements.

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on November 8, 2021. The agency indicated that it did not receive any public comments.

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

1. The citation in the last paragraph of Section D should reference A.C.A. § 17-1-110 rather than § 17-1-109. **RESPONSE:** That is correct. This has been corrected in the attached packet.
2. Section E(2) states that, in order to be eligible for automatic/expedited licensure, a uniformed service veteran must establish residence in Arkansas and make an application within one year of his/her discharge from uniformed service. However, the one-year time limit does not appear in A.C.A. § 17-4-104, which addresses applicability of the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. I see a similar one-year requirement in A.C.A. § 17-4-107(2), regarding acceptance of uniformed service education, training, or service-issued credentials. Is it DHS’s position that the one-year requirement in § 17-4-107(2) applies to both acceptance of education/training/service-issued credentials and eligibility for

automatic/expedited licensure, or was the requirement in the proposed rules taken from somewhere else?

**RESPONSE:** Section E quotes the wrong statute:

To comply with the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021 (Arkansas Code Annotated § 17-4-106), the following rules apply to:

Instead, it should read:

To comply with the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021 (Arkansas Code Annotated § 17-4-101, *et seq.*), the following rules apply to:

This has been corrected in the attached packet.

The proposed effective date is January 2, 2022.

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

**LEGAL AUTHORIZATION:** The Office of Long-Term Care, located within the Department of Human Services, Division of Provider Services and Quality Assurance, has may promulgate rules “necessary or desirable to properly and efficiently carry out the purposes and intent of” Title 20, Chapter 10 of the Arkansas Code, addressing long-term care facilities and services. The Department also has authority to “promulgate rules necessary to implement an aide training program for all long-term care facilities in this state, to prescribe in-service training programs, and to enforce compliance with those programs.” Ark. Code Ann. § 20-10-705(a). The Department and its divisions may promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

These rules implement Acts 135 and 746 of 2021. Act 135, sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, “[a]n occupational licensing entity shall grant automatic occupational licensure to” certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135. Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals. Temporary language contained within Act 746 required all occupational or professional licensing entities to promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

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

DEPARTMENT/AGENCY Department of Human Services  
DIVISION Division of Provider Services and Quality Assurance  
DIVISION DIRECTOR Martina Smith  
CONTACT PERSON Mac Golden  
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437  
Mac.E.Golden  
PHONE NO. 501-320-6383 FAX NO. 501-404-4619 E-MAIL @dhs.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Martina Smith  
PRESENTER E-MAIL Martina.Smith@dhs.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. Submit two (2) copies of this 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. Whittaker  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Licensure Update Pursuant to Acts 135 and 746

2. What is the subject of the proposed rule? See Attached.

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 regulation. \_\_\_\_\_

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."**

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-10-705 and 25-10-129

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

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).

<https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>

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.)

November 8, 2021

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

January 2, 2022

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. See Attached.

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

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. Unknown



**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services

**DIVISION** Division of Provider Services and Quality Assurance

**PERSON COMPLETING THIS STATEMENT** Jason Callan

**TELEPHONE** 501-320-6540 **FAX** \_\_\_\_\_ **EMAIL:** Jason.Callan@dhs.arkansas.gov

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

**SHORT TITLE OF THIS RULE** Licensure Update Pursuant to Acts 135 and 746

- 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?

<b><u>Current Fiscal Year</u></b>		<b><u>Next Fiscal Year</u></b>	
General Revenue	\$ _____	General Revenue	\$ _____
Federal Funds	\$ _____	Federal Funds	\$ _____
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____

Other (Identify) \_\_\_\_\_  
 Total \$ \_\_\_\_\_

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 \$ 00.00

**Next Fiscal Year**

General Revenue \$ \_\_\_\_\_  
 Federal Funds \$ \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \$ 00.00

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**

\$ 00.00

**Next Fiscal Year**

\$ 00.00

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**

\$ 00.00

**Next Fiscal Year**

\$ 00.00

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.

**Statement of Necessity and Rule Summary**  
**Licensure Updates Pursuant to Acts 135 and 746**

**Statement of Necessity**

The Director of the Division of Provider Services and Quality Assurance amends the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program to incorporate Acts 135 and 746 of the 93<sup>rd</sup> General Assembly.

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## NOTICE OF RULE MAKING

The Director of the Division of Provider Services and Quality Assurance of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rules under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-10-705 and 25-10-129.

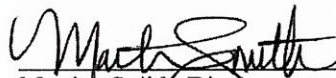
### **Effective January 1, 2022:**

The Director of the Division of Provider Services and Quality Assurance amends the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program to incorporate Acts 135 and 746 of the 93<sup>rd</sup> General Assembly. Act 135 allows for the automatic or expedited occupational licensing for uniformed service members, veterans, and their spouses. Act 746 allows a person who holds a Federal Form I-766 "work permit" to obtain an occupational or professional license.

The proposed rules are available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rules at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. Public comments must be submitted in writing at the above address or at the following email address: [ORP@dhs.arkansas.gov](mailto:ORP@dhs.arkansas.gov). All public comments must be received by DHS no later than **November 8, 2021**. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-396-6428.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed, and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color, or national origin. 4502035775



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Martina Smith, Director  
Division of Provider Services and Quality Assurance