

**SUBJECT:** Rules for Arkansas Long-Term Care Facility Nursing Assistant Training Program and Curriculum

**DESCRIPTION:** 1. Section VI of the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program is being amended to allow Long-Term Care Nursing Assistant Programs to hire classroom instructors that may not meet the minimum requirement of at least one (1) year of long-term care nursing services experience within the last five (5) years, provided that the classroom instructor completes the long-term care education course approved by DPSQA. This provides training programs, especially rural training programs, the ability to recruit instructors that may not meet the minimum requirement of having at least one (1) year of long-term care experience in recent years, since this long-term care education course will be offered as a substitute for this requirement.

2. Long-Term Care Nursing Assistant Training Program curriculum has been updated to reflect current best practices to include lesson plans on resident rights, protecting the profession (specifically the content on reporting abuse, neglect, and misappropriation), and the lesson plan related to Cognitive Impairment/Alzheimer's/Dementia (specifically the content on the person-centered approach to caring for residents with Alzheimer's and Dementia). The curriculum has also been updated to remove content related to three skills that are no longer part of the Certified Nursing Assistant (CAN) scope of practice, including feeding using a syringe, checking for impaction, and performing an enema. The Works Cited page on the "proposed" version of the curriculum lists the sources used to update the curriculum to reflect current best practices.

**PUBLIC COMMENT:** The public comment period expired on May 18, 2019. There was not a public hearing. The proposed effective date is August 1, 2019.

Per the agency, CMS approval is not required for these rule changes.

The agency provided the following summary of the comments that it received and its responses thereto:

**Holly Johnson, Assistant Attorney General**

**Comment:** As to the education course that the rule proposes to substitute for the one year (at least) of long-term care nursing services within the last five (5) years, there is no information as to what the course would actually entail. The rule does not indicate how long the course would be, who would teach the course, when the course would be taught, or who would ultimately determine that the course is sufficient to serve as a replacement for the one year of long-term care nursing services that would be replaced.

**Response:** DHS will partner with subject matter experts to develop the long-term care education course content, market the course to current Nurse Aide Training Programs across the state, deliver the course, and evaluate the course materials and course delivery. DHS expects this course to cover any recent regulatory changes occurring during the previous two years that impact CNA scope of practice, incident and accident reporting processes, resident rights, etc. This course will provide a mechanism for potential classroom instructors that do not meet the minimum requirement of (at least) one year of long-term care nursing services within the last five (5) years to meet that requirement, providing Nurse Aide Training Programs more flexibility with recruiting classroom instructors. We expect this long-term care education course to be modeled after structured continuing education courses for medical professionals.

**Comment:** The Notice of Rule Making references the “primary” instructor in the fourth line of the first numbered paragraph. It is my understanding that the rule should say “classroom instructor;” not primary instructor.

**Response:** DHS published a new Notice of Rule Making that contained this correction. The new Notice of Rule Making was published pursuant to Arkansas Administrative Procedure Act requirements beginning April 19, 2019 and extended the public comment period to May 18, 2019.

Additionally, Kathryn Henry, an attorney with the Bureau of Legislative Research, asked the following question: Is the number of training hours required by DHS increasing in the new Long-Term Care Nursing Assistant Training Program curriculum?

**RESPONSE:** The number of hours has not changed with the new curriculum, we have simply included newer information and removed content/skills that are no longer part of a CNA’s scope of practice

**FINANCIAL IMPACT:** The agency reports that the cost to implement this rule is \$20,000.00 for the current fiscal year (\$10,000.00 in general revenue and \$10,000.00 in federal funds) and \$20,000.00 for the next fiscal year (\$10,000.00 in general revenue and \$10,000.00 in federal funds). The agency further reports that the state will contract with a qualified vendor to develop the continuing education course and implement the course for nursing assistant training program instructors. During the current fiscal year, the vendor will be responsible for course development, delivery, and tracking nursing assistant training program instructor participation and completion. In subsequent fiscal years, the contractor will be responsible for updating the content of the continuing education course (based on new federal or state regulation, guidelines, or best practices), delivering the content to new nursing assistant training program instructors, and tracking participation and completion.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 20-76-201, DHS shall administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it. See Ark. Code Ann. § 20-76-201(1). DHS shall also make rules and take actions as are necessary or desirable to carry out the provisions of Title 20, Chapter 76, Public

Assistance Generally, of the Arkansas Code. *See* Ark. Code Ann. § 20-76-201(12). DHS may promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. *See* Ark. Code Ann. § 25-10-129(b). Arkansas Code Annotated § 20-77-107(a)(1) specifically authorizes DHS to “establish and maintain an indigent medical care program.” Additionally, pursuant to Arkansas Code Annotated § 20-10-705, the Office of Long-Term Care shall 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. *See* Ark. Code Ann. § 20-10-705(a).

Finally, the agency reports that this rule is required to comply with the following federal statutes and regulations: 42 U.S.C. § 1395i-3(b)(5), (e)(1)(A), and (f)(2), 42 U.S.C. § 1396r(b)(5), (e)(1)(A), and (f)(2), and 42 CFR §§ 483.151–154.

# EXHIBIT F

## Statement of Necessity and Rule Summary Long-Term Care Nursing Assistant Training Program

### Statement of Necessity.

The proposed rule change is necessary to provide Long-Term Care Nursing Assistant Training Programs, particularly those in rural areas, the flexibility to hire classroom instructors that may not meet the minimum requirement of at least one (1) year of long term care experience in the last five (5) years. By allowing the long-term care education course approved by the Division of Provider Services and Quality Assurance (DPSQA) to substitute for the above state minimum requirement, we are affording Nursing Assistant Training Programs some flexibility in their hiring decisions.

In addition, it necessary to revise the Long-Term Care Nursing Assistant Training Program curriculum in order to reflect current best practices.

### Rule Summary.

1. Section VI of the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program is being amended to allow Long-Term Care Nursing Assistant Training Programs to hire classroom instructors that may not meet the minimum requirement of at least one (1) year of long-term care nursing services experience within the last five (5) years, provided that the classroom instructor completes the long-term care education course approved by DPSQA. This provides training programs, especially rural training programs, the ability to recruit instructors that may not meet the minimum requirement of having at least one (1) year of long-term care experience in recent years, since this long-term care education course will be offered as a substitute for this requirement.
2. Long-Term Care Nursing Assistant Training Program curriculum has been updated to reflect current best practices to include lesson plans on resident rights, protecting the profession (specifically the content on reporting abuse, neglect, and misappropriation), and the lesson plan related to Cognitive Impairment/Alzheimer's/Dementia (specifically the content on the person-centered approach to caring for residents with Alzheimer's and Dementia). The curriculum has also been updated to remove content related to three skills that are no longer part of the Certified Nursing Assistant (CNA) scope of practice, including feeding using a syringe, checking for impaction, and performing an enema. The Works Cited page on the "proposed" version of the curriculum lists the sources used to update the curriculum to reflect current best practices.

This draft is a working document. All information contained herein is subject to change and may differ substantially from the final document. The information contained in this document should not be considered the position or views of the agency or the Governor.

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

DEPARTMENT/AGENCY Department of Human Services  
DIVISION Office of Long-Term Care, Division of Provider Services & Quality Assurance  
DIVISION DIRECTOR Craig Cloud  
CONTACT PERSON Isaac Linam  
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PRESENTER E-MAIL Craig.cloud@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:

**Donna K. Davis**  
**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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- Rules for Arkansas Long-Term Care Facility Nursing Assistant Training
1. What is the short title of this rule? Program and Curriculum
2. What is the subject of the proposed rule? Long-Term Care Nursing Assistant Training Programs
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
42 U.S.C. § 1395i-3(b)(5),  
(e)(1)(A), and (f)(2), 42 U.S.C. §  
1396r(b)(5), (e)(1)(A), and (f)(2),  
and 42 CFR §§ 483.151-154
- 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  
Revised January 2017

Act?

Yes

No

5. Is this a new rule? Yes  No

If yes, please provide a brief summary explaining the regulation. The Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program is not a new rule. However, the Long-Term Care Nursing Training Program curriculum that supports this rule is being repealed and replaced to reflect current best practices.

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. The new Long-Term Care Nursing Assistant Training Program curriculum replaces the old curriculum that is being repealed in this promulgation. The curriculum is being replaced to reflect current best practices.

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."** Attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-76-201, 20-77-107, 20-10-701 et seq., and 25-10-129

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

1. Section VI of the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program is being amended to allow Long-Term Care Nursing Assistant Training Programs to hire classroom instructors that may not meet the minimum requirement of two (2) years nursing experience, including at least one (1) year of long-term care nursing services within the last five (5) years, provided that the primary instructor completes the long-term care education course approved by DPSQA. This provides training programs, especially rural training programs, the ability to recruit instructors that may not meet the minimum requirement of having at least one (1) year of long-term care experience in recent years, since this long-term care education course will be offered as a substitute for this requirement.

2. Long-Term Care Nursing Assistant Training Program curriculum has been updated to reflect current best practices to include lesson plans on resident rights, protecting the profession (specifically the content on reporting abuse, neglect, and misappropriation), and the lesson plan related to Cognitive Impairment/Alzheimer's/Dementia (specifically the content on the person-centered approach to caring for residents with Alzheimer's and Dementia). The curriculum has also been updated to remove content related to three skills that are no longer part of the Certified Nursing Assistant (CNA) scope of practice, including feeding using a syringe, checking for impaction, and performing an enema. The Works Cited page on the "proposed" version of the curriculum lists the sources used to update the curriculum to reflect current best practices.

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/resources/legal-notices>

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

Date: N/A

Time: \_\_\_\_\_

Place: \_\_\_\_\_

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

May 12, 2019

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

7/1/2019

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 and the Arkansas State Library 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.

Nursing Assistant Training Program instructors (unknown)

Nursing Assistant Training Programs (unknown)

Arkansas Health Care Association (for)

**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** Craig Nunemaker

**TELEPHONE** 501-682- **FAX** 501-682-8155 **EMAIL:** [Craig.nunemaker@dhs.arkansas.gov](mailto:Craig.nunemaker@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** Long Term Care Nursing Assistant Training Program

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	<u>10,000</u>	General Revenue	<u>10,000</u>
Federal Funds	<u>10,000</u>	Federal Funds	<u>10,000</u>
Cash Funds	<u>          </u>	Cash Funds	<u>          </u>
Special Revenue	<u>          </u>	Special Revenue	<u>          </u>
Other (Identify)	<u>          </u>	Other (Identify)	<u>          </u>
<b>Total</b>	<b><u>20,000</u></b>	<b>Total</b>	<b><u>20,000</u></b>



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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>          </u>
Special Revenue	<u>          </u>
Other (Identify)	<u>          </u>
 Total	 <u>0</u>

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>          </u>
Special Revenue	<u>          </u>
Other (Identify)	<u>          </u>
 Total	 <u>0</u>

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**

\$ 0

\$ 0

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**

\$ 10,000

\$ 10,000

The state will contract with a qualified vendor to develop the continuing education course and implement the course for nursing assistant training program instructors. During the current fiscal year, the vendor will be responsible for course development, delivery, and tracking nursing assistant training program instructor participation and completion. In subsequent fiscal years, the contractor will be responsible for updating the content of the continuing education course (based on new federal or state regulations, guidelines, or best practices), delivering the content to new nursing assistant training program instructors, and tracking participation and completion.

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.