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STATE BOARD OF HEALTH

**RULES ~~AND REGULATIONS~~ FOR
PRIVATE CARE AGENCIES IN ARKANSAS**



ARKANSAS DEPARTMENT OF HEALTH
HEALTH FACILITY SERVICES

201020

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2020 ~~RULES AND REGULATIONS~~ FOR PRIVATE CARE AGENCIES IN ARKANSAS
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SECTION 1: PREFACE

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

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SECTION 2: AUTHORITY

The following Rules ~~and Regulations~~ for Private Care Agencies in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas in ~~Act 1537 of 1999, Section 133 and Act 17 of 2003 (First Extraordinary Session); Act 5 of 2009;~~ Ark. Code Ann. § 20-10-2301 et seq.

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SECTION 3: PURPOSE

~~In accordance with Act 1537 of 1999, Section 133 and Act 17 of 2003 (First Extraordinary Session), Act 5 Of 2009; Ark. Code Ann. § 20-10-2301 et seq.; rules, regulations and minimum standards for private care agencies operating in the State of Arkansas are hereby established. These rules are established to will ensure high quality professional care and services for patients clients in their homes, by providing for the safe, appropriate care of all admitted to a private care agency's program regardless of setting and shall apply to both new and existing agencies.~~

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SECTION 4: DEFINITIONS

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

- A. Administrator – A person who is an agency employee and is a physician, registered nurse, or an individual with at least one year of supervisory or administrative experience in home health care or in related health provider programs.
- ~~B. Assistance with Medication – Ancillary aid needed by a patient to self-administer medication, such as reminding a patient to take a medication at the prescribed time, opening and closing a medication container, and returning a medication to the proper storage area. Such ancillary aid shall not include administration of any medication by injection, inhalation, ingestion, or any other means, calculation of a patient's medication dosage, or altering the form of the medication by crushing, dissolving, or any other method.~~
- ~~C. Branch Office – A location or site from which a private care agency provides services within a portion of the total geographic area served by the primary agency. The branch office is part of the primary agency and is located sufficiently close (within a 50 mile radius) to share administrative supervision and services in a manner that render it unnecessary to obtain a separate license as a home health agency. A branch office shall have at least one registered nurse assigned to that office on a full time basis. The registered nurse may be an employee or a contracted individual.~~
- B. Aide Service Plan – written assignments developed and supervised by a qualified supervisor for the tasks to be completed by the aide.
- C. Client – Eligible recipient of Medicaid Services.
- ~~C.D. Cliential Note – A dated, written or electronic and signed notation by agency personnel of a contact with a patient-client including a description of signs and symptoms, treatment and/or medication given, the patient's response, other health services provided, and any changes in physical and/or emotional condition/circumstances that impact the client's services or welfare.~~
- D.E. Cliential Record – An accurate account of services provided for each patient client and maintained by the agency, ~~in accordance with accepted medical standards.~~
- E.F. Contractor – An entity or individual providing services for the agency who does not meet the definition of employee.

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~~G. Coordinating — Bringing needed services into a common action, movement or condition for the health of the patient.~~

~~H.F.~~ Department — The Arkansas Department of Health, Health Facility Services.

~~I. Discharge Summary — A recapitulation of all services provided by the private care agency before discharge of a patient.~~

~~J.G.~~ Employee — Any individual for whom the agency is required to issue a form W-2.

~~K. Geographic Area — The land area, for which the agency shall be licensed, consisting of not more than a 50 mile radius surrounding the private care agency's primary location.~~

~~L.H.~~ Health — The condition of being sound in body, mind and spirit, especially freedom from physical disease or pain.

~~M.I.~~ Health Assessment — A determination of a patient's physical and mental status performed by medical professionals.

~~N. Licensed Practitioner — An individual permitted by law and by the Private Care Agency to prescribe care.~~

~~P. Maintenance — To keep in an existing state.~~

~~Q. Parent Agency — The agency physically located within the state that develops and maintains administrative control of branches.~~

~~R. Patient Care Conference — A documented conference among the agency staff or contractors providing care to a patient to evaluate patient care needs and the delivery of service.~~

~~S.J.~~ Personal Care Services — ~~Health related~~ assistance in activities of daily living, hygiene, and or grooming, ~~for the sick or debilitated.~~

~~OK.~~ Personal Care Aide — A person who provides personal care/personal services for a person client in their place of residence ~~home under the supervision of a registered nurse.~~

~~T. Physician — A person who is currently licensed under the Arkansas Medical Practices Act.~~

~~U.L.~~ Place of Business — Any office of a private care agency that maintains patient client records or directs services. ~~This shall include a suboffice, a branch office, or any other subsidiary location.~~

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~~VL. Plan of Care – A written plan which specifies scope, and frequency and duration of services that is signed by a physician or licensed qualified practitioner.~~

~~W. Preventive – To keep from happening or existing.~~

~~C. X. Primary Agency – The agency physically located within the state responsible for the service rendered to patients and for implementation of plan of care.~~

~~Y.M. Private Care Agency – a providers that is licensed by the Department of Labor, certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as ElderChoices a pProviders of home- and community-based health services and that:~~

~~1. who furnishes in-home staffing services for personal and attendant care, respite, chore services, and homemaker services; and~~

~~2. are covered by retains liability insurance of not less than one million dollars (\$1,000,000.00) to covering their its employees and independent contractors while they are its employees and independent contractors are engaged in providing services, such as personal and attendant care, respite, chore services, and homemaker services.~~

~~ZN. Quality of Care Services – Clinically competent care which ~~meets professional standards, are~~ supported and directed in a planned pattern to achieve well-being, maximum dignity and at the required level of comfort, preventive health measures, and self-management.~~

~~AA. Registered Nurse – A person who is currently licensed under laws of Arkansas to use the title, Registered Nurse.~~

~~BB. Rehabilitative – To restore or bring to a condition of health or useful and constructive activity.~~

~~CCO. Residence – A place where a person resides, including a home, nursing home, residential care facility or convalescent home for the disabled or aged.~~

~~DD. Restorative – Something that serves to restore to consciousness, vigor or health.~~

~~EEO. Service Area – The land area for which the agency is shall be licensed, which shall be consistent with their Certification of Need (CON) or Permit of Approval (POA), if one is required, but in no case shall the service area consisting of more than a 50 mile radius.~~

~~FF. Subunit – A semi-autonomous organization, which serves patients in a geographic area different from that of the parent agency. The subunit by virtue of the distance between it and the parent agency is judged incapable of sharing administration,~~

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~~supervision, and services on a daily basis with the parent agency and shall, therefore independently meet the regulations and standards for licensure. A subunit may not have a branch office. The parent agency of the subunit shall be located and licensed within the state.~~

~~GGP. Supervision – Authoritative procedural guidance by a qualified person, acting within his or her applicable scope of practice, for the accomplishment of a function or activity, with initial direction and periodic inspection of the actual act of accomplishing the function or activity.~~

~~Q. Supervisor – A licensed nurse or one who has completed two years of full-time study at an accredited institution of higher education. An individual who has a high school diploma or GED may substitute one (1) year of full time employment in a supervisory capacity in a healthcare facility or community-based agency for one (1) year at an institution of higher education.~~

~~R. Telenursing - the use of [distance] technology to deliver nursing care and conduct nursing practice.~~

~~S. Visit – A face to face meeting in the client’s residence or by the use of information Technology.~~

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SECTION 5: ~~UNREGULATED~~ AGENCY LOCATION

No A private care agency shall ~~provide personal care services in the State of Arkansas without~~ maintain:

- a. a licensed fully operational primary office physically located within the State of Arkansas; and. The authority is vested with the Director to determine if an agency is subject to regulation under the statute and is inherent in the responsibility to regulate private care agencies.
- b. a sufficient number of licensed regional offices to adequately service the administrative needs of the agency and the clients.

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SECTION 6: APPLICATION FOR LICENSE

A. Annual license applications ~~for a private care agency~~ shall be on forms prescribed by the Department and shall be effective on a calendar year basis with an expiration date of December 31.

B. Each agency shall receive a license for Medicaid Personal Care.

~~No license shall be transferred from one entity to another. If a person, partnership, organization or corporation is considering acquisition of a private care agency, in order to insure continuity of patient services, the entity shall submit a license application at least 60 days prior to the acquisition for each place of business~~

~~DC. No license shall be transferred from one location to another without prior approval from Health Facility Services as provided in this subsection. If an agency is considering relocation, the agency shall complete and submit a form provided by notify Health Facility Services 30 days prior to the intended relocation.~~

~~1. A relocation shall be approved by Health Facility Services if the new location is within the existing service area.~~

~~2. All other relocations shall not be approved, and the licensee shall submit a new application for a license.~~

B3C. The agency shall notify Health Facility Services of any of the following:

1. Change of name;

2. Change of location;

3. Notification of Agency closing;

1. termination of provision of services;

4. Any eChange in contact information, including correspondence address, telephone number, email; FAX; and

2.

3.5. Change of ownership. Any agency name changes in the agency within five working days after the effective date of the name change; and

4. Address changes.

GD. Agency closure. If a licensed agency closes, it shall:

1. Notify Health Facility Services in writing of:

a. the effective date;

b. plans for transfer of current clients and records; and

2. Return original license to Health Facility Services.

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SECTION 7: INSPECTIONS

- A. ~~An onsite review and/or~~ inspection shall be conducted ~~determine if standards for licensure are being met~~ before the ~~initial~~ license is issued.
- B. Once the initial inspection is conducted and the agency becomes licensed, subsequent periodic inspections shall be conducted no less than every three (3) years. ~~on an every year or every three year basis.~~ ~~Agencies which are placed on a yearly cycle will be those meeting one or more of the following provisions:~~
- ~~1. Agencies which have been licensed for less than three years;~~
 - ~~2. Agencies which have had a change of ownership or a significant change in management staff;~~
 - ~~3. Agencies who have had a substantiated complaint since the last inspection; and~~
 - ~~4. Agencies which received deficiencies during the last inspection.~~
- ~~Agencies not meeting any of the above provisions shall be placed on a three year survey cycle.~~
- C. If the inspection is conducted in order to determine compliance with standards, the agency shall come into compliance within 60 days. ~~An on site follow up visit or a follow up by mail shall be conducted to determine if deficiencies have been corrected.~~ If the agency fails to comply, the Director may propose actions to suspend to suspend or revoke the license in accordance with the section relating to License Denial, Suspension, or Revocation.

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SECTION 8: DENIAL, SUSPENSION, REVOCATION OF LICENSE

~~A. Health Facility Services may deny issuing a license to an agency if the agency fails to comply with these rules.~~

~~BA. A private care agency license may be denied, Health Facility Services may suspended, or revoked the license of an agency~~ for one or more of the following reasons:

1. Violation of the provisions of the statute or any of the standards in these rules;
2. Misstatement of a material fact on any documents required to be submitted to Health Facility Services or requirements to be maintained by the agency pursuant to these rules;
3. Commission by the agency or its personnel of a false, misleading, or deceptive act or practice;
4. Materially altering any license issued by the Department.

~~C. Health Facility Services may revoke the license of any agency for one or more of the following reasons:~~

- ~~1. A repeat violation within a 12 month period which resulted in a license suspension; or~~
- ~~2. 5. An intentional or negligent act by the agency or its employees which materially affects the health and safety of a patient/client.~~

~~DB.~~ If the Director of Health Facility Services of the Department proposes to deny, suspend, or revoke a license, the Director shall notify the agency of the reasons for the proposed action and offer the agency an opportunity for a hearing. The agency may request a hearing within 30 days after the date the agency receives notice. The request shall be in writing and submitted to the Director, Health Facility Services, Arkansas Department of Health, 5800 West Tenth, Suite 400, Little Rock, Arkansas, 72204. A hearing shall be conducted pursuant to the Administrative Procedures Act. If the agency does not request a hearing in writing after receiving notice of the proposed action, the agency is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

~~EC.~~ Health Facility Services may suspend or revoke a license to be effective immediately when the health and safety of patients-clients are threatened. Health Facility Services shall notify the agency of the emergency action and shall notify the agency of the date of a hearing, which shall be within seven days of the effective date of the suspension or revocation. The hearing shall be conducted

pursuant to the Administrative Procedures Act.

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SECTION 9: BRANCH OFFICE TRAINING

~~A. The agency shall notify the Department in writing in advance of the plan to establish a branch office. Included in the notification shall be a description of the services to be provided (must be the same as the parent agency), the geographic area to be serviced by the branch office and a description of exactly how supervision by the parent agency will occur. All branch offices shall be subject to approval by Health Facility Services. Once the agency receives approval by Health Facility Services to establish the requested branch office the agency shall notify Health Facility Services of the branch office address, telephone number, and the name of the registered nurse supervisor.~~

~~B. Onsite supervision of the branch office shall be conducted by the parent/primary agency at least every two months. The supervisory visits shall be documented and include the date of the visit, the content of the consultation, the individuals in attendance, and the recommendations of the staff. In addition, branch supervision shall include clinical record review of the branch records, inclusion in the agency's quality assurance activities, meetings with the branch supervisor, and home visits.~~

~~C. A full-time registered nurse shall be assigned to the branch office and shall be available during all operating hours.~~

~~D. All admissions shall be coordinated through the parent/primary agency and a current roster of patients shall be maintained by the parent agency at all times.~~

~~E. A branch office shall offer the same services as those offered by the parent/primary agency.~~

A. Training provided to agency employees shall be approved by Health Facility Services with the Arkansas Department of Health and:

1. Include all items listed in the attached TABLE 1;

2. Be supervised by a registered nurse;

3. Be minimum of 40 hours to include:

a. classroom; and

b. clinical instruction related to the home setting;

4. Have written:

a. course objectives;

b. expected outcomes; and

c. method(s) of evaluation.

B. Unless the agency has been properly authorized by the Department of Higher Education to operate a School, training shall be limited to agency employees.

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SECTION 10: GENERAL REQUIREMENTS

A. ~~Operational Policies and Procedures~~ -The agency shall have written policies ~~ten plan of operation~~ including:

1. Organizational

~~4.-a. A description of the Organizational structure chart~~ showing ownership and line of authority down to the patient-client service ~~care~~ level;

b. The services offered; ~~including~~

~~c. Hours of operation; and lines of delegation of responsibility down to the patient care level;~~

~~ed. Criteria for client~~ patient ~~acceptance-referral, transfer~~ and termination.

~~d. Evidence of direct administrative and supervisory control and responsibility for all services including services provided by branch offices;~~

~~e. An annual operating budget approved by the governing body; and~~

~~f. Written contingency plan in the event of dissolution of the agency.~~

~~2. Policies shall be developed and enforced by the agency and include the following;~~

~~a.2. Orientation of all personnel to the policies and objectives of the agency.~~

~~b. Participation by all employees and/or contracted individuals in appropriate staff development programs, including a specific policy on the number of in-service hours that will be required for registered nurses and aides.~~

~~c. Periodic evaluation of agency staff and/or contracted individuals' performance; Personnel policies;~~

~~d. 3. Patient care policies; Procedures at guidance for all tasks;~~

~~e. Disciplinary actions and procedures;~~

~~f. Job description (statement of those functions which constitute job requirements) and job qualifications (specific education and training necessary to perform the job) for each position with the agency; and~~

~~h4. a. Infection control program; policies~~

~~g. a. which has as its goal including the prevention and control of the~~

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~~spread of infectious and communicable diseases, from agency staff and/or individuals providing services to clients.~~

~~b. Work restrictions shall be placed on employees and/or contracted individuals who are known to be affected with any disease in a communicable state or to be a carrier of such disease, to be afflicted with boils, jaundice, infected wounds, diarrhea or acute respiratory infections. Work restrictions for employees shall be according to CDC Recommendations;~~

~~c. Measures for prevention of communicable disease outbreaks, especially Mycobacterium tuberculosis (TB). All plans for the prevention of transmission of TB shall conform to the most current CDC guidelines for preventing the transmission of Mycobacterium Tuberculosis in Health Care Facilities;~~

~~5. 3. A personnel records shall be maintained for each employee and/or contracted individual. A current personnel record shall include:~~

~~a. but not be limited to, the following: job description, signed by employee;~~

~~b. qualifications, education, and/or training;~~

~~c. application for employment;~~

~~d. verification of licenses, certifications, and permits work history;~~

~~e. evidence of orientation and competency for the topics listed in TABLE 1; and~~

~~f. criminal history determination of eligibility for employment.~~

~~references, job experience, and educational requirements as appropriate;~~

~~performance evaluations and disciplinary actions; and letters of commendation. All information shall be kept current. In lieu of the job description and qualifications of employment, the personnel record may include a statement signed by the employee and/or contracted individual that the person has read the job description and qualifications for the position accepted.~~

~~4. It shall be the responsibility of the administration to establish written policies concerning pre-service physicals and the health of employees and/or contracted individuals. The policies shall include but not be limited to:~~

~~a. Each employee and/or contracted individual shall have an up-to-~~

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date health file;

b. ~~At a minimum, each employee shall be tested or evaluated annually for tuberculosis in accordance with the applicable section of the Tuberculosis Manual of the Arkansas Department of Health;~~

c. ~~3. Work restrictions shall be placed on employees and/or contracted individuals who are known to be affected with any disease in a communicable state or to be a carrier of such disease, to be afflicted with boils, jaundice, infected wounds, diarrhea or acute respiratory infections. Such individuals shall not work in any area in any capacity in which there is the likelihood of transmitting disease to patients, agency personnel or other individuals within the home or a potential of contaminating food, food contact surfaces, supplies or any surface with pathogenic organisms; and~~

d. ~~Other tests shall be performed as required by agency policy.~~

6. An agency wide Quality Assurance and Improvement Program that includes all services for the purpose of monitoring the safety and effectiveness of services and quality of care to identify and resolve problems related to client services, with the goal of improving services. The program will include:

~~—yearly evaluation of services;~~

a. client satisfaction surveys; and

b. supervision of services;

c. results of inspections, surveys and audits from outside entities; and

d. performance improvement projects as applicable.

7.40. Complaints and incidents. Each agency shall keep a record of complaints received. Documentation shall include:

a. be kept on each complaint regarding the names of involved individuals the complainant;

b. the relationship to the client; patient (if applicable);

c. the nature of the complaint; and

d. date of incident; and

e. the action taken to resolve the complaint (including referrals to other

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entities).

B. Governing Board.~~Body~~

1. ~~The governing body, or a committee designated by the governing body, of the agency~~ A Private Care Agency shall have an organized Governing Board, consisting of at least one member, which may be the owner, who shall be legally responsible for maintaining quality client services and establishing policies for the agency, shall be legally responsible for the conduct of the agency, and shall establish a mechanism to:

~~a. Approve a quality assurance plan whereby problems are identified, monitored and corrected;~~

~~b.a.~~ Adopt and periodically review written bylaws or an acceptable equivalent;

~~e.b.~~ Approve written policies and procedures related to safe, adequate services and operation of the agency; with annual or more frequent review by administrative or supervisory personnel;

~~d.c.~~ Appoint an administrator and approve a plan for an alternate in the absence of the administrator; and

~~e.d.~~ Oversee the management and fiscal affairs of the agency, including approving the agency's annual budget; and

~~f. Approve a method of obtaining regular reports on participant satisfaction.~~

C.2. Administrator Responsibilities. The Administrator shall: ~~The governing board shall insure the agency has an administrator who is an employee of the agency or related institution to:~~

~~a.~~ 1. Manage ~~Organize and direct~~ the agency's daily ongoing functions;

~~b.~~ ~~Maintain an ongoing liaison between the governing body and the personnel;~~

~~e.~~ 2. Ensure all persons providing services on behalf of the agency are qualified and receive ongoing education;

~~d.~~ 3. Ensure the accuracy of public information materials and activities;

~~e.~~ 4. Implement and monitor budgeting and accounting systems; ~~and~~

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f. ~~Ensure the presence of an alternate administrator to act in the administrator's absence.~~

~~5. Implement quality assurance and infection control programs; and~~

~~6. Conduct aAnnual review of the changes to the policies and procedures.~~

~~3. The governing board shall be responsible for ensuring the agency has a full-time supervising registered nurse to supervise clinical services. Full-time shall be according to established business hours of the agency. The administrator and supervising nurse may be the same individual.~~

~~4. If a licensed agency contracts with another entity for services, the governing body shall ensure that administration; patient management and supervision down to the patient care level are ultimately the responsibility of the licensed agency.~~

C. ~~Services Provided by Contractors~~

~~Private Care Agencies arranging for services to be provided by independent contractors or other entities there shall be a written agreement which specifies the following:~~

~~1. All referrals are through the primary agency and patients clients are accepted for care only by the primary agency;~~

~~2. The services to be provided;~~

~~3. A contracted entity or contracted individual conforms to all applicable agency polices, including those described in Section 10.A.2;~~

~~4. The primary agency is responsible for reviewing, approving and assuring the implementation of the plan of treatment;~~

~~5. The manner in which services will be controlled, coordinated and evaluated by the primary agency;~~

~~6. The procedures for submitting medical record documentation and scheduling of staff;~~

~~7. The procedure for how changes in the aide care plan will be communicated between the contracted individual or entity'; and~~

~~8. The procedures for determining charges and reimbursement.~~

D. ~~Quality Improvement~~

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- ~~1. An agency shall adopt, implement and enforce a policy on a quality improvement program which provides for accountability and desired outcomes.~~
- ~~2. Those responsible for the quality improvement program shall:
 - ~~a. Implement and report on activities and mechanisms for monitoring the quality of care;~~
 - ~~b. Identify, and when possible, resolve problems; and~~
 - ~~c. Make suggestions for improving care.~~~~
- ~~3. As part of the quality improvement program a clinical record review shall be conducted at least quarterly by appropriate professionals. A minimum of ten percent of both active and closed records shall be reviewed or a minimum of ten records per quarter if the case load is less than 99. The purpose of the clinical record review is to evaluate all services provided for consistency with professional practice standards for private care agencies and the agency's policies and procedures, compliance with the plan of care, the appropriateness, effectiveness and adequacy of the services offered, and evaluations of anticipated patient outcomes. Evaluations shall be based on specific record review criteria that are consistent with the agency's admission policies and other agency specific care policies and procedures.~~

E.D Patient-Client Rights.

1. The agency shall provide each patient-client or representative and family with a copy of the Bill of Rights affirming the patient-client's right to:
 - a. Be informed of the services offered by the agency and those being provided to the patient-client;
 - b. Participate in the development of the plan of care and to be informed of the dates and approximate time of service;
 - c. Receive an explanation of any responsibilities the client-participant may have in the care process;
 - d. Be informed of the name of agency and how to contact that agency during all hours of operation;
 - e. Be informed of the process for submitting and addressing complaints to the agency and be notified of the State Home Health

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Hotline number.

- f. Be informed orally and in writing of any charges which insurance might not cover and for which the ~~patient-client~~ would be responsible;
- g. Courteous and respectful treatment, privacy and freedom from abuse and discrimination²;
- h. Confidential management of ~~client participant~~ records and information;
- i. Access information in the ~~client participant~~ record upon request;
~~and~~
- j. Receive prior notice and an explanation for the reasons of termination, referral, transfer, discontinuance or change of service;
and or change in the plan of care.

k. Control access to the client's home.

- 2. The agency shall provide each ~~patient client~~ and family with a written list of responsibilities affirming the ~~patient client~~'s responsibility to:
 - a. Assist in developing and maintaining a safe environment;
 - b. Treat all agency staff with courtesy and respect;
 - c. Participate in the development and update of services the plan of care; and
 - d. Adhere to the plan of care or services as developed by the agency and to assist in the care as necessary.

~~F. Advance Directives~~

- ~~1. The agency shall have written policies and procedures regarding advance directives.~~
- ~~2. The agency shall inform and distribute written information to each patient on the initial evaluation visit concerning its policies on advance directives. Written information shall include notifying patients of their right to:
 - ~~a. Make decisions about their medical care;~~
 - ~~b. Accept or refuse medical or surgical treatment; and~~~~

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- c. ~~Formulate, at the individual's option, an advance directive.~~
- 3. ~~The agency shall document in the patient's medical record whether he/she has executed an advance directive.~~

G. Services Provided

~~All services shall be rendered and supervised by qualified personnel. A private Care Agency shall provide Personal Care Services. A personal care aide shall be employed by or under contract to provide aide services. The aide shall be supervised by a registered nurse at least every 62 days.~~

~~If a patient is receiving services from another agency Monday thru Friday the private care agency must coordinate the services being provided in order that services are consistent. There must be documentation of communication between the home health and Private Care Agency.~~

H. Personal Care Aide Services

- 1. ~~Each personal care aide shall meet at least one of the following requirements:~~
 - a. ~~Have at least one year of experience in an institutional setting (home health agency, hospital, hospice, or long term care facility). This experience shall be verified by a previous employer;~~
 - b. ~~Have a certificate issued by the State of Arkansas for working in long term care facilities. A copy of this certificate shall be available for review; or~~
 - c. ~~Have completed a 40 hour aide training course that meets requirements set forth in these~~

~~NOTE: In lieu of the requirement for completion of the home health aide training course, a nursing student may qualify as a home health aide by submitting documentation from the Director of programs and/or the Dean of a School of Nursing that states that the nursing student has demonstrated competency in providing basic nursing care in accordance with the school's curriculum.~~

- 2. ~~The agency is responsible for evaluating the competency of any aide who has not been employed as an aide in an institutional setting in the last 24 months. At a minimum, the aide shall be observed by a registered nurse performing the skills required to care for a patient including bathing, transferring, range of motion exercises, toileting, dressing, nail care and skin care. The registered nurse shall observe the aide performing these~~

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~~skills on a person. Any other tasks or duties for which the aide may be responsible may be evaluated by written test, oral test or observation. There shall be documentation by the agency to show evidence of this evaluation.~~

- ~~3. A registered nurse shall complete an aide assignment sheet for each patient receiving aide services. Each aide caring for the patient shall receive a copy of the assignment sheet and provide services as assigned. A copy of the assignment sheet shall be left in the patient's home.~~
- ~~4. Each aide assignment sheet shall be individualized and specific according to the patient's needs~~
- ~~5. The registered nurse shall conduct a visit to the patient's place of residence at least every 62 days to supervise the aide and update the aide assignment sheet.~~
- ~~6. In on event shall a personal care aide be assigned to receive or reduce to writing orders from a physician or licensed practitioner. An aide shall not perform any sterile procedure or any procedure requiring the application of medication requiring a prescription.~~
- ~~7. Upon a request by a patient and/or family member for assistance with medications, the registered nurse may assign a home health aide to assist with oral medications which are normally self-administered. Assistance shall be limited to reminding a patient to take a medication at a prescribed time, opening and closing a medication container and returning a medication to a proper storage area.~~
- ~~8. Except as otherwise provided in these rules, duties of the home health aide may include:
 - ~~a. Personal care: bathing, grooming, feeding, ambulation, exercise, oral hygiene, and skin care;~~
 - ~~b. Assistance with medications ordinarily self-administered as assigned;~~
 - ~~c. Household services essential to health care in the home;~~
 - ~~d. Completion of records and reporting to appropriate supervisor;~~
 - ~~e. Charting intake and output; and~~
 - ~~f.a. Any duty consistent with the State Board of Nursing Regulations on Delegation of Duties may be assigned by a registered nurse to meet the individual needs of the patient.~~~~

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- ~~g. a. A minimum of 40 hours of classroom and clinical instruction related particularly to the home health setting;~~
- ~~h. b. Written course objectives with expected outcomes and methods of evaluation; and~~
- ~~i.b. c. An assessment that the student knows how to read and write English and to carry out directions.~~

~~9. If the training is provided by the agency, the training program for personal care aides shall be conducted under the supervision of a registered nurse. The training program may contain other aspects of learning, but shall include the following:~~

~~10. Course and clinical work content shall include, but not be limited to, bathing, ambulation and exercise, personal grooming, principles of nutrition and meal preparation, health conditions, developmental stages and mental status, household services essential to health care at home, assistance with medication, safety in the home, completion of appropriate records and reporting changes to appropriate supervisor.~~

~~11. Aides shall receive a minimum of 12 hours of inservice training per 12 months. The inservices provided shall address areas that directly relate to the patient care aspects of the aide's job.~~

4E. Records and Documentation

1. The private care agency shall maintain records of all services provided to clients which are orderly, intact, legibly written and available and retrievable either in the agency or by electronic means and suitable for photocopying or printing.
2. Records shall be stored in a manner which:
 - a. Prevents loss or manipulation of information;
 - b. Protects the record from damage; and
 - c. Prevents access by unauthorized persons.
3. Records shall be retained for a minimum of five years after discharge of the patient-client or two years after the age of majority.
4. Each record shall include:

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- a. ~~Appropriate identifying information;~~
 - ab. Initial assessment performed by a ~~registered nurse~~ qualified supervisor;
 - cb. Plan of care ~~(which shall include as applicable, medication, dietary, treatment, activities)~~ which shall detail the services;
 - dc. ~~Clinical notes; aide service plan;~~
 - e. ~~Acknowledgment of receiving information regarding advance directive;~~
5. ~~The following shall be included, if applicable;~~
- ac. Physician or licensed practitioner orders ~~;~~ if any;
 - bd. Records of supervisory visits;
 - ~~c. Records of case conferences; and~~
 - ~~d. Discharge summary~~
 - e. Date and time employees or contracted individual service providers were in the home; and
 - f. Tasks completed.

6.5. ~~Clinical Client~~ notes are to be written the day the service is rendered and incorporated into the record no less than every 14 days.

576. Provisions shall be made for the ~~protection of~~ records in the event an agency ceases operation.

~~J. Discharge Planning~~

~~There shall be a specific plan for discharge in the clinical record and there must be ongoing discharge planning with the patient.~~

~~K. Complaints~~

~~Each agency shall keep a record of complaints received. Documentation shall be kept on each complaint regarding the name of the complainant, the relationship to the patient (if applicable), the nature of the complaint, and the action taken to resolve the complaint.~~

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SECTION 11: STANDARDS FOR PERSONAL CARE SERVICES

A. All Services

. A registered nurse shall:

— a. perform an initial evaluation visit;

— b. develop:

— i. the plan of care; and

— ii. the aide assignment sheet

3. plan shall be developed and maintained outlining the service scope
— frequency , supervision frequency.

— 4. A qualified supervisor shall establish the frequency of the in-person
— supervisory visits as part of the client's plan of care based on the specific
— needs of the client and the recommendations of the registered nurse.

— 5. The frequency of in-person visits shall be at least annually.

B.

— 1. The registered nurse shall perform an initial evaluation visit within five days of
a specific request for personal care aide services.
If the agency cannot perform an initial evaluation visit within five days of a
specific request for services, there shall be documentation regarding the reason,
the anticipated date the evaluation will be conducted, and notification of the
patient regarding when the evaluation will be performed. The aide shall be
supervised by a registered nurse at least every 62 days.

C. — If the agency does not have services available at the time of the initial evaluation,
the agency shall explain this to the patient. If the agency cannot staff the case
within two weeks of the initial evaluation, the agency shall be responsible for
contacting other agencies in the area to determine if services are available. If
another agency can provide the services in a shorter length of time, the patient
shall be informed and given the choice of changing agencies.

D. If an aide misses a scheduled visit, there shall be documentation that the patient
was contacted prior to the missed visit. Every attempt shall be made to send a
substitute aide to provide care.

C.E. For individuals receiving personal care services only, the agency is not required
to have the plan of care signed by a physician or licensed practitioner, unless

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~~otherwise required by other agencies or laws. However, a plan of care shall be developed outlining the scope, frequency and duration of services.~~

F. ~~If care is ordered per hour, the aide shall document the time the aide arrived at the home and the time the aide departed.~~

G. ~~Each aide shall document the tasks that were performed. If a task is not completed there shall be a documented reason why.~~

~~Patient care problems noted by the aide during the course of care shall be reported to the registered nurse.~~

H. ~~The registered nurse shall make a visit to each patient's home at least every 62 days to supervise aide services.~~

~~4. A registered nurse shall be available for consultation during operating hours.~~

~~Each personal care aide shall have completed, at a minimum, a 40-hour aide training/caregiver course. meet at least one of the following requirements:~~

A. All Services

1. The agency shall:

a. Perform an initial evaluation visit and determine;

i. the needs and condition of the client;

ii. the services to be provided; and

iii. the personnel to provide the services.

b. Develop the Aide Service Plan which shall:

i. outline the services;

ii. determine scope and frequency of visits;

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

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

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

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

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

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

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

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

6. The agency is responsible for evaluating the competency of any Personal Care aide. ~~who has not been employed as an aide in an institutional setting in the last 24 months.~~ At a minimum, the aide shall be observed by a registered nurse performing the skills required to care for a patient-client including bathing, transferring, range of motion exercises, toileting, dressing, nail care and skin care according to Table 1. The registered nurse shall observe the aide performing these skills on a person. Any other tasks or duties for which the aide may be responsible may be evaluated by written test, oral test or observation. There shall be documentation by the agency to show evidence of this evaluation.

C. Services Provided by Contractors

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

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SECTION 12: SEVERABILITY

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

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TABLE 1

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

A. Body Functions;

B. Body Mechanics & Safety Precautions;

C. Communication Skills;

D. Health conditions including Dementia and Alzheimer's;

E. Emergency recognition and procedures;

F. Household safety and fire;

G. Infection control;

H. Ethical considerations and state law regarding Nurse delegation;

I. Nutrition;

J. Ambulation;

K. Household services for healthcare to include basic housekeeping procedures and laundry;

L. Bathing, shampooing, shaving;

M. Personal grooming to include dressing and undressing;

N. Meal preparation and clean up;

O. Oral hygiene;

P. Normal range of motion;

Q. Toileting;

R. Transfer techniques;

S. Recordkeeping and documentation to include reporting changes to appropriate supervisor;

T. Role of caregiver in team; and

U. Nail and skin care.

SECTION 9

TABLE 9-1

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CERTIFICATION

This will certify that the foregoing revisions to the Rules ~~and Regulations~~ for Private Care Agencies in Arkansas were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the _____ day of _____ 2019.

Nate Smith, M.D., MPH
Secretary of ~~Arkansas State Board of Health~~
~~Director, Arkansas Department of Health~~

Agency # 007.05

ARKANSAS
STATE BOARD OF HEALTH

**RULES FOR
PRIVATE CARE AGENCIES IN ARKANSAS**



ARKANSAS DEPARTMENT OF HEALTH
HEALTH FACILITY SERVICES
2020

NATHANIEL SMITH, MD, MPH
SECRETARY OF HEALTH

2020 RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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2020 RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

SECTION 1: PREFACE

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

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SECTION 2: AUTHORITY

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

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SECTION 3: PURPOSE

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

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SECTION 4: DEFINITIONS

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

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

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

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SECTION 5: AGENCY LOCATION

A private care agency shall maintain:

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

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SECTION 6: APPLICATION FOR LICENSE

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

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SECTION 7: INSPECTIONS

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

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SECTION 8: DENIAL, SUSPENSION, REVOCATION OF LICENSE

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

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SECTION 9: TRAINING

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

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SECTION 10: GENERAL REQUIREMENTS

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

1. Organizational

- a. A description of the structure showing ownership and line of authority down to the client service level;
- b. The services offered;
- c. Hours of operation; and
- d. Criteria for client acceptance and termination.

2. Orientation of all personnel to the policies and objectives of the agency.

3. Procedures for all tasks.

4. Infection control program;

- a. which has as its goal the prevention and control of infections and communicable diseases.
- b. Work restrictions for employees shall be according to CDC Recommendations;
- c. Measures for prevention of communicable disease outbreaks, especially *Mycobacterium tuberculosis* (TB). All plans for the prevention of transmission of TB shall conform to the most current CDC guidelines for preventing the transmission of *Mycobacterium Tuberculosis* in Health Care Facilities.

5. Personnel records shall be maintained for each employee and/or contracted individual. A current personnel record shall include:

- a. job description, signed by employee;
- b. qualifications, education, and/or training;
- c. application for employment;
- d. verification of licenses, certifications, and work history;
- e. evidence of orientation and competency for the topics listed in TABLE 1; and

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- f. criminal history determination of eligibility for employment.
6. An agency wide Quality Assurance and Improvement Program that includes all services for the purpose of monitoring the safety and effectiveness of services and quality of care. The program will include:
 - a. client satisfaction surveys;
 - b. supervision of services;
 - c. results of inspections, surveys and audits from outside entities; and
 - d. performance improvement projects as applicable.
 7. Complaints and incidents. Each agency shall keep a record of complaints received. Documentation shall include:
 - a. the names of involved individuals
 - b. the relationship to the client;
 - c. the nature of the complaint;
 - d. date of incident; and
 - e. the action taken to resolve the complaint (including referrals to other entities).

B. Governing Board.

1. A Private Care Agency shall have an organized Governing Board, consisting of at least one member, which may be the owner, who shall be legally responsible for maintaining quality client services and establishing policies for the agency, shall be legally responsible for the conduct of the agency, and shall establish a mechanism to:
 - a. Adopt and periodically review written bylaws or an acceptable equivalent;
 - b. Approve written policies and procedures related to safe, adequate services and operation of the agency;

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- c. Appoint an administrator and approve a plan for an alternate in the absence of the administrator; and
- d. Oversee the management and fiscal affairs of the agency, including approving the agency's annual budget.

C. Administrator Responsibilities. The Administrator shall:

1. Manage the agency's daily ongoing functions;
2. Ensure all persons providing services on behalf of the agency are qualified and receive ongoing education;
3. Ensure the accuracy of public information materials and activities;
4. Implement and monitor budgeting and accounting systems
5. Implement quality assurance and infection control programs; and
6. Conduct annual review of the changes to the policies and procedures.

D. Client Rights.

1. The agency shall provide each client or representative with a copy of the Bill of Rights affirming the client's right to:
 - a. Be informed of the services offered by the agency and those being provided to the client;
 - b. Participate in the development of the plan of care and to be informed of the dates and approximate time of service;
 - c. Receive an explanation of any responsibilities the client may have in the care process;
 - d. Be informed of the name of agency and how to contact that agency during all hours of operation;
 - e. Be informed of the process for submitting and addressing complaints to the agency and be notified of the State Home Health Hotline number.
 - f. Be informed orally and in writing of any charges which insurance

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- might not cover and for which the client would be responsible;
 - g. Courteous and respectful treatment, privacy and freedom from abuse and discrimination;
 - h. Confidential management of client records and information;
 - i. Access information in the client record upon request
 - j. Receive prior notice and an explanation for the reasons of termination, referral, transfer, discontinuance or change of service; and
 - k. Control access to the client's home.
2. The agency shall provide each client and family with a written list of responsibilities affirming the client's responsibility to:
- a. Assist in developing and maintaining a safe environment;
 - b. Treat all agency staff with courtesy and respect;
 - c. Participate in the development and update of services; and
 - d. Adhere to the plan of care or services as developed by the agency and to assist in the care as necessary.
- E. Records and Documentation
1. The private care agency shall maintain records of all services provided to clients which are orderly, intact, legibly written and available and retrievable either in the agency or by electronic means and suitable for photocopying or printing.
 2. Records shall be stored in a manner which:
 - a. Prevents loss or manipulation of information;
 - b. Protects the record from damage; and
 - c. Prevents access by unauthorized persons.
 3. Records shall be retained for a minimum of five years after discharge of the client or two years after the age of majority.

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4. Each record shall include:
 - a. Initial assessment performed by a qualified supervisor;
 - b. Plan of care which shall detail the services;
 - c. Aide service plan;
 - d. Physician or licensed practitioner orders, if any;
 - e. Records of supervisory visits;
 - f. Date and time service providers are in the home; and
 - g. Tasks completed.
5. Client notes are to be written the day the service is rendered and incorporated into the record no less than every 14 days.
6. Provisions shall be made for the records in the event an agency ceases operation.

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SECTION 11: SERVICES

A. All Services

1. The agency shall:
 - a. Perform an initial evaluation visit and determine;
 - i. the needs and condition of the client;
 - ii. the services to be provided; and
 - iii. the personnel to provide the services.
 - b. Develop the Aide Service Plan which shall;
 - i. outline the services;
 - ii. determine scope and frequency of visits;
 - iii. assign appropriate delegation of services consistent with the Arkansas State Board of Nursing; and
 - iv. determine supervision scope and frequency. Frequency shall be at least annually.

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

1. Delegate through the use of an Aide Service Plan;
2. Each aide shall receive a copy of the Aide Service Plan;
3. A copy of the Aide Service Plan will be accessible in the home;
4. The Aide Service Plan shall be individualized and specific;
5. Aides shall receive a minimum of 12 hours of in-service training per 12 months. The in-services provided shall address areas that directly relate to the client care aspect of the aide's job.
6. The agency is responsible for evaluating the competency of any Personal Care aide. At a minimum, the aide shall be observed by a registered nurse performing the skills required to care for a client according to Table 1. There

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shall be documentation by the agency to show evidence of this evaluation.

C. Services Provided by Contractors

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

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SECTION 12: SEVERABILITY

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

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TABLE 1

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

- A. Body Functions;
- B. Body Mechanics & Safety Precautions;
- C. Communication Skills;
- D. Health conditions including Dementia and Alzheimer's;
- E. Emergency recognition and procedures;
- F. Household safety and fire;
- G. Infection control;
- H. Ethical considerations and state law regarding Nurse delegation;
- I. Nutrition;
- J. Ambulation;
- K. Household services for healthcare to include basic housekeeping procedures and laundry;
- L. Bathing, shampooing, shaving;
- M. Personal grooming to include dressing and undressing;
- N. Meal preparation and clean up;
- O. Oral hygiene;
- P. Normal range of motion;
- Q. Toileting;
- R. Transfer techniques;
- S. Recordkeeping and documentation to include reporting changes to appropriate supervisor;
- T. Role of caregiver in team; and
- U. Nail and skin care.

2020 RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

CERTIFICATION

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

Nate Smith, M.D., MPH
Secretary of Health

DRAFT

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

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

- 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.”

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

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

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).

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.)

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 _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ 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

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 _____

Total _____

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 _____

Total _____

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.

Rules and Regulations for Private Care Agencies in Arkansas 2020

091119

Index Summary of Proposed Changes

Title page	Change Director title to Secretary of Health	Act 910 of 2019
throughout	Eliminate regulation	Act 315 of 2019
throughout	Change “patient” to “client”	
	Table of Contents	
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	“standards for Personal Care Services”	Reorganized content
§12	Add “Severability”	Protect remaining rules if any section invalid
table	Add Table 1	Required training topic
	§1 Preface	
p. 1-1	patient trends to “home care” patients to “clients”	Uses standard industry language
	§2 Authority	
p. 2-1	Remove citations to Acts - leave citations to the Arkansas code	Arkansas Code incorporates citations to authorizing acts & is more user friendly
	§3 Purpose	
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

Rules and Regulations for Private Care Agencies in Arkansas 2020

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Index Summary of Proposed Changes

	§4 Definitions	
p.4-1 B	Eliminate “ Assistance with Medication ”	Defer to ASBN – nursing scope of practice term
€	Eliminate “ Branch Office ”	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
€	Eliminate coordinating	PCAs are not multi-disciplinary
I p.4-2	Eliminate discharge summary	unnecessary
K	Geographic area	Unnecessary – no POA
N	Licensed prescriber	Term not used in rules
P	maintenance	Term not used in rules
Q	Parent agency	Term not used in rules
R	Patient care conference	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
Θ	Personal care aide	clarified
T	Physician	unnecessary
K	Struck additional location language	inapplicable
L	Updated physician to qualified practitioner	Consistent with CMS language

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Index Summary of Proposed Changes

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

Rules and Regulations for Private Care Agencies in Arkansas 2020

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Index Summary of Proposed Changes

	Strike authorizing language	Authorized by statute – see §2 Authority
	§6 Application for license	
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	
	§7 Inspections	
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
	§8 Denial, suspension, revocation	
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 patient to <u>client</u>	PCA services are non-skilled
	§9 Training	
p. 9-1	Rename section Branch Offices 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
	§10 General requirements	
10-1 A	Change “Policies” to Policies & <u>Procedures</u> Reorder – improve clarity and brevity Change <u>patient care</u> to <u>client services</u>	PCAs deliver non-medical care
	Non-substantive language eliminated	
	Remove excess content	Eliminate duplication
	Change <u>patient care</u> to <u>services delivery</u>	PCAs deliver non-medical care
	Change <u>patients</u> 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
10 7	Complaints moved from p. 10-10	simplified
p. 10-3 B Gov. Body	Body <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)	reorg
	Add annual budget approval to governing body functions (moved from A(4)(c) ¶2)	Promote understanding by PCAs Consolidate
10(C) p.10-4	Reworked language to clarify and simplify administrators implementation responsibilities as distinguished from governing body board	
10(C) contractor reqs p. 10-5	Moved to 11(B)	reorganize
10(D) -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
10(F) p. 10-7,8	Eliminate Advance Directive provisions	Not applicable to PCAs § 20-6-102

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Index Summary of Proposed Changes

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

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Index Summary of Proposed Changes

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