

ARKANSAS REGISTER

Transmittal Sheet

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Secretary of State

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Use Only:

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Department Division for Health Protection, Health Facility Services Branch

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06/07/2024

Contact Person

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Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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General Counsel

Title

06/07/2024

Date

ARKANSAS
STATE BOARD OF HEALTH

**RULES FOR
PRIVATE CARE AGENCIES IN ARKANSAS**



ARKANSAS DEPARTMENT OF HEALTH
HEALTH FACILITY SERVICES

Effective Date: June 17, 2024

**Renee Mallory, RN, BSN,
Secretary of Health**

**Jennifer Dillaha, MD
Director and State Health Officer**

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

TABLE OF CONTENTS

SECTION 1.	PREFACE	3
SECTION 2.	AUTHORITY.....	4
SECTION 3.	PURPOSE	5
SECTION 4.	DEFINITIONS.....	6
SECTION 5.	AGENCY LOCATION.....	5
SECTION 6.	APPLICATION FOR LICENSE	6
SECTION 7.	INSPECTIONS	7
SECTION 8.	DENIAL, SUSPENSION, REVOCATION OF LICENSE.....	8
SECTION 9.	TRAINING.....	9
SECTION 10.	GENERAL REQUIREMENTS	10
SECTION 11.	SERVICES	14
SECTION 12.	SEVERABILITY	15
	TABLE 1	16
	CERTIFICATION	18

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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

SECTION 3. PURPOSE

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

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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:
 - 1) furnishes in-home staffing services for personal and attendant care services; and

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

- 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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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 .

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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
 - (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:

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

- (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;
 - (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

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

- 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 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

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

- 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.
- 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.
- F) A written notice of the felony status under A.C.A §5-13-202 of attacking a healthcare worker shall be posted in all public entrances and patient waiting area of the healthcare facility utilizing the digital poster available on the Arkansas Department of Health website.
- G) A healthcare provider shall not mislead any patient regarding the healthcare provider's licensure status.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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 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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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.

RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

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;
- E) Alzheimer's disease and dementia (4 hours) to include:
 - 1) Communication Skills;
 - 2) Problem solving with challenging behaviors;
 - 3) Assistance with daily living; and
 - 4) explanation of Alzheimer's disease and other dementia;
- F) Emergency recognition and procedures;
- G) Household safety and fire;
- H) Infection control;
- I) Ethical considerations and state law regarding Nurse delegation;
- J) Nutrition;
- K) Ambulation;
- L) Household services for healthcare to include basic housekeeping procedures and laundry;
- M) Bathing, shampooing, shaving;
- N) Personal grooming to include dressing and undressing;
- O) Meal preparation and clean up;
- P) Oral hygiene;
- Q) Normal range of motion;
- R) Toileting;
- S) Transfer techniques;

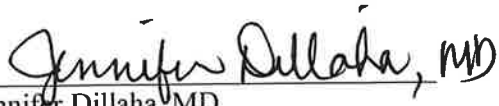
RULES FOR PRIVATE CARE AGENCIES IN ARKANSAS

- T) Recordkeeping and documentation to include reporting changes to appropriate supervisor;
- U) Role of caregiver in team; and
- V) Nail and skin care.

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 adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the 26th day of October, 2023.



Jennifer Dillaha, MD
Secretary of Arkansas State Board of Health
Director of the Arkansas Department of Health