

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

520 DIRECT CARE STAFFING REQUIREMENTS AND FLEXIBILITIES FOR NURSING FACILITIES

520.1 Definitions

For purposes of this section, the following definitions apply:

- a. "Average direct care hours per resident day" means the total number of hours of direct care services provided by direct care staff in a month, divided by the number of calendar days in that month, and the facility's average daily resident census for that month.
- b. "Certified nursing facility" means a nursing facility licensed by the Department of Human Services that is certified to participate in the federal Medicare program as a skilled nursing facility, or in the Arkansas Medicaid Program as a nursing facility, or both.
- c. "Direct care services" means nursing and nursing-related services; clinical, diagnostic, therapeutic, and rehabilitative services; physical, occupational, respiratory, and speech therapy services; delegated physician tasks; behavioral health services; care management, care coordination, and care transition activities; medication administration; assistance with activities of daily living; assessment, evaluation, planning, and implementation of care plans; coordination and consultation with residents' physicians and other healthcare providers; and other services and supports provided for skilled nursing facility residents in response to individual resident needs. However, the meaning of "direct care services" does not include food preparation, laundry, housekeeping, or other maintenance of a nursing facility's physical environment.
- d. "Direct care staff" means a person who provides any direct care services to a skilled nursing facility resident through interpersonal contact with residents or resident care management, including without limitation a licensed nurse; nurse aide; medication assistant; physician; physician assistant; licensed physical or occupational therapist or licensed therapy assistant; registered respiratory therapist; licensed speech-language pathologist; infection preventionist; and other healthcare professionals licensed or certified in the state of Arkansas.
- e. "Division" means the Division of Provider Services and Quality Assurance.
- f. "Federal direct care data system" means the national online data reporting system operated by the Centers for Medicare and Medicaid Services and used by nursing facilities participating in the federal Medicare program, or the Arkansas Medicaid Program, or both to electronically report detailed and standardized direct care and other staffing information.
- g. "Licensed nurse" means any registered nurse, licensed practical nurse, advanced practice registered nurse, or registered nurse practitioner licensed in the state of Arkansas.
- h. "Medicare and Medicaid requirements of participation" means the federal requirements established by the Centers for Medicare and Medicaid Services under

42 U.S.C. 1320a-7j, 42 U.S.C. 1395i-3, and 42 U.S.C. 1396r, that a licensed nursing facility is required to follow to be certified as compliant with and participate in the federal Medicare program as a skilled nursing facility, or the Medicaid program as a nursing facility, or both.

- i. "Medication assistant" means a medication assistive person who is qualified and certified under Arkansas Code § 17-87-701 et. seq. Alternatively referred to as medication assistant-certified in rules of the Arkansas Board of Nursing.
- j. "Private pay-only nursing facility" means a licensed nursing facility that is not certified to participate in the federal Medicare program as a skilled nursing facility or in the Arkansas Medicaid Program as a nursing facility.
- k. "Universal worker" means a certified nurse aide (CNA) who is designated by a skilled nursing facility as a universal worker and who performs both CNA direct care service duties and non-direct care tasks such as food service, laundry, and housekeeping, and other non-direct care services to meet the needs of residents.
- l. "Variance" means granting an alternate requirement or modifying a requirement in place of a requirement established in rule.
- m. "Waiver" means the grant of an exemption from a requirement established in rule.

520.2 Condition of Licensure

- a. As a condition of licensure by the department, a nursing facility, except a private pay-only nursing facility, shall be certified to participate in the federal Medicare program as a skilled nursing facility, or in the Arkansas Medicaid program as a nursing facility, or in both.
- b. As a condition of licensure by the department, a private pay-only nursing facility shall (1) comply with all state requirements applicable to a private pay-only nursing facility, including rules promulgated by the department, and (2) cooperate with department audits, inspections, and document requests.

520.3 Consistency with Federal Requirements

- a. Under 42 U.S.C. 1395i-3 and 42 U.S.C. 1396r, a certified nursing facility (1) is subject to federal requirements of participation and (2) must demonstrate substantial compliance with applicable federal requirements to receive and maintain certification necessary to participate in Medicaid, Medicare, or both.
- b. As required under Arkansas Code § 20-10-1402(d)(2), department rules applicable to certified nursing facilities (1) apply to conditions and processes of state licensure and (2) may not exceed or duplicate federal requirements of participation, including staffing and data reporting requirements, except average direct care hours per resident day requirements under Arkansas Code § 20-10-1402(a)(2) and (b).

520.4 Average Direct Care Hours Per Resident Day; Certified Nursing Facilities

- a. Each certified nursing facility shall:

1. Provide each month direct care services by direct care staff equivalent to at least three and thirty-six hundredths (3.36) average direct care hours per resident day; and
 2. On or before the fifteenth day of each month, a certified nursing facility shall report electronically to the department the facility's actual average direct care hours per resident day for the prior month.
- b. Hours used in determining actual average direct care hours per resident day for each month shall be:
1. Consistent with the certified nursing facility's final staffing data submission to the federal direct care data system for the applicable quarter, and
 2. Based on all direct care services labor categories and all direct care staff job codes specified in the most recent CMS instructions for the federal direct care data system.
- c. If necessary to correct one (1) or more of the three (3) monthly reports following data validation and based on the final staffing data reported to the federal direct care data system for the applicable quarter, the facility shall promptly file an amended monthly report(s) with the department within fifteen (15) days of the federal direct care data system reporting deadline for the quarter.
- d. The monthly reports shall show the following information:
1. The full name and license number of the reporting nursing facility.
 2. The month and year for which the report is provided and whether the report is an original or amended report for that month.
 3. For each direct care job code for which the facility had staff (employed, contracted, agency, or consultants) providing any direct care services in the month, the total number of direct care hours by all staff in that job code combined. For example, for the certified nurse aide (CNA) job code, the report would show (a) the aggregate total of all direct care hours provided by all the facility's CNAs combined and (b) not the granular information, such as hours by individual staff person, reported to the federal direct care data system.
 4. Grand total of direct care services hours provided in the month.
 5. The number of calendar days in the monthly reporting period.
 6. Average daily resident census for the month (the sum of the total of each daily resident census for all days in the month divided by the number of calendar days in the month).
 7. The average direct care hours per resident day for the month (the grand total of direct care services hours provided in the month divided by the average daily resident census for the month).

8. For the month, the difference between the actual average direct care hours per resident day and the three and thirty-six hundredths (3.36) average direct care hours per resident day standard required under Arkansas Code § 20-10-1402(a)(2), with an indication of whether the actual hours provided met or exceeded the standard or did not meet the standard.
- e. The monthly reporting under this section is not intended to duplicate or exceed the comprehensive federal direct care data system, require reporting at the level of detail required by the federal direct care data system, or require reporting not otherwise necessary to meet Arkansas Code § 20-10-1402(b).
- f. Consistent with Arkansas Code § 20-10-1402(e), this section does not require or advise any specific or minimum number of nursing staff hours, direct care staff hours, or hours of other services for any nursing facility resident. The services an individual resident receives is based on baseline and comprehensive, person-centered care plans required under 42 CFR § 483.21 and are governed by the services and staffing-related requirements in 42 CFR Part 483 Subpart B.
- g. To ensure compliance with the requirements of this subsection, the department may:
 1. Audit the monthly reports and request documentation from a certified nursing facility;
 2. Review a facility's quarterly submissions to federal direct care data system;
 3. Compare a facility's monthly reports under this subsection with its corresponding quarterly submissions to the federal direct care data system;
 4. Review the results of federal audits of facility submissions to the federal direct care data system; and
 5. Request demonstrations of the vendor payroll and other systems nursing facilities commonly use to report direct care hours.

520.5 Average Direct Care Hours Per Resident Day; Private Pay-Only Nursing Facilities

- a. Each private pay-only nursing facility shall:
 1. Provide each month direct care services by direct care staff equivalent to at least three and thirty-six hundredths (3.36) average direct care hours per resident day; and
 2. On or before the fifteenth day of each month, report electronically to the department the facility's actual average direct care hours per resident day for the prior month.
- b. In determining and reporting direct care hours as required:
 1. A private pay-only facility shall follow the same or substantially comparable process required of certified nursing facilities under sub-section 520.4. The

process is the same, except a private pay-only facility would not formally submit data to the federal direct care data system.

2. Unless the department approves an alternative, the private pay-only facility shall:
 - (a) Use the same or substantially comparable payroll and time tracking system capabilities or software that certified nursing facilities use to support reporting to the federal direct care data system and preparation of monthly reports under subsection 520.4;
 - (b) Produce and provide to the department quarterly direct care staffing reports consistent with the detailed quarterly reports that certified nursing facilities are required to submit to the federal direct care data system; and
 - (c) Report direct care staffing hours to the federal direct care data system when the Centers for Medicare and Medicaid Services subsequently permits non-certified licensed nursing facilities to use the system.
3. A process or system is substantially comparable if it records the same data or information and has the same capabilities or software as the federal reporting system.
- c. The department may audit these monthly reports and request documentation from the private pay-only facility to ensure compliance with the requirements of this subsection.

520.6 Certified Medication Assistants

- a. Any licensed nursing facility may elect to use certified medication assistants (medication assistants-certified) to perform the delegated nursing function of medication administration and related tasks under the supervision of a licensed nurse on the premises and consistent with the medication assistant rules of the Arkansas Board of Nursing.
- b. A person who is both a certified medication assistant and certified nurse aide may perform both functions in a nursing facility.

520.7 Modern Staffing Practices Supported

- a. A licensed nursing facility may:
 1. Engage the services of direct care staff and other personnel on a full-time or part-time basis and through employment, contracting, and staffing agencies, or any combination thereof;
 2. Use fixed schedules, flex-time, rotating shifts, split shifts, compressed workweeks, and other alternative staffing schedules; and
 3. Use the universal worker model and assign other tasks to some or all certified nurse aides, (such as food service, laundry, and housekeeping) in addition to their direct care responsibilities;

- (a) The universal worker option applies to both traditional and home-style type nursing facilities.
- (b) For certified nurse aides serving as universal workers, the facility must ensure that direct care and non-direct care hours are properly differentiated for monthly reports under subsections 520.4 and 520.5 and quarterly reporting to the federal direct care data system.
- b. Without limitation under department rules or need of a waiver or permission from the department, a licensed nursing facility may engage in any staffing-related practice permitted under federal requirements of participation.

520.8 Posting of Staffing Information

Each licensed nursing facility shall comply with the information posting requirements of 42 CFR § 483.35.

520.9 Waivers and Variances

- a. In the event of a public health emergency, natural disaster, other major emergency, or severe labor shortage, the department may temporarily waive the average direct care hours per resident day standard or reporting requirements in subsections 520.4 and 520.5 for any facility in a county or the state.
- b. In the event of a public health emergency, a natural disaster, or other emergency declared by the Governor or the U.S. Secretary of Health and Human Services, the department may issue a temporary waiver or variance of any rule (including any staffing-related rule) that it determines reasonable and necessary under one (1) or more of the following circumstances:
 - 1. For licensed nursing facilities and ICFs-IID to (a) provide resident care; (b) protect the health and safety of residents, staff, and visitors; (c) meet staffing needs; (d) meet new federal requirements or guidance; (e) coordinate care delivery and emergency response with hospitals, physicians, other providers, and public health or emergency management authorities; or (f) adopt alternative staffing, practices, procedures, or technology; or
 - 2. In response to any federal waiver or requirement modification issued under 42 U.S.C. 1320b-5, 42 CFR Part 483, or other federal authority.
- c. A request for a waiver or variance must be made in writing by a licensed nursing facility to the division director. The request must contain details of the reason for the waiver or variance and the potential impact to the facility if said waiver or variance is not granted.
- d. The department may approve or deny a waiver or variance request at its discretion. Approvals and denials must be made in writing.
- e. The department may extend or renew an approved waiver or variance and may impose such conditions it deems necessary to (1) protect the health and safety of facility

residents and staff, (2) meet federal requirements or guidance, or (3) best meet the intended purpose of the waiver or variance.

520 MINIMUM DIRECT CARE STAFFING REQUIREMENTS

520.1 DEFINITIONS

For purposes of this rule, and unless otherwise specified herein, the following definitions shall apply. The following definitions are independent of, and in no way are intended to modify, amend or otherwise change, the definitions set forth in the Reimbursement Methodology.

520.1.1 *Direct care staff* means any licensed or certified nursing staff who provides direct, hands on care to residents in a nursing facility. *Direct care Staff* shall not include therapy personnel or individuals acting as Director of Nursing for a facility.

520.1.2 *Midnight census* means the number of residents occupying nursing home beds in a nursing facility at midnight of each day.

520.1.3 *Day shift* means the period of 7:00 a.m. to 3:00 p.m., or, in the event of flex staffing, the first shift to begin after midnight.

520.1.4 *Evening shift* means the period of 3:00 p.m. to 11:00 p.m., or, in the event of flex staffing, the second shift to begin after midnight.

520.1.5 *Night shift* means the period of 11:00 p.m. to 7:00 a.m., or, in the event of flex staffing, the third shift to begin after midnight.

520.1.6 *Therapy personnel* shall include certified or licensed Medicare Part A Therapy personnel when they are performing, or billing for, Medicare Part A therapy services.

520.1.7 *Flex staffing* means the ability to vary the beginning and ending hours of a shift from the times set forth in **520.1.3** through **520.1.5**.

520.1.8 *Pattern of failure* means a facility did not meet the minimum staffing requirements for more than twenty percent (20%) of the total number of shifts for any one month.

520.1.9 *Resident census* means the midnight census as defined in **520.1.2** taken prior to the shift in question.

520.2 RATIO OF DIRECT CARE STAFF TO RESIDENTS—COMPUTATION

520.2.1 Minimum staffing computations shall be performed using the following method:

Step 1—Determine the midnight census for the date the shift begins.

Step 2—Divide the census by the ratio of direct care staff required for the shift being computed. The result will be the ***total number of direct care staff required for the shift.***

Step 3—Divide the census by the required ratio of licensed personnel for the shift being computed. The result will be the ***total number of licensed direct care staff required for the shift.***

Step 4—Subtract the results of Step 3 from the results of Step 2. The result will be the ***total number of remaining direct care staff required for the shift.***

520.2.2 All computations shall be carried to the hundredth place. If the computations result in other than a whole number of direct care staff for a shift, the number shall be rounded up to the next whole number when the computation, carried to the hundredth place, is fifty-one hundredths (.51) or higher.

520.2.3 Facilities shall have no less than one (1) licensed personnel per shift for direct care staff as of July 1, 2001.

520.3 MINIMUM DIRECT CARE STAFF RATIOS

5.20.3.1 Beginning October 1, 2003, facilities shall maintain the following direct care staff to resident ratios:

520.3.1.1 Day Shift: One (1) direct care staff to every six (6) residents; of which there shall be one (1) licensed nurse to every forty (40) residents.

520.3.1.2 Evening Shift: One (1) direct care staff to every nine (9) residents; of which there shall be one (1) licensed nurse to every forty (40) residents.

520.3.1.3 Night Shift: One (1) direct care staff to every fourteen (14) residents; of which there shall be one (1) licensed nurse to every eighty (80) residents.

Beginning October 1, 2003

Example The facility has a census of eighty-two (82) residents as of midnight on December 10, 2003, and is computing the required direct care staff for the day shift of December 11, 2003. The day shift has a direct care staff to resident ratio of one (1) direct care staff to every six (6) residents, of which there shall be one (1) licensed staff member to every forty (40) residents.

Step 1: Census of 82

Step 2: $82 \div 6 = 13.67$ [**Round to 14; total number of direct care staff required**]

Step 3: $82 \div 40 = 2.05$ [**Round to 2; number of licensed direct care staff required**]

Step 4: $14 - 2 = 12$ [**Number of remaining direct care staff required**]

Total number of direct care staff for the day shift: 14
Total number of licensed direct care staff for the day shift: 2
Total number of remaining direct care staff for the day shift: 12

Example The facility has a census of ninety seven (97) residents as of midnight on January 3, 2004, and is computing the required direct care staff for the evening shift. The evening shift has a direct care staff to resident ratio of one (1) direct care staff to every nine (9) residents, of which there shall be one (1) licensed staff member to every forty (40) residents.

Step 1 — Census of 97

Step 2 — $97 \div 9 = 10.77$ [Round to 11; total number of direct care staff required]

Step 3 — $97 \div 40 = 2.42$ [Round to 2; number of licensed direct care staff required]

Step 4 — $11 - 2 = 9$ [Number of remaining direct care staff required]

Total number of direct care staff for the evening shift: 11
Total number of licensed direct care staff for the evening shift: 2
Total number of remaining direct care staff for the evening shift: 9

Example The facility has a census of one hundred forty two (142) residents as of midnight on December 7, 2003, and is computing the required direct care staff for the night shift. The night shift has a direct care staff to resident ratio of one (1) direct care staff to every fourteen (14) residents, of which there shall be one (1) licensed staff member to every eighty (80) residents.

Step 1 — Census of 142

Step 2 — $142 \div 14 = 10.14$ [Round to 10; total number of direct care staff]

Step 3 — $142 \div 80 = 1.77$ [Round to 2; number of licensed direct care staff]

Step 4 — $10 - 2 = 8$ [Number of remaining direct care staff]

Total number of direct care staff for the night shift: 10
Total number of licensed direct care staff for the night shift: 2
Total number of remaining direct care staff for the night shift: 8

520.4 — EXCEPTIONS TO MINIMUM STAFFING RATIOS

520.4.1 Upon an increase in a facility's resident census, the facility shall be exempt from any corresponding increase in staffing ratios for a period of nine (9) consecutive shifts beginning with the first shift following the midnight census for the date of the expansion of the resident census.

520.4.2 When residents are relocated or transferred from facilities due to natural disaster, emergency or as a result of state or federal action, the Department of Human Services may waive, for a period of no more than three (3) months from the date of transfer, some or all of any required increase in direct care

staff for the facility or facilities to whom the residents are relocated or transferred. Waivers will only be granted for good cause shown, and upon telephone, facsimile or written request. A grant of a waiver is within the sole discretion of the Office of Long Term Care. Facilities may apply for a waiver by writing the Director of the Office of Long Term Care. The written request should state, at a minimum:

- a. The date of the transfer for each resident;
- b. The number of residents transferred for each date in which residents were received from another facility;
- c. The anticipated date by which the facility will be able to meet the increased number of minimum staff for the total number of residents of the entire facility, including all residents received in transfer;
- d. The name of the facility from which the residents were transferred; and
- e. A brief explanation as to why the facility's staffing cannot be increased prior to the anticipated increase date set out in c, above.

520.5 STAFFING REPORTS

520.5.1 By the fifth (5th) day of each month, each nursing facility or nursing home shall submit a written report of all shifts for the preceding month to the Office of Long Term Care, utilizing form **DMS-718**.

520.5.2 In addition, each report shall designate the shifts in which minimum staffing standards were not met, as set forth in form **DMS-718**.

520.6 FLEX STAFFING

520.6.1 Flex staffing permits facilities to vary the beginning and ending hours for shifts, so that facilities may maximize staff time to the benefit of residents. Regardless whether a facility employs shifts of greater duration than specified in these rules—such as ten (10) or twelve (12) hour shifts—for purposes of computing minimum staffing ratios the facility shall base their computations on three shifts of equal length. Facilities can, however, designate that their shifts will begin earlier or later than specified in Sections **520.1.3** through **520.1.5**.

520.6.2 When facilities utilize flex staffing, the shifts must meet the staffing requirements set forth herein for the entire period of the shift. As way of example only, if a facility begins a shift at 5:30 a.m., the minimum staffing requirements for that shift, which would end at 1:30, would be minimum staffing requirements for the Day Shift as set forth in Sections **520.1.3** through **520.1.5**, and those minimums must be maintained throughout the entire shift.

5.20.6.3 ~~The Office of Long Term Care shall be notified in writing when a facility implements a flex staffing schedule. The written notice shall state the beginning and ending hours of each shift under the flex staffing.~~

5.20.7 PENALTIES

~~Violations of these rules shall be punishable in accordance with Ark. Code Ann. § 20-10-1407 and 20-10-1408.~~

5.20.8 RESIDENT CARE NEEDS AND INCREASES IN STAFFING

~~The staffing standards set forth in Section 520.3 are *minimum* requirements that facilities must meet at all times, except as provided herein. In the event that the Office of Long Term Care determines that sufficient personnel are not employed or available to meet resident care needs, the Office of Long Term Care may require the facility to either increase staff on a per shift basis or reduce resident census. In such cases, the Office of Long Term Care will notify the facility in writing of its determination, including the basis for the determination. In addition, the Office of Long Term Care will state the number of additional staff that must be employed or available and the date by which the additional staff must be employed or available; the amount by which the resident census must be reduced and the date by which that reduction must be achieved; or both.~~

~~In the event that the Director of the Office of Long Term Care determines that minimum staffing standards should be increased pursuant to Ark. Code Ann. § 20-10-1409(b)(2), the Director of the Office of Long Term Care shall certify the determination and any proposed regulatory increases to minimum staffing standards to the Director of the Division of Medical Services, who shall notify the Director of the Department of Human Services and the Legislative Council of the determination, and whether sufficient appropriated funds exist to fund the costs, as defined as direct care costs by the Long Term Care Cost Reimbursement Methodology of the Long Term Care Provider Reimbursement Manual as in effect January 12, 2001, to be incurred by the proposed changes to the minimum staffing standards.~~

~~In no event shall minimum staffing standards be increased unless sufficient appropriated funds exist to fund the costs to be incurred by the proposed increases to minimum staffing standards.~~

MINIMUM STAFFING REPORTING FORM

THIS REPORT MUST BE TYPED. All fields must be completed for each reporting period. Indicate any shift in which minimum staffing requirements were not met by placing an asterisk beside the number of personnel for that shift for each category in which minimum staffing was not met. For example, if minimum staffing was not met for the Day Shift of the third day of the month because of insufficient direct care staff that were not licensed staff, an asterisk would be placed after the numbers in both the Total and Other fields.

Facility: _____ Month/Year: _____ Signature of Person
Preparing this Report: _____

Day	Census	Day Shift Direct Care Staff			Evening Shift Direct Care Staff			Night Shift Direct Care Staff		
		Total	Licensed	Other	Total	Licensed	Other	Total	Licensed	Other
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
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17										
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29										
30										
31										

DMS-718

(8/01)

10/1/20202021

5.20.9 POSTING

5.20.9.1 Definitions. For purposes of this rule:

- ~~(a) *Hall* means a corridor or passageway in a facility containing one or more resident rooms.~~
- ~~(b) *Wing* means a section of a facility devoted to resident care and containing one or more resident rooms.~~
- ~~(c) *Corridor* means a passageway with one or more resident rooms opening onto it.~~
- ~~(d) *Unit* means one hall, one wing, or one corridor.~~
- ~~(e) *Daily Staffing Log* means form DMS 7780.~~
- ~~(f) *Day Shift* means the period of 7:00 a.m. to 3:00 p.m. The facility may allow employees to begin their work shift up to two (2) hours prior to, or up to two (2) hours following, 7:00 a.m. to meet patient care needs.~~
- ~~(g) *Evening Shift* means the period of 3:00 p.m. to 11:00 p.m. The facility may allow employees to begin their work shift up to two (2) hours prior to, or up to two (2) hours following, 3:00 p.m. to meet patient care needs.~~
- ~~(h) *Night Shift* means the period of 11:00 p.m. to 7:00 a.m. The facility may allow employees to begin their work shift up to two (2) hours prior to, or up to two (2) hours following, 11:00 p.m. to meet patient care needs.~~
- ~~(i) *Accessible* means that the Daily Staffing Log shall not be obscured or blocked, partially or in whole, by any object; shall be located between four feet (4') to five feet (5') as measured from the floor; and shall be posted on a wall of each hall, wing or corridor that is not obstructed, blocked or is in any manner behind any fixture, nurses' station or other object. Encasing the Daily Staffing Log in a clear or transparent cover, binder or other similar object is permissible.~~

5.20.9.2 ~~The facility shall complete, post and maintain Daily Staffing Logs utilizing form DMS 7780, and in conformity with the instructions contained in that form and these rules.~~

5.20.9.3 ~~The Daily Staffing Log shall be conspicuously posted on each hall, wing and corridor in a manner that makes it accessible at all times.~~

5.20.9.4 ~~The DMS 7780 shall be retained and filed by the facility until the next standard survey by the Office of Long Term Care or one year from the month the specific form is completed, whichever is greater. All DMS 7780s filed by the facility shall be available for review by any interested person within seventy two (72) hours of receipt of a written request.~~

5.20.9.5 ~~A violation of any provision of this rule shall be a Class C violation in accordance with Ark. Code Ann. § 20-10-205 and 20-10-206.~~

DAILY STAFFING LOG

Facility _____

Hall, Wing or Corridor _____

Date _____

Shift (Day, Evening, Night) _____

Total Hours Worked _____

Census (Of Unit at Beginning of Shift) _____

Staff (RN/LPN CNA/RNA/Other)	Time In	Signature	Time Out	Time Worked

Total Hours: _____
RNs LPNs CNAs Others

Comments: _____

Administrator/DON/Designee _____ Date _____

DMS-7790 (R. 7/06)

Instructions for Completing Form DMS-7780

As required by Ark. Code Ann. § 20-10-1401 *et seq.*, a copy of the Form DMS-7780 is to be completed and posted daily as specified in these instructions and LTC Section 520.9.

Start a new Log with each Day Shift.

1. ~~_____ Date~~ Enter the current date.
2. ~~_____ Facility~~ Enter facility name.
3. ~~_____ Hall, Wing or Corridor~~ Specify the hall, corridor, or wing that the Log covers. See Section 520.9.1.
4. ~~_____ Shift Sign-In Sheet~~ Staff will sign in at the beginning of each shift and sign out at the end of each shift on the Shift Sign-In Sheet in the section designated for their licensure or certification status. On the log, each person will:

- ~~_____~~ specify his/her time in
- ~~_____~~ sign name
- ~~_____~~ specify time out

RNs, LPNs and RNAs working as CNAs will sign in under the section for their licensure, but the facility shall denote on the form that they are working as CNAs for that shift by placing "(CNA)" after their name. Likewise, RNs working as LPNs will sign in under the RN section, but the facility shall denote on the form that they are working as LPNs by placing "(LPN)" after their name.

5. ~~_____ Today's Residents on Unit~~ At the beginning of each shift, the Charge Nurse or designee will enter the number of residents on that unit as of 12:01 a.m. of the date of the report. See Section 520.9.1 for the definition of shifts.
6. ~~_____ Comments~~ The Administrator or designee may enter comments explaining any discrepancies between required and actual staffing.
7. ~~_____ Post the log~~ See Sections 520.9.1(a), (b), (c), (e), and (i), and 520.9.3.
8. ~~_____ Review~~ The Administrator, DON or Designee will sign and date each staffing log prior to filing.
9. ~~_____ Save and file the logs for audit by OLTC~~ See Section 520.9.4.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of Provider Services and Quality Assurance

PERSON COMPLETING THIS STATEMENT Jason Callan

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

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

SHORT TITLE OF THIS RULE Direct Care Staffing Requirements update pursuant to Act 715 of 2021

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

General Revenue	\$ _____
Federal Funds	\$ _____
Cash Funds	_____
Special Revenue	_____

Next Fiscal Year

General Revenue	\$ _____
Federal Funds	\$ _____
Cash Funds	_____
Special Revenue	_____

Other (Identify) _____

Total \$ _____

Other (Identify) _____

Total \$ _____

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

Current Fiscal Year

General Revenue	\$ 159,638
Federal Funds	\$ 402,863
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ 562,501

Next Fiscal Year

General Revenue	\$ 212,850
Federal Funds	\$ 537,151
Cash Funds	_____
Special Revenue	_____
Other (Identify)	_____
Total	\$ 750,001

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

\$ 0 _____

Next Fiscal Year

\$ 0 _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 159,638 _____

Next Fiscal Year

\$ 212,850 _____

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;

Act 715 changed the staffing standards that required a particular ratio of staff to residents. Act 715 also eliminated the penalties associated with such standards. Previously, if those ratios were not met, DHS could issue penalties to the facilities for a failure to meet those standards. In the previous FY, DHS collected \$210,500 in penalties from nursing facilities.

- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

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- (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;

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- (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;

None.

- (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;

None.

- (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

Act 715 changed the staffing standards that required a particular ratio of staff to residents. Act 715 also eliminated the penalties associated with such standards. Previously, if those ratios were not met, DHS could issue penalties to the facilities for a failure to meet those standards. In the previous FY, DHS collected \$210,500 in penalties from nursing facilities.

- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
- (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

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Summary and Statement of Necessity
Direct Care Staffing Requirements update pursuant to Act 715 of 2021

Statement of Necessity

Section 520 of the Rules for Nursing Homes is being updated to reflect changes due to Act 715 of 2021. Section 520 covers Minimum Direct-care Staffing requirements. Act 715 of 2021 changes staffing standards and reporting requirements for nursing facilities.

Summary

DPSQA amends Section 520 of the Rules for Nursing Homes. The new Section 520 changes the rules and reporting requirements to comply with Act 715. This rule provides guidance to nursing home facilities as to how reporting should be conducted, when reporting should be made to DHS, requirements for waivers and variances, and how facilities should respond to the law.

Act 715 directs that the Rules for Nursing Homes, as applied to Medicare and Medicaid certified nursing facilities, be consistent with federal staffing and data reporting requirements. DPSQA changes the staff to resident ratios and eliminates the penalties associated with those standards. DPSQA also amends the reporting requirements for actual average direct care hours per resident.

NOTICE OF RULE MAKING

The Director of the Division of Provider Services and Quality Assurance of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§20-76-201, 20-77-107, 20-10-203, 20-10-1402, and 25-10-129.

Effective January 1, 2022:

The Director of the Division of Provider Services and Quality Assurance (DPSQA) amends Section 520 of the Rules for Nursing Homes to comply with Act 715 of the 93rd General Assembly. Act 715 directs that the Rules for Nursing Homes, as applied to Medicare and Medicaid certified nursing facilities, be consistent with federal staffing and data reporting requirements. DPSQA changes the staff to resident ratios and eliminates the penalties associated with those standards. DPSQA also amends the reporting requirements for actual average direct care hours per resident.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than **October 18, 2021**. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

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

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



Martina Smith, Director
Division of Provider Services and Quality Assurance