

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

**John Thurston**

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Department of Human Services

Department Division of Provider Services and Quality Assurance

Contact Mac E. Golden E-mail Mac.E.Golden@dhs.arkansas.gov Phone 501.320.6383

Statutory Authority for Promulgating Rules Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

Rule Title: Waiver of Licensure Fees - Act 725

Intended Effective Date  
(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☒ Other 06/01/2022  
(Must be more than 10 days after filing date.)

Legal Notice Published .....

Final Date for Public Comment .....

Reviewed by Legislative Council .....

Adopted by State Agency .....

Date

03/11/2022

04/09/2022

05/20/2022

06/01/2022

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Renita Jones

Renita.Jones@dhs.arkansas.gov

05/20/2022

Contact Person

E-mail Address

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  
501-396-6165 Martina.Smith@dhs.arkansas.gov  
Phone Number E-mail Address

Director

Title

05/20/2022

Date



Arkansas Department of Human ServicesDivision of  
Medical Services Office of Long Term Care

Table of Contents

<b>Authority .....</b>	<b>i.</b>
<b>Preface .....</b>	<b>i.</b>
<b>Section I — Definitions .....</b>	<b>1</b>
<b>Section II — Applicant’s Qualifications.....</b>	<b>1</b>
A. Character.....	2
B. Age .....	2
C. Health.....	2
D. Education .....	2
E. Administrator-in-Training Program Qualifications .....	3
F. Equivalent Qualifications .....	4
<b>Section III — Licensure.....</b>	<b>4</b>
A. Licensure Requirement.....	4
B. Application for Licensure .....	4
C. Examination for Licensure .....	5
D. Continuing Education and Training .....	5

E. Licensure Renewal .....	6
F. Reciprocity .....	7
G. Inactive Administrators .....	8
H. Disciplinary Proceedings .....	8
I. Appeals .....	10
J. Penalties .....	10
<b>Section IV — Severability .....</b>	<b>10</b>

## Attachment A — Code of Ethics

06/01/2022

## Authority

The following Rules for the Licensure of Nursing Home Administrators are duly adopted and promulgated by the Arkansas Department of Human Services, Office of Long Term Care, pursuant to the authority expressly conferred by Title 20-10-203 (b) of the Arkansas Code.

## Preface

These rules have been prepared for the purpose of establishing nursing home administrator competency as well as criterion for the licensure of nursing home administrators. There exists a relationship between the quality of care and quality of life for residents in a nursing home and the knowledge, skills, and abilities of the nursing home's administrator. This relationship becomes

increasingly apparent as nursing home administrators attempt to implement new and often complex standards of resident care services so that the facilities can participate in the full continuum of care.

The rules are subject to periodic revisions as new knowledge becomes available that will more fully establish the level of competency necessary for effective nursing home administration.

Rules are limited in their ability to set forth all the attributes necessary for quality administration. Administrators of nursing homes have a responsibility beyond the minimum standards detailed here to continue to enhance their education, experience, and professional growth.

The end result of such enhancement will be the achievement of optimum nursing home resident care.

## **Section III — Licensure**

### **A. LICENSURE REQUIREMENT**

No person shall administer, manage, supervise, or be in general administrative charge of a nursing home unless he or she is a licensed nursing home administrator in active status. No nursing home within the State shall operate except under the supervision of a licensed administrator. No administrator shall manage more than one nursing home.

### **B. APPLICATION FOR LICENSURE**

Applicants for licensure shall file applications under oath with the Department, upon forms prescribed by the Department (Form DMS-7790) and shall pay the required licensure fee, as outlined in Ark. Code Ann. §20-10-404. The application and fee shall be mailed to the Department at the address provided by the Department. If the application is approved, the applicant has eighteen (18) months from the date of approval, to become licensed. Half of the licensure fee shall be refunded to the applicant if the Department denies licensure because (a) the application is not approved, (b) the applicant does not pass the exams, or (c) any other reason deemed appropriate by the Department.

Pursuant to Ark. Code Ann. § 17-5-104, individuals may be granted a licensing waiver if they have been receiving assistance through the Arkansas Medicaid Program, the Supplemental Nutrition Assistance Program, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Temporary Assistance for Needy Families Program, or the Lifeline Assistance Program; or they were approved for unemployment within the last twelve (12) months; or they have an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.

The waiver of the initial fee does not include fees for:

- A criminal background check;
- An examination or a test; or
- A medical or drug test.

A signed consent form from the applicant may be required for verification of eligibility.

**Agency #016.06**

**Rules for the  
Arkansas Long Term Care Facility  
Nursing Assistant Training Program**

**Arkansas Department of Human Services  
Division of Medical Services  
Office of Long Term Care  
1992  
(Revised June 01, 2022)**

## Section VII

## REQUIREMENTS FOR EXAMINATION AND CERTIFICATION

### A. Transition

The initial implementation of these training and examination requirements have covered three basic phases:

#### 1. Deemed Equivalence Waivers -

A nursing assistant shall be deemed to have satisfied the requirement of completing a training and competency examination program approved by the State if the nursing assistant:

- a. Completed a program that offered a minimum of sixty (60) hours of nursing assistant training before July 1, 1989 and if such received before July 1, 1989 up to fifteen (15) hours of supervised and practical nursing assistant training or regular in-service nursing assistant education (initial training must be at least seventy-five (75) hours);
- b. Completed a course of at least one hundred (100) hours of nursing assistant training and was found competent (whether by the State or not) before January 1, 1989; or
- c. Has served as a nursing assistant at one (1) or more facilities of the same employer in the State for at least twenty-four (24) consecutive months before December 19, 1989.

Individuals will not qualify for these waivers if they have not provided nursing or nursing-related services for a period of twenty-four (24) months or longer since completing training. They will be required to complete a new training program and state examination to obtain current certification.

Facilities who wish to obtain certification for the above-described individuals should submit to the Department Form DMS-798, Interstate Transfer Form, with attached copies of documents or certificates verifying course completion, and the number of hours in the course.

#### 2. Employment status as of July 1, 1989 -

All individuals working as nursing assistants in Arkansas nursing facilities as of July 1, 1989, were allowed to become certified by passing the state examination but were not required to complete the "formal" 75 hour training course.

This phase was completed by October 1, 1990 and does not apply thereafter. Therefore, all individuals must now complete the ninety-

hour training requirements to qualify to take the state examination regardless of past employment status on July 1, 1989.

3. July 1, 1989 - Ongoing -

Effective July 1, 1989, a facility must not use any individual working in the facility as a nursing assistant for more than four (4) months (one hundred twenty (120) calendar days) unless that individual has successfully completed a training program and competency examination, approved by the Department, as described in these rules.

B. Examination

1. The Department or its appointed agency shall be responsible for administering the competency examination. The exam shall be based upon the training curriculum requirements specified in the LTCF Nursing Assistant Training Curriculum Guide.
2. The examination will be in English. Translation of this examination will be offered, if needed. Additional accommodations can be made by the Department or contractor based on a documented need; however, an additional fee may be required.
3. The competency examination shall consist of two (2) components, a written (or oral) exam and a skills demonstration. Each examination candidate will be allowed to choose between a written or oral exam. The oral examination will be read from a prepared text in a neutral manner.
4. The written or oral component shall be developed from a pool of examination questions, only a portion of which are used in each exam. The skills demonstration shall consist of a demonstration of five (5) randomly selected items drawn from a pool of tasks ranked according to difficulty.
5. The skills demonstration component will be performed in a facility (which has not been disqualified by criteria specified in Section V, item B.) or laboratory setting similar to the setting in which the individual will function.
6. The skills demonstration will be administered and evaluated by a registered nurse (RN) with at least one (1) year experience in providing care for the elderly or chronically ill of any age.
7. The skills demonstration component may be proctored by facility or training site personnel (RNs as described above) if secure, standardized, and scored by the contractor approved by the Department. "Proctoring" will not be approved in facilities subject to prohibitions specified in Section V (item B).
8. To complete the competency examination successfully, an individual must pass both the written (or oral) examination and the skills demonstration. If

an individual does not complete the examination satisfactorily, they will be advised of areas which they did not pass and their right to take the examination three (3) times.

9. All candidates will be allowed up to three (3) opportunities to successfully complete the examination. Failure after three (3) attempts will require re-training to qualify for further examination opportunities. A maximum time limit of twelve (12) months shall be imposed on an individual to complete the examination. Verification of new re-training will be required after this 12-month limit, for further examination opportunities.

10. Effective upon notification of examination results, any person who has failed the competency examination (either the written, oral, or skills portion) after three (3) attempts is prohibited from providing nursing services to residents in a nursing facility. However, based on the program rules, these individuals may maintain their employment status if they re-enroll in a new training program. They would be required to follow the program implementation requirements of completing the first sixteen (16) hours (Part I) training prior to direct resident contact and can only be assigned to job duties thereafter in which they have been "checked-off" as competent to perform as they complete the remainder of the full ninety (90) hours of training. Upon successful completion of their training, they should be scheduled for the next available competency examination.

11. All individuals who successfully complete the examination shall be placed on the CNA registry and issued a state certificate. Information on the registry shall be made available for public inquiry (see Section VIII).

C. Examination Fees, Dates, and Locations

1. The Department does not require an initial fee for this occupational license; however, there is a fee to take the state examination. The amount of the examination fee will be announced in a timely manner by the Department or designated contractor.
2. If there were to be an initial fee, per Arkansas Code Ann §17-5-104, the following individuals are not required to pay an initial fee for this license:
  - a. An individual receiving assistance through the Arkansas Medicaid Program, the Supplemental Nutrition Assistance Program, the Special Supplemental Nutrition Program for Women, Infants, and Children, Temporary Assistance for Needy Families Program, or the Lifeline Assistance Program;
  - b. An individual who was approved for unemployment within the last twelve (12) months; or
  - c. An individual who has an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.

3. The waiver of the initial fee does not include fees for:
  - a. A criminal background check;
  - b. An examination or a test; or
  - c. A medical or drug test.
4. The examination will be given at multiple sites geographically dispersed throughout the state. Schedules of times, locations, and registration requirements will be announced in a timely manner by the Department or designated contractor.
5. At the option of the NA, the competency examination (both written, oral, and skills components) may be administered in the facility at which the NA is (or will be) employed (unless the facility is disqualified by the Department under criteria specified in Section V, item B).
6. Each candidate must have appropriate verification of completion of the training requirements. This will be in the form of a "certificate of completion" from an approved training program or other acceptable documents (see item D of this section and Section IV(B) of these rules).
7. The Department will be responsible to pay the examination fee for individuals who are employed by a Medicaid certified nursing facility or those individuals that have a commitment ("letter of intent" as defined in Section X (A) (2) of these rules) to be employed in a Medicaid certified nursing facility. Letters of intent to hire from Medicaid certified nursing facilities must be dated within twelve (12) months immediately preceding the date of the application to take the examination. Independent examination candidates who are taking the competency examination without an employment connection to a long-term care facility will be responsible to pay their own examination fee. In accordance with 42 CFR § 483.154, no nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency examination program may be charged for any portion of the program.
8. If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than twelve (12) months after completing a nurse aide training and competency examination program, the State must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

D. Candidate Qualifications

The following list identifies those individuals who qualify for the state competency exam.

Note: Individuals listed on the LTCF Employment Clearance Registry, with a disqualification status due to a substantiated administrative finding of abuse, neglect, misappropriation of resident property or a disqualifying criminal record in accordance with Ark. Code Ann. § 20-38-101 et seq, shall not be eligible to take the competency examination.

1. Nursing assistants who were trained in **approved** non-facility programs (for example: career colleges, Vo-Tech schools, or proprietary schools) after January 1, 1989.
2. Nursing assistants who were trained in **approved** facility (nursing homes) programs after July 1, 1989.
3. RN or LPN students who have finished the basic nursing course (for example: Introduction to Nursing, or Fundamentals of Nursing). The individual must provide a copy of their school transcript, or documentation showing successful completion of the basic nursing course, to qualify to take the state competency examination.
4. Registered nurses or licensed practical nurses that have had disciplinary action resulting in suspension, revocation, or voluntary surrender of license due to disciplinary action, shall not be allowed an exemption to training or be allowed to challenge the state examination.
5. Home health aides who have met appropriate federal training or examination requirements for HHA certification. Verification must show completion of a minimum of seventy-five (75) hours training or federal testing requirements as a home health aide. This provision does not apply to "personal care aides" as their training requirements of forty (40) hours does not meet the LTCF Nursing Assistant Training Program's ninety (90) hours or curriculum content.
6. Individuals from other states who can verify completion of a state approved geriatric nursing assistant training program but who were not tested and registered. (If registered in the other state, see Section VIII for reciprocity transfers without further examination.) Verification of course completion rests with the individual and must be submitted to the DHS designated contractor for approval to take the Arkansas competency examination.
7. Nursing assistants whose certification has become inactive based on the recertification requirements (see Section VIII, item D.). These individuals shall be required to be retested for recertification. Permission for retesting shall require an "admission slip" obtained from the examination agency prior to the specified examination date.

All other persons trained in programs that have not received approval from the Department as a training provider shall not qualify and shall not be allowed to take the examination. Such programs may include hospitals, emergency medical technicians, medical assistant programs, personal care aides, correspondence courses, independent study, on-the-job training, or in-service training, as they are not acceptable in lieu of the approved training program.