

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



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Agency or Division Name \_\_\_\_\_

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Previous Agency Name, If Applicable \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

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Arkansas Department of ~~Health and~~ Human Services  
Division of Medical Services Office of Long Term Care

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## Attachment A — Code of Ethics

01/01/202006/01/2022

## Authority

The following Rules for the Licensure of Nursing Home Administrators are duly adopted and promulgated by the Arkansas Department of ~~Health and~~ 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.

01/01/202006/01/2022

## 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 ~~Office~~ Department, upon forms prescribed by the ~~Office~~ 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, ~~in which~~ to become licensed. ~~One-half~~ of the ~~application-licensure~~ fee shall be refunded to the applicant if the Department denies licensure ~~is denied~~ because (a) the application is not approved, (b) the applicant does not pass the exams, or (c) any other reason deemed appropriate by the ~~Office~~ Department.

Pursuant to Ark. Code Ann. § 17-54-104, 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.

**~~NOTE: DHS does not currently have an initial fee. In the event that DHS requires an initial fee, the aforementioned statute would apply and those individuals would not be responsible for the initial fee.~~**

**~~NOTE: The application and fee shall be sent by Certified Mail to the address provided by the Office.~~**

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 ~~January-June~~ 01, ~~2020~~2022)**

## Section VII

## REQUIREMENTS FOR ~~TESTING-EXAMINATION~~ AND CERTIFICATION

### A. Transition

The initial implementation of these training and ~~testing-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 ~~evaluation-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); ~~or~~
- b. Completed a course of at least ~~one hundred (100)~~ hours of nursing assistant training and was found competent (whether ~~or not~~ 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 ~~test-examination~~ to obtain current certification.

Facilities who wish to obtain certification for the ~~above-described~~ ~~above-described~~ individuals should submit to ~~OLTC-the~~ ~~Department~~ ~~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, ~~etc.~~

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

All individuals working as nursing assistants in Arkansas nursing facilities as of July 1, ~~1989~~ ~~1989~~, were allowed to become certified by passing the state ~~competency test~~ ~~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-90-hour training requirements to qualify to take the state ~~test-examination~~ regardless of past employment status on July 1, 1989.

3. July 1, 1989 - Ongoing -

Effective July 1, ~~1989~~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 ~~evaluation-examination~~, approved by the ~~Office of Long Term Care~~Department, as described in these rules.

B. Examination

1. The Department or its appointed agency shall be responsible for administering the competency ~~evaluation~~/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 ~~test-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 ~~test-examination~~ questions, only a portion of which ~~is-are~~ used in ~~any one~~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 ~~testing-contractor agency~~ 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 ~~evaluation examination~~ successfully, an individual must pass both the written (or oral) examination and the skills demonstration. If an individual does not complete the ~~evaluation examination~~ satisfactorily, they will be advised of areas which ~~he/she/they~~ did not pass and their right to take the ~~test examination~~ three (3) times.

9. All ~~test~~ 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 ~~test examination~~ opportunities. A maximum time limit of ~~twelve~~ (12) months shall be imposed on an individual to complete the ~~test examination~~. Verification of new re-training will be required after this 12-month limit, for further ~~testing examination~~ opportunities.

10. Effective upon notification of ~~test examination~~ results, any person who has failed the competency ~~evaluation 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 ~~exam examination~~.

11. All individuals who successfully complete the ~~competency~~ 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. Test Examination Fees, Dates, and Locations, and Fees

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; or

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. ~~Testing will be made available~~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 ~~testing agent~~contractor.
5. At the option of the NA, the competency ~~evaluation 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 ~~test~~ 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 ~~test~~ 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 ~~test~~ examination. Independent ~~test~~ examination candidates who are taking the competency ~~test~~ examination without an employment connection to a ~~long term~~ long-term care facility will be responsible to pay their own ~~test~~ 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.

~~8.—There will be a fee charged to take the state competency evaluation. The amount of the fee will be announced in a timely manner by the Department or designated testing agent.~~

~~9.8. The Department will be responsible to pay the test 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 12 months immediately preceding the date of the application to take the test. Independent test candidates who are taking the competency test without an employment connection to a long term care facility will be responsible to pay their own test fee.~~

#### 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 ~~ana~~ 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, ~~etc.~~) 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, ~~etc.~~). The individual must provide a copy of their school transcript, ~~or~~ documentation showing successful completion of the basic nursing course, ~~in order to~~ qualify to take the state competency test examination.
4. Registered nurses or licensed practical nurses that have had disciplinary action resulting in suspension, ~~revocation~~ 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 ~~competency~~ examination.
5. Home health aides who have met appropriate federal training ~~and/or~~

~~testing-examination~~ requirements for HHA certification. Verification must show completion of a minimum of seventy-five (75) hours training ~~and~~/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 ~~testing~~examination.) Verification of course completion rests with the individual and must be submitted to ~~OLTC~~the DHS designated contractor for ~~-~~approval to take the Arkansas competency ~~test~~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 ~~testing-examination~~ agency prior ~~to the~~to the specified ~~test-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, ~~or~~ on-the-job training, or in-service training, as they are not acceptable in lieu of the approved training program.

## FINANCIAL IMPACT STATEMENT

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Department of Human Services

**DIVISION** Division of Provider Services and Quality Assurance/Shared Services

**PERSON COMPLETING THIS STATEMENT** Rhonda Williams

**TELEPHONE** 501-396-6165 **FAX** \_\_\_\_\_ **EMAIL:** Rhonda.Williams@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** Waiver of Licensure Fees

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;  
N/A

(b) The reason for adoption of the more costly rule;  
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
N/A

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	<u>\$0</u>
Federal Funds	<u>\$0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>

**Next Fiscal Year**

General Revenue	<u>\$0</u>
Federal Funds	<u>\$0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>

Other (Identify) 0

Total \$0

Other (Identify) 0

Total \$0

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

**Current Fiscal Year**

General Revenue \$0

Federal Funds \$0

Cash Funds 0

Special Revenue 0

Other (Identify) \$717.00

Total \$ 717.00

**Next Fiscal Year**

General Revenue \$0

Federal Funds \$0

Cash Funds 0

Special Revenue 0

Other (Identify) \$8,600.00

Total \$ 8,600.00

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**

\$ 717.00

**Next Fiscal Year**

\$ 8,600.00

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; N/A

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

(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; N/A

- (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; N/A
- (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; N/A
- (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 N/A
- (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. N/A



## **Statement of Necessity and Rule Summary**

### **Licensure Fee Waivers**

#### **Statement of Necessity:**

Act 725 of the 93<sup>rd</sup> General Assembly created the Workforce Expansion Act of 2021. The Act provides license and fee waivers for individuals and applicants for licensure due to specified economic hardships.

#### **Summary:**

DPSQA amends the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program Manual and the Rules for Licensure of Nursing Home Administrators Manual to incorporate the requirements of Act 725. Act 725 waives initial filing fees, permit fees, and licensing fees for individuals and applicants meeting specified requirements: (a) 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; (b) approved for unemployment within the last twelve (12) months; or (c) 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) a criminal background check; (b) an examination or a test; or (c) a medical or drug test. A signed consent form from the applicant may be required for verification of eligibility.

## NOTICE OF RULE MAKING

The Director of the Division of Provider Services and Quality Assurance 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: §§4-25-110, 17-4-105, 20-10-203, 20-10-701, 20-76-201, 20-77-107, and 25-10-129.


### **Effective June 1, 2022:**

The Director of the Division of Provider Services and Quality Assurance (DPSQA) amends the following manuals to comply with Act 725 of the 93<sup>rd</sup> General Assembly: Rules for Licensure of Nursing Home Administrators in Arkansas and the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program. Act 725 creates the Workforce Expansion Act of 2021, which allows fee waivers for certain individuals. The manuals are revised to provide for the fee waivers identified in the Act.

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](mailto:ORP@dhs.arkansas.gov). All public comments must be received by DHS no later than April 9, 2022. 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



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Martina Smith, Director  
Division of Provider Services and Quality Assurance