

# ARKANSAS REGISTER

## Transmittal Sheet

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



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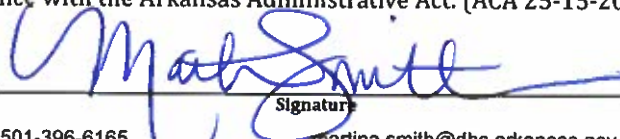
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Date

### 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.)

  
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May 20, 2022

Date

# Rules for Nursing Homes Office of Long

## Term Care

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## 100 **DEFINITIONS**

For the purpose of these standards the following definitions shall apply:

Administrator means a person licensed as a nursing home administrator by the Department who administers, manages, supervises, or is in general administrative charge of a nursing home.

Alteration means any work other than maintenance in an existing building and which does not increase the floor or roof area or the volume of enclosed space.

Consultant shall mean a qualified person who gives professional advice or service within his/her specialty, with or without re-numeration.

Consultant Dietitian a person who is eligible for registration by the Dietetic Association, has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management; has one year of supervisory experience in the dietetic service of a health care institution and participates annually in continuing dietetic education.

Consultant Pharmacist means a qualified licensed, registered pharmacist, who under arrangement with an institution, renders assistance in developing, implementing, evaluating, and revising where indicated, policies and procedures for providing the administrative and technical guidance of the pharmaceutical services relative to labeling, storing, handling, dispensing, and all other matters pertaining to the administration and control of drugs and medication. He/she provides such services and monitors activities within the institution with the express purpose of creating and maintaining the highest standards in medication distribution, control, and service.

Controlled Substances means a drug, substance or immediate precursor in Schedules I through V of Article 11 of the Controlled Substances Act.

Department shall mean the Arkansas Department of Human Services (DHS).

Director shall mean the Director of the Division of Provider Services and Quality Assurance

Disinfection shall mean the process employed to destroy harmful microorganisms, but ordinarily not viruses and bacterial spores.

Distinct Part shall mean an identifiable unit accommodating beds and related facilities including, but not limited to, a wing, floor, or building that is approved by the Division for a specific purpose.

Division shall mean the DHS/Division of Provider Services and Quality Assurance

Drug means (a) articles recognized in the Official United States Pharmacopeia, Official Homeopathic Pharmacopeia of the United States, or Official National Formulary, or any supplement to any of them; and (b) articles intended for use in the diagnosis, cure mitigation, treatment, or prevention of disease in man or other animal; and (c) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) articles specified in clause (a), (b) or (c); but does not include devices or their components, parts or accessories.

Drug Administration is an act restricted to nursing personnel as defined in Nurses Practice Act 432 or 1971, in which a single dose of a prescribed drug or biological is given to a patient. This activity includes the removal of the dose from a previously dispensed, properly labeled container, verifying it with the prescriber's orders, giving the individual dose to the proper patient, and recording the time and dose given.

Drug Dispensing is an act restricted to a pharmacist which involves the issuance of one or more doses of a medication in a container other than the original, with such new containers being properly labeled by the dispenser as to content and directions for use as directed by the prescriber. This activity also includes the compounding, counting, and transferring of medication from one labeled container to another.

Existing Facilities are those facilities which were in operation, or those proposed facilities which began construction or renovation of a building under final plans approved by the Division prior to adoption of these rules.

Fire Resistance Rating shall mean the time in hours or fractions thereof that materials or their assemblies will resist fire exposure as determined by fire test conducted in accordance with recognized standards.

Governing Body shall mean the individuals or group in whom the ultimate authority and legal responsibility is vested for conduct of the nursing home.

Institution is any facility requiring licensure under these rules.

Intermediate Care Facility (ICF) is a nursing home licensed by Arkansas Social Services as meeting the Intermediate Care Facility rules. It is a health facility, or a distinct part of a hospital or Skilled Nursing Facility that is staffed, organized, operated, and maintained to provide 24- hour long terminpatient care and other restorative services under nursing supervision.

Legend Drugs are drugs, which because of their toxicity or other potentiality for harmful effect, or the method of their use, or the collateral measures necessary to their use, are not safe for use except under the supervision of a practitioner licensed by law to administer such drugs, or shall be dispensed only on prescription by the pharmacist. Such drugs bear the label "Caution: Federal Law Prohibits Dispensing Without Prescription."

License shall mean the basic document issued by the Division permitting the operation of nursing homes. This document constitutes the authority to receive patients and to perform the services included within the scope of these rules.

Licensed Bed Capacity shall mean the exact number of beds for which license application has been made and granted.

Licensee shall mean any state, municipality, political subdivision, institution, public, or private corporation, association, individual, partnership or any other entity to whom a license is issued for the purpose of operating the nursing home, who shall assume primary responsibility for complying with approved standards for the institution.

Medication Assistant- Any medication assistive person who is qualified and certified under Ark. Code Ann. §17-87-701 et. seq.



New Construction means those facilities which are constructed or renovated for the purpose of operating an institution according to architectural plans approved by the Division after adoption of these rules.

Nursing Home shall mean and be construed to include any buildings, structure, agency, institution, or other place for the reception, accommodation, board, care, or treatment of two (2) or more unrelated individuals, who, because of physical or mental infirmity are unable to sufficiently or properly care for themselves, and for which reception, accommodation, board, care, and treatment, a charge is made, provided the term "Nursing Home" shall not include the offices of private physicians and surgeons, boarding homes, hospitals, or institutions operated by the Federal Government. (Section 2, Act 141 of 1961 as amended)

Nursing Home Classification shall mean the level of care the nursing home is capable of rendering such as Skilled Nursing Facility, Intermediate Care Facility, and Intermediate Care Facility for the Mentally Retarded.

O.T.C. Drugs are commonly referred to as "over-the-counter," or patient medication that may be provided without prescription.

Patient (interchangeable with resident) shall mean any individual who is being treated by a physician or whose health is being supervised by a physician while residing within the respective facility.

Patient Unit is an area designated to accommodate an individual patient bed, bedside cabinet, chair, reading light, and other necessary equipment placed at the bedside for the proper care and comfort of a patient.

Provisional Licensure is a temporary grant of authority to the purchaser to operate an existing long-term care facility upon application for licensure to the Department.

Restorative Nursing or Rehabilitative Nursing shall mean measures directed toward prevention of deterioration in normal body alignment, and muscle tone, restoration of the resident to full activity insofar as their health problems permit and maintaining a state in which their total need for care is minimal.

Restraint is any device or instrument used to limit, restrict, or hold patients under control, not including safety vests or other instruments such as bed rails used for the safety and positioning of patients. Personal safety devices and postural support devices that restrict movement are considered restraints.

Sanitation is the process of promoting hygiene and preventing disease by maintaining sanitary conditions.

Skilled Nursing Facility (SNF) is a nursing home, or a distinct part of another facility, licensed by the Department as meeting the skilled nursing facility licensure rules. A health facility which provides skilled nursing care and supportive care on a 24-hour basis to residents whose primary need is for availability of skilled nursing care on an extended basis.

Qualified Social Worker is a person who is registered by the State Board of Social Work and is a graduate of a school of social work accredited or approved by the council on Social Work Education.

State Health Officer shall mean the Director of the Arkansas Department of Health, Secretary of the State Board of Health.

Sterile the state of being free from all forms of micro-organisms.

Unit Dose Medication System shall mean a system in which single doses of drugs are prepackaged and pre-labeled in accordance with all applicable laws and rules governing these practices and made available separated by resident and by dosage time. The system includes all equipment and records deemed necessary and used in making the doses available to the resident in an accurate and safe manner. A pharmacist shall be in charge of and responsible for the system.

Guardian shall mean a court appointed person who by law is responsible for a patient's affairs.

Responsible Party shall mean the person who is accountable for the patient's affairs but who has not been appointed by the court.

Routine means the regular performance of a particular task.

#### Abbreviations

|          |   |
|----------|---|
| R.N.     | Registered Nurse  |
| L.P.N.   | Licensed Practical Nurse  |
| L.P.T.N. | Licensed Psychiatric Technician Nurse   |
| N.A.     | Nurse's Aide  |
| P.T.     | Part-time   |
| F.T.     | Full-time 40 hours per week in these rules and should not be confused with (Fair Labor Standards Act) |
| N.H.     | Nursing Home  |
| LTC      | Long Term Care  |
| OLTC     | Office of Long Term Care  |
| O.T.C.   | Over-the-counter drugs  |

## **200     GENERAL PROVISIONS FOR LICENSURE**

### **201     LICENSURE**

Nursing homes, or related institutions, shall be operated, conducted, or maintained in this State by obtaining a license pursuant to the provisions of these Licensing Standards. Separate institutions operated by the same management require separate licenses. Separate licenses are not required for separate buildings on the same grounds. The classification of license shall be Skilled Nursing Facility, Intermediate Care Facility, and Intermediate Care Facility for the Mentally Retarded.

Whenever ownership or controlling interest in the operation of a facility is sold, both the buyer and the seller must notify the Office of Long Term Care at least thirty (30) days prior to the completed sale. The thirty (30) day notice shall be the date the paperwork is stamped received by the Office of Long Term Care.

### **202     APPLICATION FOR LICENSE**

Applicants for license shall file a notarized application with the Division upon forms prescribed by the Division and shall pay an annual license fee of ten cents (10¢) per patient bed, or Ten Dollars (\$10), whichever is greater. This fee shall be paid to the State Treasury. If the license is denied, the fee will be returned to the applicant. Facilities operated by any unit or division of state or local government shall be exempted from payment of a licensing fee. Application shall be signed by the owner if individually owned, by one partner if owned under partnership, by two (2) officers of the board if operated under corporation, church, or non-profit association, and in case of a governmental unit, by the head of the governmental entity having jurisdiction over it. Applicants shall set forth the full name and address of the institutions for which license is sought, the names of the persons in control, a signed statement by a registered nurse indicating responsibility for nursing services of the home, and such other information as the Division may require.

In these instances where a distinct part of a facility is to be licensed as a Skilled Nursing Facility and the remainder of the facility is to be licensed under some other category, separate applications must be filed for each license and separate licensure fees shall be required with each application.

202.1 Each home applying for and receiving a license must furnish the following information to the Department:

- The identity of each person directly or indirectly having an ownership interest of five percent (5%) or more in such nursing home.
- In case such nursing home is organized as a corporation, the identify of each officer and director of the corporation.
- In case such nursing home is organized as a partnership, the identity of each partner.
- Identity of owners of building and equipment leased, including ownership breakdown of the leasing entity.
- Information on the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility.

- Information on the owner or owners of the building or other structures that will be used in the operation of the facility.
- Information on all other facilities owned, operated, or managed by the applicant or applicants.
- Information on all other facilities owned, operated, or managed by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility; and
- Affirmative evidence of ability to comply with standards, rules, and regulations as may be lawfully prescribed.

202.2 The Department may deny a license if:

- The administrator, officers, directors, or management company, operator, or other management agent that the applicant will use to manage the facility has ever been convicted of a felony;
- A facility or facilities owned or operated by the applicant or applicants have been found, after final administrative decision, to have committed a Class A violation;
- A facility or facilities owned or operated by the administrator, directors, management company, operator, or other management agent (that the applicant or applicants will use to manage the facility) has been found, after final administrative decision, to have committed a Class A violation;
- The applicant or applicants have had a license revoked or suspended;
- The administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have had a license revoked;
- The applicant or applicants have not demonstrated to the satisfaction of the department that any other facility owned, operated, or administered by the applicant or applicants, administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility, is and has been in substantial compliance with the standards as set by applicable state and federal law; or
- The applicant or applicants have not demonstrated to the satisfaction of the Department that any other facility (owned, operated, or administered by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility) is and has been in substantial compliance with the standards as set by applicable state and federal law.

The Department may consider the mitigation of compliance issues by an applicant or applicants that would fall under the aforementioned section, including the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility.

## **203 RENEWAL OF APPLICATION FOR LICENSURE**

Annual licensure fees shall be tendered with each application for a new long-term care facility license and annually thereafter by the anniversary of the date the department issued the long-term care facility license. A license or licensure renewal shall not be issued unless the initial annual licensure fee has been paid in full. Any fee not paid when due shall be delinquent and shall be subject to assessment of a ten-percent penalty. If a long-term care facility fails to pay the annual licensure fee within sixty (60) calendar days of the anniversary of the date that the department issued the long-term care facility license, the department may suspend the license until the annual licensure fee is paid in full.

## **204 ISSUANCE OF LICENSE**

A license shall remain effective unless revoked, suspended, or terminated by the Department. A license shall be issued only for the premises and persons in the application and shall not be assignable or transferable.

## **205 DENIAL, REVOCATION, OR SUSPENSION OF LICENSE**

The Division is empowered to deny, suspend, or revoke licenses on any of the following grounds:

- 205.1** Violation of any of the provisions of Act 28 of 1979 or the rules lawfully promulgated hereunder.
- 205.2** Permitting, aiding, or abetting the commission of any unlawful act in connection with the operation of the institution, as defined in these rules.
- 205.3** Conduct or practices detrimental to the health or safety of residents and employees of any such institutions, but this provision shall not be construed to have any reference to healing practices authorized by law, as defined in these rules.
- 205.4** Failure to comply with the provisions of Act 58 of 1969 and the rules promulgated thereunder. (Note: The aforementioned act requires the licensure of nursing home administrators.)

## **206 CHANGE OF OWNERSHIP/MANAGEMENT**

If a long-term care facility intends to add, remove, or otherwise change the management company, owner, operator, or other management agent that manages the long-term care facility, the long-term care facility shall notify the department. The long-term care facility shall notify the department of the change and request approval at least thirty (30) days before the change occurs.

The long-term care facility shall complete the appropriate documents and provide the department with the information required to allow the department to evaluate whether the new management company, owner, operator, or other management agent that manages the long-term care facility meets the eligibility criteria set forth in the disqualifying criteria stated in the aforementioned section. The long-term care facility shall receive approval of the change from the department before the change occurs unless the change is required due to an emergency.

If a change occurs without prior approval from the department due to an emergency, the long-term care facility shall notify the Department within ten (10) days of the change. The Department may deny a requested change based on the criteria established in the above (second) paragraph of this section. If the Department denies a requested change, the long-term care facility may not employ or otherwise use the denied management company, owner, operator, or other management agent. A long-term care facility is not required to notify or receive approval from the Department for a change involving vendors that provide services to the long-term care facility but do not manage the facility.

Responsibilities of the seller and buyer:

- The seller shall remain responsible for the operation of the facility until such time as a license is

issued to the buyer.

- The buyer shall be subject to any plan of correction submitted by the previous licensee and approved by the department.
- The seller shall remain liable for all penalties assessed against the facility that are imposed for violations or deficiencies occurring before the date the department issues the long-term care facility license to the buyer.
- The seller shall remain liable for all quality assurance fees and license fees that are assessed to the facility before the date that the department issues the long-term care facility license to the buyer.

## **207 NOTICE AND PROCEDURE ON HEARING PRIOR TO DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

Whenever the Division decides to deny, suspend, or revoke a license, it shall send to the applicant or licensee a notice stating the reasons for the action by certified mail. The applicant or licensee may appeal such notice to the Long Term Care Facility Advisory Board as permitted by Arkansas Statute Annotated §82-211. Procedures for appeal to the Long Term Care Facility Advisory Board are incorporated in these rules as Appendix A.

## **208 APPEALS TO COURTS**

Any applicant or licensee who considers himself injured in his person, business, or property by final agency action shall be entitled to judicial review thereof. Proceedings for review shall be made by filing a petition in the Circuit Court, of any county in which the petitioner does business, or in the Circuit Court of Pulaski County, within thirty (30) days after service, upon the petitioner of the agency's final decision. All petitions for judicial review shall be in accordance with the Administrative Procedures Act Arkansas Statute Annotated §5-713.

## **209 PENALTIES**

Any person, partnership, association, or corporation, establishing, conducting, managing, or operating any institution within the meaning of this act (§§ 82-327 -- 82-354), without first obtaining a license therefor as herein provided, or who violates any provision of this act or rules lawfully promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than twenty five dollars (\$25) nor more than one hundred dollars (\$100) for the first offense and not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each subsequent offense, and each day such institution shall operate after a first conviction shall be considered a subsequent offense. (Section 27, Act 414 of 1961)

## **210 INSPECTION**

All institutions to which these rules apply shall be subject to inspection for reasonable cause at any time by the authorized representation of the Division.

## **211 COMPLIANCE**

An initial license will not be issued until the applicant has demonstrated to the satisfaction of the Division that the facility is in substantial compliance with the licensing standards set forth in these rules.

## **212 NONCOMPLIANCE**

When noncompliance of the licensing standards is detected during surveys, licensees will be notified of the violations and will be requested to provide a plan of correction with a timetable for corrections. If an item of noncompliance is of a serious nature that affects the health and safety of patients and is not promptly corrected, action will be taken to suspend or revoke the facility's license.

## **213 VOLUNTARY CLOSURE**

Any nursing home, or related institution, that voluntarily closes must meet the rules for new construction to be eligible for re-licensure.

## **214 EXCEPTION TO LICENSING STANDARDS**

The Division reserves the right to make temporary exceptions to these standards where it is determined that the health and welfare of the community requires the services of the institution. Exceptions will be limited to unusual circumstances and the safety and well-being of the residents will be carefully evaluated prior to making such exceptions.

Overbeds will be authorized only in cases of emergency. An emergency exists when it can be demonstrated that the resident's health or safety would be placed in immediate jeopardy if relocation were not accomplished. A fire, natural disaster (such as a tornado or flood), or other catastrophic event that necessitates resident relocation, will be considered an emergency. The Department must be contacted for prior authorization of the overbed, and all authorizations must be in writing.

## **215 PROVISIONAL LICENSURE**

Subject to the requirements below, a provisional license shall be issued to the Applicant and new operator of the long-term care facility when the Department has received the Application for Licensure to Conduct a Long Term Care Facility. A provisional license shall remain in effect unless the provisional license is revoked, suspended, or terminated by the department. With the exception of Medicaid or Medicare provider status, a provisional license confers upon the holder all the rights and duties of licensure.

Prior to the issuance of a provisional license:

1. The purchaser and the seller of the long-term care facility shall provide the Department with written notice of the change of ownership at least thirty (30) days prior to the effective date of the sale.
2. The Applicant and new operator of the long-term care facility shall provide the Department with the application for licensure, including all applicable fees.
3. The Applicant and new operator of the long-term care facility shall provide the Department with evidence of transfer of operational control signed by all applicable parties.

A provisional license holder may operate the facility under a new name, whether fictitious or otherwise. For purposes of this section, the term new name means a name that is different than the name under which the facility was operated by the prior owner, and the term “operate” means that the provisional license holder may hold the facility out to the public using the new name. Examples include, but are not limited to, signage, letterhead, brochures, or advertising (regardless of media) that bears the new name.

In the event that the provisional license holder operates the facility under a new name, the facility shall utilize the prior name in all communications with the Office of Long Term Care until such time as the license is issued. Such communications include, but are not limited to, incident reports, notices, Plans of Correction, and MDS submissions. Upon the issuance of the license, the facility shall utilize the new name in all communications with the Office of Long Term Care.

## **520 DIRECT CARE STAFFING REQUIREMENTS AND FLEXIBILITIES FOR NURSING FACILITIES**

### **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. Certified nursing facilities shall report aggregate direct care hours for the month using the table provided in the electronic reporting form provided by the department. This table shall consist of:
  1. Rows for each direct care type of position (such as director of nursing, registered nurse, registered nurse with administrative tasks, certified nurse aide, medication assistant, medical director, or nurse practitioner) consistent with the same direct care labor category titles (each with a unique job code number) used in the federal direct care data system.
  2. Two (2) columns for reporting the aggregate number of direct care hours in the month attributable to each row, as follows:
    - (a) Column A for reporting all direct care hours reportable quarterly to the federal direct care data system. Column A must be completed, regardless of the additional direct care hours the facility may report in Column B. A facility's direct care hours will be primarily reported under Column A.
    - (b) Column B for reporting hours that (i) meet the definitions of direct care services and direct care staff in Arkansas Code § 20-10-1401(3) and (4), respectively; (ii) are not reportable quarterly to the federal direct care data system; and (iii) are not reported in Column A.
    - (c) Direct care hours reportable under Column B will not, by themselves, be sufficient to meet the minimum average direct care hours standard.
- c. Within fifteen (15) days of the federal direct care data system reporting deadline for the quarter, the facility shall electronically file an amended report for one (1) or more of the three (3) monthly reports attributable to that quarter, if necessary to correct:
  1. Direct care hours reported in Column A, based on the number of hours by type of position (labor category) that the facility reported in its quarterly submission into the federal direct care data system;
  2. Direct care hours reported in Column B; or
  3. The MDS-based average daily resident census shown in the original monthly report.
- d. The monthly reports shall show the following information:
  1. The full name and department-assigned vendor 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. The completed table described in section 540(b).
  4. Grand total of direct care services hours provided in the month, which is the sum of all hours reported in Column A and Column B of the table described in section 540(b).
  5. The number of calendar days in the monthly reporting period.
  6. Average daily resident census for the month, which shall equal the facility's Minimum Data Set (MDS) average daily resident census for the month
  7. The average direct care hours per resident day for the month, which is the sum of (a) the grand total of direct care hours in the month, divided by (b) the number of calendar days in the month and (c) the MDS-based 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 the standard, exceeded the standard, or did not meet the standard.
  9. If the report is an amended report, a brief description of the reason for filing an amended report.
- e. The monthly reporting under this section is not intended to 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 are 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 the 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 that nursing facilities commonly use to report direct care hours.
- h. To ensure accurate monthly reporting and facilitate efficient auditing by DPSQA, all hours reported in Column A or Column B for a month must be adequately documented in the facility's records:
1. A facility must avoid any duplication or double counting of hours reported in Column A and Column B or under particular types of direct care positions.
    - (a) For example, a specific hour reported under Column B should not be counted in Column A or vice versa. However, hours provided by a particular direct care staff person (such as the director of nursing) may be shown split between the columns, with some of the hours reportable in Column A and others reportable in Column B.
    - (b) Similarly, specific hours reported for an initial position type should not be duplicated in any other labor category title. For example, specific hours reported under "Registered Nurse Director of Nursing", or "Registered Nurse with Administrative Duties" should not also appear in the "Registered Nurse" row.
  2. A facility's payroll system and associated reporting capabilities are sufficient to document direct care hours by employed staff.
  3. A facility will need to use other methods to adequately document direct care hours reported under Column A or Column B, provided by contracted staff, consultants, and other non-employed but licensed or certified health professionals that are providing direct care services in the facility.
  4. Acceptable methods for adequately documenting direct care service hours by non-employees as reported in Column A or Column B of a monthly report include, without limitation:
    - (a) A time tracking system the same or similar to that used by employed direct care staff;
    - (b) Signed time sheets; or
    - (c) Invoices, in the case of contracted or consultant staff paid by the facility, provided the invoices detail the number of direct care hours provided in the month.

## **401 LICENSING INFORMATION**

**401.1** Licenses to operate a Level I assisted living facility are issued to be effective without expiration unless the license is revoked, suspended, or terminated by the Department. Fees for new licensure applications will be prorated by dividing the total licensure fee by three hundred sixty five (365) and then multiplying the result by the total number of days from the date the application is approved through June 30th,.

**401.2** Licenses shall be issued only for the premises and persons specified in the application and shall not be transferable.

**401.3** Licenses shall be posted in a conspicuous place on the licensed premises.

**401.4** Separate licenses are required for Level I assisted living facilities maintained on separate premises, even though they are operated under the same management. When two or more buildings located on contiguous land house Assisted Living operations, the owner or operator may choose to license each operation in each building separately, or to have all operations in all buildings operate under a single license. Multiple licenses for multiple operations housed in separate buildings on contiguous land will be considered and treated under these rules as separate Assisted Living Facilities, and each licensed operation must conform to the requirements of these rules independent of the other licensed operations housed in other buildings on contiguous land.

**401.5** Every Level I assisted living facility owner shall designate a distinctive name for the facility, which shall be included on the application for a license. The name of the facility shall not be changed without prior written notification to and receipt by the owner of the assisted living facility of approval from the Department.

## **404 APPLICATION, EXPIRATION AND RENEWAL OF LICENSE**

**404.1** Applicants for licensure of Level I assisted living facility licensure shall obtain the necessary forms for initial licensure or to request relicensure of the facility after a change of ownership (see Section 404.7 and Section 405) from the Department. The issuance of an application form shall not be construed to be a guarantee that the completed application will be acceptable, or that the Department will issue a license.

**404.2** The facility shall not admit any residents until a license to operate a Level I assisted living facility has been issued, except as provided in Section 404.10(e) of these rules for purposes of inspection and initial licensure.

**404.3** Applicants for initial licensure, or re-licensure after a change in ownership shall pay in advance a license fee of ten dollars (\$10) per bed to the Department. Such fee

shall be refunded to the applicant in the event that a license is not issued. An application fee (non-refundable) of two hundred fifty dollars (\$250) shall also accompany every application.

**404.4** Annual licensure fees shall be tendered with each application for a new long-term care facility license and annually thereafter by the anniversary of the date the department issued the long-term care facility license. The annual licensure fees consist of a two hundred fifty dollar (\$250) annual fee plus ten dollars (\$10) per bed.

**404.5** Licenses shall be issued only for the premises and persons named in the application and shall not be transferable.

**404.6** The operator of the facility shall sign applications and must successfully complete a criminal background check pursuant to Ark. Code Ann. 20-33-213, *et seq.*, and in accordance with the Rules for Conducting Criminal Record Checks for Employees of Long Term Care Facilities.

**404.7** As a part of the application process, and in addition to all other applicable requirements, facility operators:

- Must provide information on the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility;
- Must provide information on the owner or owners of the building or other structures that will be used in the operation of the facility;
- Must provide information on all other facilities owned, operated, or managed by the applicant or applicants;
- Must provide information on all other facilities owned, operated, or managed by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility; and
- Must provide affirmative evidence of ability to comply with standards, and rules, as may be lawfully prescribed.

**404.8** The applicant or licensee must furnish the following information:

- a. The identity of each person having (directly or indirectly) an ownership interest of five percent (5%) or more in the facility;

- b. The complete name and address of the assisted living facility for which license is requested and such additional information as the Department may require including, but not limited to, affirmative evidence of ability to comply with standards, and rules as are lawfully prescribed here under;
- c. In case such facility is organized as a corporation, the identity of each officer and director of the corporation, together with a certificate of good standing from the Arkansas Secretary of State;
- d. In case such a facility is organized as a partnership, the identity of each partner and a copy of the partnership agreement;
- e. A statement from an authorized representative of the facility acknowledging that the facility is responsible for any funds that are handled for the residents by the facility or its staff, including personal allowance funds, together with an acknowledgement that the failure to make restitution within ten (10) working days for lost or stolen funds will result in the non-renewal of licensure, or other sanctions;
- f. A copy of any required contract agreement for the provision of services meeting specifications in Section 503 of these rules; and
- g. A copy of the floor plan of the assisted living facility. If the assisted living facility will be a part of another facility under a different license, the distinct part of the facility that will be assisted living shall be identified.

**404.9** A Level I assisted living facility may apply for and be granted a license to operate as a Level II facility. A facility desiring to change its licensure status to a Level II from a Level I shall meet all requirements for and shall make application without additional fee in accordance with new licensure applications. The Level I facility must meet the provisions of the International Building Code in effect at the time of the licensure or construction of the facility, whichever is later.

**404.10** Procedure for Licensure. The procedure for obtaining an Assisted Living License shall be:

- a. The individual or entity seeking licensure shall request or obtain all forms for licensure from the Office of Long Term Care.
- b. The individual or applicant shall fully complete all forms for licensure and submit same to the Department, along with all licensure and application fees. As applicable and required by law or rules, the individual or entity seeking licensure shall submit drawings or plans, for the facility, to the Department at the time of application.

- c. For a new facility, at the time of application submission to the Office of Long Term Care, the applicant shall, in writing, request a life-safety code survey from the Department.
- d. For a new facility, the Department will conduct an unannounced life-safety code survey to determine compliance with applicable building code requirements.
- e. For a new facility, upon being informed that the facility meets all requirements for all applicable building codes, the facility may admit residents.
- f. For a new facility, upon admission of residents, the facility shall, in writing, request an initial survey.
- g. For a new facility, the Department will conduct an unannounced initial survey to determine compliance with applicable law and these rules.
- h. For a new facility, upon successful completion of the initial survey the facility shall be granted a license to operate as an Assisted Living Facility.
- i. The Department may elect, to perform a survey prior to issuance of the license, and issuance of the license is contingent upon the facility being found in compliance with all program requirements.

**404.11** The Department may deny a license if:

- The administrator, directors, or management company, operator, or other management agent that the applicant will use to manage the facility has ever been convicted of a felony;
- A facility or facilities owned or operated by the applicant or applicants have been found, after final administrative decision, to have committed a Class A violation;
- A facility or facilities owned or operated by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have been found, after final administrative decision, to have committed a Class A violation;
- The applicant or applicants have had a license revoked or suspended;
- The administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have had a license revoked;
- The applicant or applicants have not demonstrated to the satisfaction of the Department that any other facility owned, operated, or administered by the applicant or applicants is and has been in substantial compliance with the standards as set by applicable state and federal law; or
- The applicant or applicants have not demonstrated to the satisfaction of the department that any other facility owned, operated, or administered by the

administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility, is and has been in substantial compliance with the standards as set by applicable state and federal law.

The Department may consider the mitigation of compliance issues by whether an applicant or applicants that would fall under one (1) of the above denial criteria including the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility. This includes any long-term care facility which was not licensed at the time of application or any additional bed capacity of a licensed facility.

**404.12** Before the department may approve the application for licensure of the buyer, the seller or the buyer shall pay all outstanding quality assurance fees and license fees.

## **405 CHANGE IN OWNERSHIP**

If a long-term care facility intends to add, remove, or otherwise change the management company, operator, or other management agent that manages the long-term care facility, the long-term care facility shall notify the Department of the change and request approval at least thirty (30) days before the change occurs. The Department will timely process the application; however, additional requests for information may be necessary and extend this process

The long-term care facility shall provide the Department with the information required to allow the Department to evaluate whether the new management company, operator, or other management agent that manages the long-term care facility meets the eligibility criteria set forth in the disqualifying criteria stated in the aforementioned section. The long-term care facility shall receive approval of the change from the Department before the change occurs unless the change is required due to an emergency.

If a change occurs without prior approval from the Department due to an emergency, the long-term care facility shall notify the Department within ten (10) days of the change. The Department may deny a requested change based on the criteria established in below subdivision of this section. If the Department denies a requested change, the long-term care facility may not employ or otherwise use the denied management company, operator, or other management agent. A long-term care facility is not required to notify or receive approval from the Department for a change involving vendors that provide services to the long-term care facility but do not manage the facility.405.1

**405.1** The Department shall consider and may deny a license based upon any criteria provided for at Ark. Code Ann. § 20-10-224*et seq.* Failure to comply with the provisions of this section will result in the denial of licensure to the new owner.



**405.2** Transactions constituting a change in ownership include, but are not limited to, the following:

- a. Sale or donation of the facility's legal title;
- b. Lease of any portion of facility's real or personal property;
- c. A sole proprietor becomes a member of a partnership or corporation, succeeding him as the new operator;
- d. A partnership dissolves;
- e. An initial partnership is replaced by another through the removal, addition or substitution of a partner;
- f. The corporate owner merges with, or is purchased by, another corporation or legal entity; or
- g. A not-for-profit corporation becomes a general corporation, or a for-profit corporation becomes not-for-profit.

**405.3** Transactions that do not constitute a change of ownership include, but are not limited to, the following:

- a. Changes in the membership of a corporate board of directors or board of trustees, or;
- b. Changes in the membership of a not-for-profit corporation.

## **406 PROVISIONAL LICENSURE**

Subject to the requirements below, a provisional license shall be issued to the Applicant and new operator of the long-term care facility when the Department has received the Application for Licensure to Conduct a Long Term Care Facility. A provisional license shall be effective from the date the Office of Long-Term Care provides notice to the Applicant and new operator, until the date the long-term care license is issued. With the exception of Medicaid or Medicare provider status, a provisional license confers upon the holder all the rights and duties of licensure.

Prior to the issuance of a provisional license:

1. The purchaser and the seller of the long-term care facility shall provide the Department with written notice of the change of ownership at least thirty (30) days prior to the effective date of the sale.

2. The Applicant and new operator of the long-term care facility shall provide the Department with the application for licensure, including all applicable fees.
3. The Applicant and new operator of the long-term care facility shall provide the Department with evidence of the transfer of operational control signed by all applicable parties.

A provisional license holder may operate the facility under a new name, whether fictitious or otherwise. For purposes of this section, the term *new name* means a name that is different than the name under which the facility was operated by the prior owner, and the term “operate” means that the provisional license holder may hold the facility out to the public using the new name. Examples include, but are not limited to, signage, letterhead, brochures, or advertising (regardless of media) that bears the new name.

In the event that the provisional license holder operates the facility under a new name, the facility shall utilize the prior name in all communications with the Department until such time as the license is issued. Such communications include, but are not limited to, incident reports, notices, Plans of Correction, and MDS submissions. Upon the issuance of the license, the facility shall utilize the new name in all communications with the Department.

## **401    LICENSING INFORMATION**

- 401.1** Licenses to operate a Level II assisted living facility are issued to be effective without expiration unless the license is revoked, suspended, or terminated by the Department. Fees for new licensure applications will be prorated by dividing the total licensure fee by three hundred sixty five (365) and then multiplying the result by the total number of days from the date the application is approved through June 30th.
- 401.2** Licenses shall be issued only for the premises and persons specified in the application and shall not be transferable.
- 401.3** Licenses shall be posted in a conspicuous place on the licensed premises.
- 401.4** Separate licenses are required for Level II assisted living facilities maintained on separate premises, even though they are operated under the same management. When two or more buildings located on contiguous land house Assisted Living operations, the owner or operator may choose to license each operation in each building separately, or to have all operations in all buildings operate under a single license. Multiple licenses for multiple operations housed in separate buildings on contiguous land will be considered and treated under these rules as separate Assisted Living Facilities, and each licensed operation must conform to the requirements of these rules independent of the other licensed operations housed in other buildings on contiguous land.
- 401.5** Every Level II assisted living facility owner shall designate a distinctive name for the facility, which shall be included on the application for a license. The name of the facility shall not be changed without prior written notification to and receipt by the owner of the assisted living facility of approval from the Department.

## **402    INITIAL LICENSURE**

- 402.1** Initial licensure requires that the applicant for licensure possess a current, valid Permit of Approval (P-o-A) issued by the Health Services Permit Commission (HSPC) or Health Services Permit Agency (HSPA). Initial licensure shall apply to:
- a. Newly constructed facilities designed to operate as assisted living facilities;
  - b. Existing structures not already licensed as a Level II assisted living facility on the effective date of these rules.

Permits of approval held by residential care facilities as of the effective date of Act 1230 of 2001 or held by subsequent purchases of those facilities shall also be considered permits of approval for assisted living without further action. However, residential care facilities that choose to offer Level II assisted living services are not exempt from assisted living licensure requirements except as specifically

provided by Act 1230 of 2001.

- 402.2** The initial licensure application shall be accompanied by one set of building plans.

**403     COMPLIANCE**

An initial license will not be issued until the Department verifies that the facility is in compliance with the licensing standards set forth in these rules.

An initial license will be effective on the date specified by the Office of Long Term Care once the Office of Long Term Care determines the facility to be in compliance with these licensing standards and applicable laws and regulations. The license will expire on June 30th following the issuance of the license.

**404     APPLICATION, EXPIRATION AND RENEWAL OF LICENSE**

- 404.1** Applicants for licensure of Level II assisted living facility licensure shall obtain the necessary forms for initial licensure or to request re- licensure of the facility after a change of ownership (see Section 404.7 and Section 405) from the Department. The issuance of an application form shall not be construed to be a guarantee that the completed application will be acceptable, or that the Department will issue a license.
- 404.2** The facility shall not admit any residents until a license to operate a Level II assisted living facility has been issued, except as provided in Section 404.10(e) of these rules for purposes of inspection and initial licensure.
- 404.3** Applicants for initial licensure, or re-licensure after a change in ownership shall pay in advance a license fee of \$10.00 per bed to the Department. Such fee shall be refunded to the applicant in the event a license is not issued. An application fee of \$250.00 shall also accompany every application which shall be non-refundable.
- 404.4** Annual licensure fees shall be tendered with each application for a new long-term care facility license and annually thereafter by the anniversary of the date the department who issued the long-term care facility license. The annual licensure fees consist of a two hundred fifty dollars (\$250) annual fee plus ten dollars (\$10) per bed.
- 404.5** Licenses shall be issued only for the premises and persons named in the application and shall not be transferable.
- 404.6** The operator of the facility shall sign applications and must successfully complete a criminal background check pursuant to Ark. Code Ann. 20-33-213, *et seq.* and in accordance with the Rules for Conducting Criminal Record Checks for Employees of Long Term Care Facilities.

**404.7** As a part of the application process, and in addition to all other applicable requirements, facility operators:

- Must provide information on the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility;
- Must provide information on the owner or owners of the building or other structures that will be used in the operation of the facility;
- Must provide information on all other facilities owned, operated, or managed by the applicant or applicants;
- Must provide information on all other facilities owned, operated, or managed by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility; and
- Must provide affirmative evidence of ability to comply with standards, and rules, as may be lawfully prescribed.

**404.8** The applicant or licensee must furnish the following information:

- a. The identity of each person having (directly or indirectly) an ownership interest of five percent (5%) or more in the facility;
- b. The complete name and address of the assisted living facility for which license is requested and such additional information as the Department may require including, but not limited to, affirmative evidence of ability to comply with standards, rules, and regulations as are lawfully prescribed hereunder;
- c. In case such facility is organized as a corporation, the identity of each officer and director of the corporation, together with a certificate of good standing from the Arkansas Secretary of State;
- d. In case such facility is organized as a partnership, the identity of each partner and a copy of the partnership agreement;
- e. A statement from an authorized representative of the facility acknowledging that the facility is responsible for any funds that are handled for the residents by the facility or its staff, including personal allowance funds, together with an acknowledgement that the failure to make restitution within ten (10) working days for lost or stolen funds, will result in the non-renewal of licensure, or other sanctions;

- f. A copy of any required contract agreement for the provision of services meeting specifications in Section 503 of these rules; and
- g. A copy of the floor plan of the assisted living facility. If the assisted living facility will be a part of another facility under a different license, the distinct part of the facility that will be used for assisted living shall be identified.

**404.9** A Level II assisted living facility may apply for and be granted a license to operate as a Level I-only facility. The facility shall, prior to the issuance of the license, provide a written plan to the Department setting forth:

- a. The means by which alternative placement for individuals who receive, or meet the medical eligibility for, nursing home level of care, will be made; and
- b. The date of transfer to alternative placement for each resident that receives, or meets the medical eligibility for, nursing home level of care.

The Department shall evaluate all written plans and will grant the license as a Level I-only facility only upon determination, in the sole discretion of the Office, that the proposed plan meets the best interest of residents. The facility shall comply with all requirements of Section 602 regarding transfer of residents. A facility desiring to change its licensure status to a Level I from a Level II shall meet all requirements for and shall make application without additional fee, in accordance with new licensure applications.

**404.10** Procedure for Licensure. The procedure for obtaining an Assisted Living License shall be:

- a. The individual or entity seeking licensure shall request or obtain all forms for licensure from the Department.
- b. The individual or applicant shall fully complete all forms for licensure and submit the same to the Department, along with all licensure and application fees. As applicable and required by law or regulation, the individual or entity seeking licensure shall submit drawings or plans for the facility to the Department at the time of application.
- c. For a new facility, at the time of application submission to the Department, the applicant shall (in writing) request a life-safety code survey from the Department.
- d. For a new facility, the Department will conduct an unannounced life-safety code survey to determine compliance with applicable building code requirements.

- e. For a new facility, upon being informed that the facility meets all requirements for all applicable building codes the facility may admit residents.
- f. For a new facility, upon admission of residents the facility shall (in writing) request an initial survey.
- g. For a new facility, the Department will conduct an unannounced initial survey to determine compliance with applicable law and these rules.
- h. For a new facility, upon successful completion of the initial survey, the facility shall be granted a license to operate as an Assisted Living Facility.
- i. The Department may elect, for any renewal application, to perform a survey prior to issuance of the license, and issuance of the license is contingent upon the facility being found in compliance with all program requirements.

**404.11** The Department may deny a license if:

- The administrator, directors, management company, operator, or other management agent that the applicant will use to manage the facility has ever been convicted of a felony;
- A facility or facilities owned or operated by the applicant or applicants have been found, after final administrative decision, to have committed a Class A violation;
- A facility or facilities owned or operated by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have been found, after final administrative decision, to have committed a Class A violation;
- The applicant or applicants have had a license revoked or suspended;
- The administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have had a license revoked;
- The applicant or applicants have not demonstrated to the satisfaction of the Department that any other facility owned, operated, or administered by the applicant or applicants is and has been in substantial compliance with the standards as set by applicable state and federal law; or
- The applicant or applicants have not demonstrated to the satisfaction of the department that any other facility owned, operated, or administered by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility is and has been in substantial compliance with the standards as set by applicable state and federal law.

The Department may consider the mitigation of compliance issues based on whether an applicant or applicants (including the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility) fall under one (1) of the above denial criteria. This includes any long-term care facility which was not licensed at

the time of application or any additional bed capacity of a licensed facility.

**404.12** Before the department may approve the application for licensure of the buyer, the seller or the buyer shall pay all outstanding quality assurance fees and license fees.

## **405 CHANGE IN OWNERSHIP**

If a long-term care facility intends to add, remove, or otherwise change the management company, operator, or other management agent that manages the long-term care facility, the long-term care facility shall notify the Department of the change and request approval at least thirty (30) days before the change occurs. The Department will timely process the application; however, additional requests for information may be necessary and may extend the time it takes to complete this process.

The long-term care facility shall provide the Department with the information required to allow the Department to evaluate whether the new management company, operator, or other management agent that manages the long-term care facility, meets the eligibility criteria set forth in the disqualifying criteria stated in the aforementioned section. The long-term care facility shall receive approval of the change from the Department before the change occurs unless the change is required due to an emergency.

If a change occurs without prior approval from the Department due to an emergency, the long-term care facility shall notify the Department within ten (10) days of the change. The Department may deny a requested change based on the criteria established in section 405.1. If the Department denies a requested change, the long-term care facility may not employ or otherwise use the denied management company, operator, or other management agent. A long-term care facility is not required to notify or receive approval from the Department for a change involving vendors that provide services to the long-term care facility but do not manage the facility.

**405.1** The Department shall consider and may deny a license based upon any criteria provided for at Ark. Code Ann. § 20-10-224*et seq.* Failure to comply with the provisions of this section will result in the denial of licensure to the new owner.

**405.2** Transactions constituting a change in ownership include, but are not limited to, the following:

- a. Sale or donation of the facility's legal title;
- b. Lease of any portion of facility's real or personal property;
- c. A sole proprietor becomes a member of a partnership or corporation,



succeeding him as the new operator;

- d. A partnership dissolves;
- e. One partnership is replaced by another through the removal, addition or substitution of a partner;
- f. The corporate owner merges with, or is purchased by, another corporation or legal entity; or
- g. A not-for-profit corporation becomes a general corporation, or a for-profit corporation becomes not-for-profit.

**405.3** Transactions that do not constitute a change of ownership include, but are not limited to, the following:

- a. Changes in the membership of a corporate board of directors or board of trustees, or;
- b. Changes in the membership of a not-for-profit corporation.

#### **406 PROVISIONAL LICENSURE**

Subject to the requirements below, a provisional license shall be issued to the Applicant and new operator of the long-term care facility when the Office of Long Term Care has received the Application for Licensure to Conduct a Long Term Care Facility. A provisional license shall be effective from the date the Office of Long-Term Care provides notice to the Applicant and new operator, until the date the long-term care license is issued. With the exception of Medicaid or Medicare provider status, a provisional license confers upon the holder all the rights and duties of licensure.

Prior to the issuance of a provisional license:

- 1. The purchaser and the seller of the long-term care facility shall provide the Office of Long Term Care with written notice of the change of ownership at least thirty (30) days prior to the effective date of the sale.
- 2. The Applicant and new operator of the long-term care facility shall provide the Office of Long Term Care with the application for licensure, including all applicable fees.
- 3. The Applicant and new operator of the long-term care facility shall provide the Office of Long Term Care with evidence of transfer of operational control signed by all applicable parties.

A provisional license holder may operate the facility under a new name, whether fictitious or otherwise. For purposes of this section, the term *new name* means a name that is different than the name under which the facility was operated by the prior owner, and the term “operate” means that the provisional license holder may hold the facility out to the

public using the new name. Examples include, but are not limited to, signage, letterhead, brochures or advertising (regardless of media) that bears the new name.

In the event that the provisional license holder operates the facility under a new name, the facility shall utilize the prior name in all communications with the Office of Long Term Care until such time as the license is issued. Such communications include, but are not limited to, incident reports, notices, Plans of Correction, and MDS submissions. Upon the issuance of the license, the facility shall utilize the new name in all communications with the Office of Long Term Care.