

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



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



---

Name of Department \_\_\_\_\_

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

Other Subdivision or Department, If Applicable \_\_\_\_\_

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

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

---

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

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

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_

## ADMINISTRATIVE RULES FOR PROVIDERS OF ADULT DAY CARE

### 100 DEFINITIONS

As used in these rules and regulations, the following definitions shall apply unless the context clearly states otherwise. Where these rules and regulations refer to an enactment of the General Assembly, such referenced shall include subsequent enactment or amendments by the General Assembly on the same subject matter.

ABUSE - Shall have the same meaning as prescribed by Ark. Code Ann. § 12- 12-1703. "Abuse" also includes sexual abuse as defined in Ark. Code Ann. § 12- 12-1703(18).

ACTIVITIES OF DAILY LIVING - The tasks for self-care that are performed either independently, with supervision, with assistance, or by others. Activities of daily living include but are not limited to ambulating, transferring, grooming, bathing, dressing, eating and toileting.

ADA - The Americans with Disabilities Act.

ADULT DAY CARE PROGRAM - Adult Day Care (ADC) is a program which provides care and supervision to meet the needs of four (4) or more functionally impaired adults for periods of less than twenty-four, but more than two hours per day in a place other than the adult's own home.

ADULT DAY CARE PROVIDER - The person, corporation, partnership, association, or organization legally responsible for the overall operation of the ADC Program and that is licensed to operate as an ADC by the ~~Office of Long Term Care (OLTC)~~ Department

APPLICANT - The person, corporation, partnership, association or organization which has submitted an application to operate an ADC but has not yet been approved and issued a license by the ~~Office of Long Term Care~~ Department.

CARE-GIVER - Shall have the same meaning prescribed by Ark. Code § 12-12-1703.

CONTACT DAYS - Contact days means the number of days the client actually attended the Adult Day Care facility.

DEFICIENCY - A facility's failure to meet program participation requirements as defined in these and other applicable regulations and laws.

DEPARTMENT - The division within the Department of ~~Health and~~ Human Services that has the responsibility for the licensure, certification, and regulation of long term care facilities.

DIRECT CARE SERVICES – Services that directly help a client with certain routines and activities of daily living such as assistance with mobility and transfers; assistance to clients to consume a meal, grooming, shaving, trimming or shaping fingernails and toenails, bathing, dressing, personal hygiene, bladder and bowel requirements, including incontinence or assistance with medication only to the extent permitted by the state Nurse Practice Act and interpretations thereto by the Arkansas State Board of Nursing.

DIRECT CARE STAFF – Any staff, compensated or volunteer, acting on behalf of, employed by, or contracted by the facility either directly or through an employment agency, to provide services and who provides direct care services or assistance to clients, including activities of daily living and tasks related to medication administration or assistance.

DIRECT CONTACT – The ability or opportunity of employees of the facility, or individuals with whom the facility contracts either directly or through an agency, to physically interact with or be in the presence of clients.

DIRECTOR – The individual or entity that conducts the business of the facility and is in charge of the daily operations of the facility. The Director is the resource contact between the facility and ~~OLTC~~the Department.

DISCHARGE – When a client leaves the facility and it is not anticipated that the client will return.

EMERGENCY MEASURES – Those measures necessary to respond to a serious situation that threatens the health and safety of clients.

~~LONG TERM CARE FACILITY RESIDENT – Shall have the same meaning as prescribed by Ark. Code Ann. §12-12-1703 and as amended.~~

EXPLOITATION – Shall have the same meaning as prescribed by Ark. Code Ann. §12-12-1703 and as amended.

FUNCTIONALLY IMPAIRED ADULT - An individual, age eighteen (18) or older, who by reason of mental or physical disability, requires care and supervision.

~~HEALTH CARD – A certificate issued by the Arkansas Department of Health and Human Services’ Divison of Health or any entity certified by the Arkansas Department of Health and Human Services’ Divison of Health, that states the person named on the card has been tested for tuberculosis.~~

HIPAA - Health Insurance Portability Accountability Act required by federal law to “protect health information” of clients. See [www.dhhs.gov/ocr/hipaa](http://www.dhhs.gov/ocr/hipaa) for specific details.

LICENSE - A time-limited non-transferable permit required by Ark. Code Ann. §20-10-224 and issued for a maximum period of 12 months to a licensee who complies with the Office of Long Term Care rules and regulations. This document shall list the maximum number of slots for the facility.

LONG-TERM CARE FACILITY- shall have the same meaning as prescribed by Ark. Code Ann. § 12-12-1703. Per Ark. Code Ann. §20-10-101(10)(B), a long-term care facility does not include an Adult Day Care Program that provides care and supervision to meet the needs of twelve (12) or fewer functionally impaired adults at any time in a place other than the adult's home, or an Adult Day Care Program that provides services to clients for four (4) hours or less per day for no more than two (2) days per week.

LONG-TERM CARE FACILITY RESIDENT – Shall have the same meaning as prescribed by Ark. Code Ann. §12-12-1703 and as amended.

MALTREATMENT – Shall have the same meaning as prescribed in Ark. Code Ann. § 12-12-1703.

MENTAL ABUSE – Verbal, written, or gestured communications to a client a visitor, or staff, about a client within the client's presence, or in a public forum, that a reasonable person finds to be a material endangerment to the mental health of a client.

NEGLECT – Shall have the same meaning as prescribed by Ark. Code Ann. §12-12-1703.

NON-COMPLIANCE – Any violation of these regulations, or of applicable law or regulations.

~~OFFICE OF LONG TERM CARE (OLTC) – The Office in the Division of Medical Services of the Department of Health and Human Services that has the responsibility for the licensure, certification and regulation of long term care facilities, herein referred to as the Office or OLTC.~~

PERSON – An individual, partnership, association, corporation, or other entity.

PERSONNEL/STAFF/EMPLOYEE – Any person who, under the direction, control, or supervision of facility administration, provides services as defined in these regulations for compensation, or who provides services voluntarily, and may include the owner, professional, management and person, firms, or entities providing services pursuant to a contract or agreement.

PLAN OF CARE – The Adult Day Care Provider's written description of the scope of services to be provided to each individual client.

PLAN OF CORRECTION (PoC) – A plan developed by the facility and approved by ~~OLTC~~ the Department that describes the actions the facility will take to correct deficiencies, specifies the date by which those deficiencies will be corrected, and sets forth the means and methods used to evaluate the efficacy of the corrections.

PRN – A medication or treatment prescribed by a medical professional to a person, allowing the medication or treatment to be given “as needed”.

PROGRAM DIRECTOR – The person responsible for the operation of the program.

PROGRAM REQUIREMENTS – The requirements for participation and licensure under these and other applicable regulations and laws as an Adult Day Care Facility.

PROPRIETOR/LICENSEE – Any person, firm, corporation, governmental agency or other legal entity, issued an Adult Day Care license, and who is responsible for maintaining approved standards.

SURVEY – The process of inspection, interviews, or record reviews conducted by the ~~Office of Long Term Care~~ the Department to determine an Adult Day Care facility's compliance with program requirements and with applicable regulations and laws.

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

SENATE BILL 677

By: Senator Irvin

## For An Act To Be Entitled

AN ACT TO AMEND THE DEFINITION OF "LONG-TERM CARE  
FACILITY"; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE DEFINITION OF "LONG-TERM  
CARE FACILITY".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-10-101(10)(B), concerning the definition  
of "long-care facility", is amended to read as follows:

(B) "Long-term care facility" does not include an adult  
day care program that:

(i) Provides care and supervision to meet the needs  
of twelve (12) or fewer functionally impaired adults at any time in a place  
other than the adult's home;

(ii) Provides services to clients for periods of  
four (4) hours or less per day for ~~only one (1) day~~ no more than two (2) days  
per week;

(iii) Designates an individual to act as the program  
director to have responsibility for the operation of the program;

(iv) Posts a notice in eighteen-point type that:

(a) Is located at or near the main entrance to  
the structure in which the program operates;

(b) Lists the name and contact information of  
the program director;

(c) Lists the name and the contact telephone



1 number for the Adult Protective Services Unit of the Department of Human  
2 Services; and

3 (d) Lists the name and the contact telephone  
4 number for the Office of Long-Term Care;

5 (v) Operates in a building or structure that is at  
6 all times in compliance with safety code requirements as determined by the  
7 local fire authority; and

8 (vi) Operates in accordance with the Alzheimer's  
9 Association Dementia Care Practice Recommendations or similarly nationally  
10 recognized standards for the treatment and care of individuals with  
11 Alzheimer's disease or related dementia, as in existence on January 1, 2009;

12  
13  
14 **APPROVED: 4/26/21**  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36



## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** \_\_\_\_\_

**DIVISION** \_\_\_\_\_

**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_

**TELEPHONE NO.** \_\_\_\_\_ **FAX NO.** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

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** \_\_\_\_\_

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No \_\_\_\_\_
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes \_\_\_\_\_ No \_\_\_\_\_
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes \_\_\_\_\_ No \_\_\_\_\_  
If an agency is proposing a more costly rule, please state the following:
  - (a) How the additional benefits of the more costly rule justify its additional cost;
  
  - (b) The reason for adoption of the more costly rule;
  
  - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
  
  - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
  
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
  - (a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

Other (Identify)\_\_\_\_\_

Total\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Total\_\_\_\_\_

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

**Current Fiscal Year**

General Revenue\_\_\_\_\_

Federal Funds\_\_\_\_\_

Cash Funds\_\_\_\_\_

Special Revenue\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Total\_\_\_\_\_

**Next Fiscal Year**

General Revenue\_\_\_\_\_

Federal Funds\_\_\_\_\_

Cash Funds\_\_\_\_\_

Special Revenue\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Total\_\_\_\_\_

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**

\$\_\_\_\_\_

**Next Fiscal Year**

\$\_\_\_\_\_

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**

\$\_\_\_\_\_

**Next Fiscal Year**

\$\_\_\_\_\_

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

## **Statement of Necessity and Rule Summary [Definition of Long-Term Care Facility]**

**Why is this change necessary? Please provide the circumstances that necessitate the change.**

Act 905 of 2021 updated the definition of a long-term care (LTC) facility. The Act provides that facility does not include an adult day care program that provides care and supervision to meet the need of twelve (12) or fewer functionally impaired adults at any time in a place other than the adult's home; provides services to clients for periods of (4) hours or less per day for no more than two (2) days per week.

**What is the change? Please provide a summary of the change.**

The Division of Provider Services and Quality Assurance (DPSQA) updates the definitions in the Rules and Regulation for Adult Day Care Providers to comply with the provisions of Act 905, and replaces Office of Long-Term Care throughout the manual with Department, which is defined as the division with the Department of Human Services responsible for the licensure, certification, and regulation of long-term care facilities. The rule also defines long-term care facility resident and program director, and deletes definitions no longer applicable.

**Please attach additional documents if necessary**

## NOTICE OF RULE MAKING

The Director of the Division of Provider Services and Quality Assurance of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§20-10-203, 20-10-705, 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) revises definitions in the Rules and Regulation for Adult Day Care Providers pursuant to Act 905 of 2021. The updated definitions provide that a long-term care facility does not include an adult day care program that provides care and supervision to meet the need of twelve (12) or fewer functionally impaired adults at any time in a place other than the adult's home or provides services to clients for periods of (4) hours or less per day for no more than two (2) days per week. The rule further defines long-term care facility and long-term care facility resident consistent with the Adult and Long-term Care Facility Resident Maltreatment Act and defines the program director. The revisions update the definition of department and substitutes department for Office of Long-Term Care throughout the rule.

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

Martina Smith, Director  
Division of Provider Services and Quality Assurance