

# ARKANSAS REGISTER

## Transmittal Sheet

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Name of Agency Department of Human Services

Department Division of Provider Services and Quality Assurance

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### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

  
Signature

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Title

December 16, 2022

Date

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

**Arkansas Department of Human Services**

**Division of Provider Services and  
Quality Assurance**

**1992**

**(Revised January 1, 2023)**

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## Section I

## AUTHORITY

1. The following rules for the Long-Term Care Facility Nursing Assistant Training Program are duly adopted and promulgated by the Department of Human Services pursuant to Arkansas Code 20-10-701 et seq.
2. This initiative is pursuant to the Federal mandates of Public Law 100-203 (the Nursing Home Reform Act, Subtitle C of the Omnibus Budget and Reconciliation Act of 1987 and technical amendments of OBRA 1989 and 1990) concerning the training and competency examination of nursing assistants employed in long term care facilities and the registry of certified nursing assistants.
3. The Federal Omnibus Budget Reconciliation Act of 1987, 1989, 1990, and 1993(OBRA) and regulations issued by the U.S. Department of Health and Human Services – Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration, or HCFA) established the minimum requirements for nursing assistant training and competency evaluation programs in Section 1819(a) - (f) and 1919(a) - (f) of the Social Security Act.

## Section II

## PURPOSE

1. To develop and approve training and competency evaluation programs for individuals who provide nursing or nursing-related services to residents in long term care facilities and who are not licensed health professionals or volunteers who provide services without monetary compensations.

2. These requirements are designed to assist long term care facilities and other educational institutions with training and competency programs for nursing assistants. The objective of the Nursing Assistant Training Program is the provision of quality services to residents by nursing assistants who are able to:

(a) Perform Certified nursing-aide skills and to assist licensed practical nurses or registered nurses in direct resident care;

(b) Form a relationship, communicate and interact competently on a one-to-one basis with the residents as part of the team implementing resident care objectives;

(c) Demonstrate sensitivity to residents' emotional, social, and mental health needs through skillful, directed interactions;

(d) Assist residents in attaining and maintaining functional independence;

(e) Exhibit behavior in support and promotion of residents' rights;

(f) Demonstrate observational and documenting skills needed in support of the assessment of residents' health, physical condition and well-being.

3. The training program must teach skills to enhance knowledge in promoting healthy functioning of residents both physically and emotionally and focus on the restoration and maintenance of the resident. These attitudes and behaviors of staff must be demonstrated in the facility on a day-to-day basis

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### Section III

### DEFINITIONS

The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

- Abuse - The willful, knowing, or reckless act of mistreatment of a resident through words or physical action which results in physical, emotional, or mental injury to a resident.
- Act - Public Law 100-203 (the Federal Nursing Home Reform Act, Subtitle C of the Omnibus Budget and Reconciliation Act) of 1987 and technical amendments of OBRA 1989 and 1990. Also, may refer to Arkansas Code 20-10-701 et seq.
- Additional Instructor - A RN or LPN who, under the general supervision of the Primary Instructor, may provide classroom and skills training.
- Centers for Medicare & Medicaid Services (CMS) - A federal agency that oversees programs including Medicare, Medicaid, the [Children's Health Insurance Program](#) (CHIP), and the state and federal health insurance marketplaces.
- Certified Nursing Assistant (CNA) - Individuals trained and certified to help nurses by providing non-medical assistance to patients, such as help with bathing, dressing, and using the bathroom.
- Competency Examination - An examination that includes manual (skills) and written (or oral component for those with limited literacy skills) evaluations.
- Department - The Arkansas Department of Human Services (DHS).
- Division - The Division of Provider Services and Quality Assurance within the Department of Human Services.
- Educational Institution - An institution that is licensed by the Arkansas State Board of Private Career Education within the Arkansas Division of Higher Education as defined by Act 906 of 1989 (i.e., career colleges, proprietary school).
- Examination - A competency examination that includes manual (skills) and written evaluations.
- Facility - A long term care facility/nursing facility (nursing home) licensed by the Office of Long-Term Care. A nursing facility that provides nursing care and supportive care on a twenty-four (24) hour basis to residents. Facility "premises" include all structures and surrounding property.
- Facility Based Program - A nursing assistant training program offered by or in a

long-term care facility.

- General Nursing Experience – Experience which may include, without limitation, employment in a nursing assistant education program or employment in or supervision of nursing students in a long-term care facility or unit, geriatrics department excluding a geriatric psychiatry department, long-term acute care hospital, home healthcare, hospice care, or other long-term care setting. (Arkansas Code Ann. §20.10.702 (2)(C)(ii).
- Guest Speaker – A registered nurse, licensed practical nurse, or other licensed health professionals who conduct specific classroom lectures based upon an expertise in a given subject area, under the direct supervision of the Primary Instructor.
- Instructor Training Program - A train-the-trainer program of instruction in educational teaching techniques and methods for Primary Instructors and Team Instructors approved by the Office of Long-Term Care.
- Licensed Health Professional - A physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational assistant, registered professional nurse, licensed practical nurse, or certified social worker.
- Misappropriation of resident property - The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the effective control of a resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by law prescribing conduct relating to the custody or disposition of property of a resident.
- Neglect - An act of omission or an act without due care which causes physical or emotional harm to a resident or adversely affects the resident's health, safety, or welfare in any way.
- Non-facility-based program - A nursing assistant training program not offered by or in a facility (i.e., career college, community college, Vo-Tech school, proprietary school, etc.)
- Nursing Assistant - An unlicensed nursing staff member who assists with basic patient care (such as giving baths, checking vital signs, bed-making, and positioning) to residents in a long-term care facility who has successfully completed a training and/or competency evaluation program and is competent to provide such services but not an individual who is a licensed health professional or who volunteers to provide such services without monetary compensation.
- Orientation Program - A program which provides the nursing assistant with explanations of facility structure, policies, procedures, philosophy of care, description of the resident population and employee rules. This orientation phase

is not included as part of the Nursing Assistant Training Program.

- Task Performance Record - A list of the major duties/skills to be learned in the program and the trainee's performance of each.
- Petitioner - A person who appeals a finding that such person has, while acting as a nursing assistant in a facility or while being used by a facility in providing services to a resident, abused or neglected a resident, or has misappropriated a resident's property.
- Primary Instructor (PI) - An individual who is a registered nurse licensed in this state to practice if the registered nurse moves from a state that has joined the Interstate Nurse Licensure Compact, §17-87-601 et seq., to Arkansas and meets all requirements for licensure in Arkansas does not have any disciplinary action regarding his or her license by the licensing entity or authority; and possesses a minimum of two (2) years' general nursing experience as a registered nurse including at least one (1) year of long-term care nursing services in a long-term care facility setting within the last five (5) years. (Arkansas Code Ann. §20-10-702).
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- Office - Nursing Assistant Training Program within the Division of Provider Services and Quality Assurance.
- Resident - Individuals who reside in long-term care facilities that receive a range of services, including medical and personal care.
- Skills training - Training composed of both skills demonstration in the classroom lab and skills performance in the clinical area with residents in a long-term care facility.
- Supervised Practical Training - Pursuant to 42 CFR 483.152, supervised practical training means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.
- Trainee - An individual who is enrolled in a nursing assistant training program and who is not permitted to perform nursing services for residents during the training period for which they have not been trained and found to be competent.
- Virtual Instruction/Training - a method of teaching that is taught either entirely online or when elements of face-to-face courses are taught online through learning management systems and other educational tools and platforms.



## Section IV

## NURSING ASSISTANT TRAINING

GENERAL RULE: A facility must not use any individual working in the facility as a nursing assistant for more than four (4) months (120 calendar days) unless that individual has successfully completed a training program and competency examination approved by the Department as required by CMS.

### A. Training

1. Nursing assistant training programs must include materials that provide a basic level of both knowledge and demonstrable skills for each individual completing the program.
2. Each course must be prepared and administered in accordance with the training course guidelines prescribed in the "**Arkansas LTCF Nursing Assistant Training Curriculum**". This curriculum is to be used as a guide for conducting in-person or virtual training in both facility and non-facility programs.
3. These guidelines essentially provide the outline for in-person and virtual training programs and can be enhanced by the inclusion of current information to keep training relevant to changing needs. The content provides fundamental information and leaves open the opportunity for an instructor to function as necessary in response to perceived student requirements. **It is important to recognize that the curriculum guidelines identify the limitations (i.e., scope of practice) of the LTCF nursing assistants' direct care responsibilities.**
4. Each in-person/virtual training program must use the behavioral stated objectives in the "**Arkansas LTCF Nursing Assistant Training Curriculum**" for each unit of instruction. These objectives state the measurable performance criteria that serve as the basis for the state competency examination. The instructor shall conduct a review of each unit objective with trainees at the beginning of each unit so that each trainee knows what is expected of them in each part of the training program.
5. Upon successful completion of the required in-person/virtual training, the trainee must pass the state competency examination administered by the Department (see Section VII). An individual must complete the state competency examination within twelve (12) months of graduation from a training program or retraining will be required.

B. Implementation Requirements

1. Pursuant to 42 CFR § 483.152, a nurse aide training and competency examination program must include, at a minimum, a combination of classroom (in-person/virtual) and clinical instruction. The requirement for state certification shall include a minimum of ninety (90) hours of training which consist of no less than seventy-four (74) clock hours of training, including sixteen (16) hours of supervised practical training, for a total of ninety (90) hours.
2. The clinical site must be a long-term care facility, skilled nursing unit or rehabilitation unit located in an acute care facility or inpatient hospice unit which has not been disqualified by restrictions as described in Section V (B).
3. A minimum of sixteen (16) hours initial classroom (in-person/virtual) instruction is required in Part I. This will include both theory instruction and skills demonstration in the classroom lab. During Part I, the trainee is not allowed on the floor as part of a facility's staffing pattern. After completion of Part I, a trainee may be used in a facility's staffing pattern **but only assigned to duties for which they have demonstrated competency**. Documentation of acceptable performance of all skills and duties shall be on file with the Primary Instructor (see item C – Nursing Assistant Trainee Activities).
4. Parts II and III require the completion of the remaining seventy-four (74) clock hours of training consisting of theory, classroom lab and clinical skills training. Clinical skills training must include at least sixteen (16) hours of supervised practical training in a facility performing tasks on an individual under the direct supervision of the instructor. Clinical skills training assignment or supervision by another nursing assistant is prohibited.
5. The ratio of trainees to instructors in the in-person/virtual classroom must not exceed twenty-four (24) trainees to one (1) instructor (primary or additional instructor) and the ratio for skills training must not exceed twelve (12) trainees to one instructor.
6. . Staff in training can be employed after completing lessons one (1) – eleven (11) (sixteen (16) hours of course work) and may continue to work on the floor while they are actively progressing through a NATP; however, they cannot be included in staffing ratio if they are actively participating in class instruction.
7. Each program shall issue a written statement to each trainee, upon successful completion of the program in the form of a certificate of completion, which shall include the program's name, NATP license number, the student's name and a numerical identifier such as a driver's license number or identification number from a valid government issued document that contains a current photo (such as state or national ID card, alien registration card, military identification or passport); the begin date and end date; and the signature of the Primary Instructor upon successful completion of the program. Such certificate, or

copies thereof, shall serve as evidence of successful completion of a training program to be eligible to take the state competency examination.

C. Nursing Assistant Trainee Activities

1. Each trainee shall wear identification during all skills training portions that identifies them as a trainee. Identification must be visible to residents, family members, visitors, and staff.
2. A nursing assistant who has begun a training program and has not completed the program may be hired by a facility to provide care for which they have received training and demonstrated competence. Nursing assistants are not permitted to perform services for residents during the training period for which they have not been trained and found by the training program to be competent.
3. Documentation of each trainee's acceptable performance of each skill/procedure must be maintained by the Primary Instructor on the Task Performance Record (DMS-741 form) provided by the Department. This record consists of the following:
  - Tasks performed which includes duties and skills completed
  - Satisfactory performance date; and
  - The instructor's signature supervising the performance.
4. A program must terminate a trainee when provided with substantial evidence or a determination that the trainee is guilty of resident neglect or abuse or misappropriation of resident property. The program shall establish procedures for a review of the allegations when requested by the trainee. The program shall inform the Department of any trainees terminated under these circumstances.

D. In person/Virtual Classroom Facilities & Resources

1. In Person:
  - a. The nursing assistant training program shall require the provision of physical facilities as follows:
    - Temperatures conducive to the weather;
    - Clean and safe conditions;
    - Adequate Lighting;
    - Space to accommodate all students; and

All Equipment for simulating resident care and classroom/lecture (See Instructional Equipment under Section X). b. The physical facilities including classrooms, laboratories, conference space, library, and educational materials

shall be adequate to meet the needs of the program, the number of trainees, and the instructional staff.

2. Virtual:  
See the virtual methodology section.

Suggested training material/resources may include, but is not limited to a blackboard, flipchart, projector/screen, DVD, anatomical chart, mannequin, bed, lavatory/sink, etc.

3. The Department will not require or endorse any one textbook or other material such as videotapes, films, etc. There are several resources on the market and each facility or school will have the choice in selecting their materials. The curriculum guide is to be used so each program will know the objectives and procedures expected to be communicated to the nursing assistant trainee for them to pass the state competency examination.

E. Orientation Program

1. All nursing assistants must receive an orientation program that includes, but is not limited to, an explanation of:

- The organizational structure of the facility;
- Policies and procedures (including fire/disaster plans, etc.)
- The philosophy of care of the facility;
- The description of the resident population; and
- Employee rules.

2. This facility orientation training program is not included in the required ninety (90) hours of nursing assistant training.

F. Ongoing In-Service Training

1. All facilities will continue to provide ongoing in-service training on a routine basis both in groups and as necessary in specific situations on a one-to-one basis. Each nursing assistant must receive one (1) hour of in-service training per month.

2. The facility must complete a performance review of each nursing assistant at least once per year and provide regular in-service training based on the outcome of these reviews. The in-service training should address areas of weakness and be sufficient to ensure the continuing competence of the nursing assistants.

3. In addition to training needs identified by performance reviews, in-service training should also address the special needs of residents as determined by each facility. Training can be received on the unit as long as it is directed toward skills improvement, provided by appropriately trained staff, and documented (for example, skills demonstration with return demonstration recorded on a check list).

4. Effective July 1, 2006, facilities are strongly encouraged to offer in-service training for nursing-home-employed CNAs who were certified in Arkansas prior to July 1, 2006, that covers the Barbara Broyles Alzheimer and Dementia Training that is included in Arkansas LTCF Nursing Assistant Training Curriculum. Facilities should maintain records that verify each employed CNA, who was certified in Arkansas prior to July 1, 2006, has received this training. After July 1, 2006, and ongoing, the new Alzheimer's training is strongly encouraged for CNAs registered in Arkansas through reciprocity from other states and test candidates that are allowed to challenge the State competency test based on exemptions found in Section VII (D) (three (3) through six (6)).

G. Non-Permanent Employees

1. Nursing assistants who are employed/leased through a temporary hiring service must have completed an approved training program and passed the state competency evaluation test prior to employment and use by a facility.

## Section V

## APPROVAL OF PROGRAMS

### A. Location

1. Nursing assistant training programs may be offered by or in nursing facilities, as well as outside facilities. The clinical portion of the training must be conducted in all cases and must utilize a nursing facility and its residents. Nursing facilities may offer a complete training program and/or may contract with another organization to provide the training unless they are sanctioned. Sanctioned nursing facilities cannot offer the training.

2. Other groups and/or institutions such as employee organizations, vocational/technical schools, community colleges, and private institutions may conduct programs, upon the Department's approval.

3. Programs offered to the public and charging a tuition fee must submit an application and be approved by the Department before they can be licensed through the State Board of Private Career Education. This provision would not apply to the state schools (Vo-Tech, community colleges, etc.) or programs offered by long-term care facilities who train their own employees (or potential "on-call" employees).

### B. Restrictions

1. The Department shall not approve a program offered by or in a nursing facility which, in the previous two years, has done the following:

(A) Operated under a waiver of the nurse staffing requirements in excess of forty-eight (48) hours during the week;

(B) Been subjected to an extended survey\*or partially extended survey\*; or

(C) Been subjected to a civil money penalty of no less than \$5,000, denial of payment for new admissions, appointment of temporary management, closure, or transfer of residents.

\* Extended survey is defined for this provision as a survey which includes a review of facility policy and procedures pertinent to Level A deficiencies in Resident Rights, Resident Behavior and Facility Practices, Quality of Life, or Quality of Care.

\* Partial extended survey is defined as a survey conducted as a result of a deficiency in Level A requirements other than those listed above in the extended survey definition.

2. Facility-based training programs are prohibited from charging tuitions/training fees to their nursing assistant employees or those who have received an offer of employment for any portion of the program including any

fees for textbooks or other required course materials) (See Reimbursements under Section X).

C. Application

1. Each facility or entity that desires to offer a program shall file an Application for Program Approval form prescribed by the Department (Form DMS-724). Application forms are available on the [DHS DPSQA website](http://dhs.dpsqa.com) or you can request an application by emailing: [natpcertification@dhs.arkansas.gov](mailto:natpcertification@dhs.arkansas.gov)
2. An outline must be attached to the application showing the lesson plans and teaching modules utilized to cover the curriculum contents. This should specify the elements covered in each module, hours of classroom theory, hours of lab (return demonstrations), and hours in the clinical area in a nursing home. Each facility's application must also include the following:
  - a. PI Resumes/work history to establish LTC experience;
  - b. AI resume/work history to establish LTC experience;
  - c. Waiver letter from the Department if utilizing a sanctioned LTCF;
  - d. Professional license verification; and
  - e. Additional information, as requested by the Department.
3. When applicable for renewals, verification of school licensure by the Arkansas State Board of Private Career Education within the Arkansas Division of Higher Education (ADHE) will be required (See item A of this section). A notarized copy of the school licensure must be included with applications for new programs and for renewal of programs. Notification to the ADHE verifying additional instructors and/or changes in instructors will be required with each application.
4. Application must be submitted to the Department and approved by the Department prior to the start of the first course.
5. An application must be completed and signed by the Primary Instructor.
6. Applications that are received incomplete may cause postponement of the program starting date. A notice of deficiency in the application will be mailed to an applicant within fifteen (15) business days of the date of filing. The applicant will be given an opportunity to correct any deficiencies.
7. Notice of approval or disapproval of the application will be given to the entity within fifteen (15) business days of the receipt of a complete application. If the application is to be disapproved, the reasons for disapproval shall be given in the notice.
8. An applicant may request a review on a disapproval in writing within ten

(10) business days of receipt of the notice of the proposed disapproval to the Division Director. If no request is made, the entity is deemed to have waived the opportunity for a hearing.

D. Changes in Programs

1. Prior to major changes in the course, an application must be resubmitted for approval
2. Major changes include, but are not limited to:
  - Change in training provider
  - Change in delivery site (i.e., classroom to virtual);
  - Change in clinical site
  - Change in instructor; and
  - Complete revision of course structure, including change in hours allotted to one (1) or more modules.
3. Major changes do NOT include:
  - Change in materials (handouts, textbooks, videos, etc.)
  - Change in order in which modules are taught
  - Addition of modules/tasks not required by rules or guidelines

E. Withdrawal of Approval

1. Provisions for monitoring and review of compliance with program requirements are specified in these rules. The Department shall withdraw approval of a training program when;
  - (a) The program has one (1) or more restrictions;
  - (b) The entity offering the program refuses to permit visits by the Department, whether announced or unannounced. (Any facility that refuses to permit unannounced visits is subject to having its provider agreement terminated;
  - (c) The program's curriculum and implementation requirements specified in these rules are not met by the program;
  - (d) The program has an excessive failure rate for trainees on the state competency evaluation test over a three (3) year period and after opportunities to address the failure rate through enhanced monitoring.;
  - (e) Renewal is not completed prior to renewal date. NATP approval will be suspended until renewal is completed and approved;
  - (f) The program makes or causes to be made any false statement or representation of a material fact used in determining rights or any



application for payment by any entity for reimbursement of training costs as allowed in Section X of these rules;

- (g) The program makes or causes to be made any false statement or representation that training was provided when training was not provided;
  - (h) The program makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of the program in order for the program to qualify either upon initial approval or re-approval;
  - (i) The program makes or causes to be made any false statement or representation that the amount of training costs are greater than the actual cost of the training to obtain Medicaid reimbursement, as allowed in Section X of these rules, that exceeds the actual cost of training;
  - (j) The program makes or causes to be made any false statement or representation of a material fact in violation of these rules; or
  - (k) The State determines that any of the applicable requirements of §483.152 or §483.154 are not met by the program.
2. When the State withdraws approval of a nurse aide training and competency evaluation program or competency evaluation program:
- (a) The State must notify the program in writing, indicating the reason(s) for withdrawal of approval of the program; and
  - (b) Students who have started a training and competency evaluation program from which approval has been withdrawn must be allowed to complete the course.
3. The program may file for a reconsideration of the withdrawal of approval of a nurse aide training and competency evaluation program within ten (10) business days of the notification. The reconsideration shall be forwarded to the Director of the division.

## Section VI

## QUALIFICATIONS OF INSTRUCTORS

### A. Primary Instructor (PI)

1. The Primary Instructor shall:
  - (a) Be a Registered Nurse currently licensed in Arkansas or licensed under a compact license; or holding a multistate privilege to practice if the registered nurse moves from a state that has joined the Interstate Nurse Licensure Compact, § 17-87-601 et seq., to Arkansas and meets all requirements for licensure in Arkansas; (b) Not be under any current disciplinary action by the Arkansas State Board of Nursing. Disciplinary action includes, but is not limited to: probation, suspension, revocation or voluntary surrender of license due to disciplinary action;
  - (b) Possess a minimum of two (2) years' general nursing experience as a registered nurse including at least one (1) year of long-term care nursing services in a nursing facility setting within the last five (5) years. (Ark. Code Ann. § 20-10-702).

Nursing experience may include, but is not limited to, employment in:

    - (a) a Nursing Assistant Education Program;
    - (b) a long-term care facility, or the supervisor of nursing students in a long-term care facility or unit;
    - (c) a geriatrics department (excluding geriatric psychiatry); or
    - (d) a long-term acute care hospital (recuperative care), home care, hospice care, or other long-term care setting.
2. In a facility-based program, the training of nursing assistants may be performed under the general supervision of the Director of Nursing (DON), who is prohibited from performing the actual training (unless replacement DON coverage is provided).
3. An individual who will be the Primary Instructor and meets the above criteria must submit the Application for Program Approval (Form DMS-724) to identify their teaching qualifications. This must include nursing experience, supervisory experience, teaching experience and/or certificate of attendance in an instructor workshop.

### B. Primary Instructor Responsibilities

1. There must be one (1) and only Primary Instructor (PI). A Primary Instructor may oversee a maximum of four sites. All questions and correspondence pertaining to the site will be directed to the PI. The PI shall participate in the planning of each lesson/teaching module including clinical instruction whether or not the PI teaches the lesson.  
<https://codes.findlaw.com/ar/title-20-public-health-and-welfare/ar-code-sect-20-10-705.html>
2. The PI of a nursing assistant training program shall be responsible for supervision of the program and ensuring that the following requirements are

met:

- (a) Course objectives are accomplished.
- (b) Each trainee exhibits the appropriate skills and knowledge to conduct any part of the training.
- (c) That Each instructor is monitored and evaluated in the classroom, learning laboratory and clinical training whenever they are teaching an assignment or introducing material for the first time and at periodic intervals. Performance reviews of instructors must be documented and maintained.
- (d) The provision of direct individual care to assigned residents by a trainee is limited to appropriately supervised clinical experience. Instructors shall serve as supervisor of trainees while in clinical areas and providing resident care.
- (e) Each trainee shall demonstrate competence in clinical skills and fundamental principles of resident care. The task performance record must be approved and signed or initialed by the PI.
- (f) Records are kept to verify the participation and performance of each trainee in each phase of the training program. Satisfactory completion of the training program shall be attested on each trainee's record.
- (g) Each trainee is issued a certificate of completion within ten (10) calendar days of course completion and as described in Section IV (B) (6) of these rules.

#### Additional Instructor Guest Speaker

Instructors may use other qualified resource personnel from the health field as guest instructors or speakers in the program to meet the objectives for a specific unit. Examples are pharmacists, dietitians, social workers, sanitarians, advocates, gerontologists, nursing home administrators, nurse aid program staff, etc. Guest instructors must have a minimum of one (1) year of experience in their respective fields and must not have current disciplinary action by their respective regulatory board.

Additional Instructors such as Registered Nurse (RN) or Licensed Practical Nurse (LPN) may be used to provide instruction, skills training and/or supervision. They must be under the general supervision of the Primary Instructor, currently licensed in Arkansas and shall not be subject to any current disciplinary action by the Arkansas State Board of Nursing. Disciplinary action includes, but is not limited to probation, suspension, revocation or voluntary surrender of license due to disciplinary action and have a minimum of one (1) year of long-term care experience. All final skills check-off reviews must be approved by the Primary Instructor.

3. The Application of Program Approval (Form DMS-724) shall be used to identify each additional instructor/guest speaker and their qualifications to teach.

## Section VII

## REQUIREMENTS FOR EXAMINATION AND CERTIFICATION

### A. Transition

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

#### 1. Deemed Equivalence Waivers -

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

- a. Completed a program that offered a minimum of sixty (60) hours of nursing assistant training before July 1, 1989, and if such received before July 1, 1989, up to fifteen (15) hours of supervised and practical nursing assistant training or regular in-service nursing assistant education (initial training must be at least seventy-four (74) hours of classroom instruction, as well as sixteen (16) hours of supervised practical training; a total of ninety (90) hours);
- b. Completed a course of at least one hundred (100) hours of nursing assistant training and was found competent (whether by the State or not) before January 1, 1989; or
- c. Has served as a nursing assistant at one (1) or more facilities of the same employer in the State for at least twenty-four (24) consecutive months before December 19, 1989.

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

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

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

All individuals working as nursing assistants in Arkansas nursing facilities as of July 1, 1989, were allowed to become certified by passing the state examination but were not required to complete the "formal" seventy-four (74) hours classroom training course, as well as sixteen (16) hours of supervised practical training; a total of ninety (90) hours.

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 examination regardless of past employment status on July 1, 1989.

3. July 1, 1989 - Ongoing -

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

B. Examination

1. The Department or its appointed agency shall be responsible for administering the competency examination. The exam shall be based upon the training curriculum requirements specified in the LTCF Nursing Assistant Training Curriculum Guide.
2. The examination will be in English. Translation of this examination will be offered, if needed. Additional accommodations can be made by the Department or contractor based on a documented need; however, an additional fee may be required.
3. The competency examination shall consist of two (2) components, a written (or oral) exam and a skills demonstration. Each examination candidate will be allowed to choose between a written or oral exam. The oral examination will be read from a prepared text in a neutral manner.
4. Foreign language translation dictionaries must be shown to the RN Test Observer at check-in and to the Knowledge Test Proctor when entering the knowledge test room. No electronic dictionaries are allowed. No definitions or writing is allowed in the translation dictionary. If there is any writing or definitions, the translation dictionary will not be permitted to be used during testing.
5. The written or oral component shall be developed from a pool of examination questions. Only a portion will be used in the exam. The skills demonstration shall consist of five (5) randomly selected questions drawn from a pool of tasks ranked based on the level of difficulty.
6. The skills demonstration component will be performed in a facility (not disqualified by criteria specified in Section V, item B.) or laboratory setting.
7. 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.

8. The skills demonstration component may be proctored by facility or training site personnel (RNs as described above) if secure, standardized, and scored by the contractor approved by the Department. "Proctoring" will not be approved in facilities prohibited as specified in Section V item B.

9. To complete the competency examination successfully, an individual must pass both the written or oral examination and the skills demonstration. If an individual does not complete the examination satisfactorily, they will be advised of areas which they did not pass and their right to take the examination two (2) more times.

10. All candidates will be allowed up to three (3) attempts, within in a twelve (12) month period, to successfully complete all portions of the competency examination. Failure after three (3) attempts will require retraining to qualify to sit for the competency examination. An individual has twelve (12) months to successfully pass the test after retraining.

11. Any trainee who is employed by any long-term care facility and fails any portion of the competency examination after three (3) attempts is prohibited from providing nursing services to residents in a long-term care facility.

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) of training prior to direct resident contact and can only be assigned job duties thereafter in which they have been deemed competent to perform as they complete the remainder of the full ninety (90) hours of training. Upon successful completion of their training, they should be scheduled for the next available competency examination.

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

C. Examination Fees, Dates, and Locations

1. The Department does not require an initial fee for this occupational license; however, there is a fee to take the state examination. The amount of the examination fee will be announced in a timely manner by the Department or designated contractor.
2. If there were to be an initial fee, per Arkansas Code Ann §17-5-104, the following individuals are not required to pay an initial fee for this license:
  - a. An individual receiving assistance through the Arkansas Medicaid Program, the Supplemental Nutrition Assistance

Program, the Special Supplemental Nutrition Program for Women, Infants, and Children, Temporary Assistance for Needy Families Program, or the Lifeline Assistance Program;

- b. An individual who was approved for unemployment within the last twelve (12) months; or
  - c. An individual who has an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.
- 3. The waiver of the initial fee does not include fees for:
  - a. A criminal background check;
  - b. An examination or a test; or
  - c. A medical or drug test.
- 4. The examination will be given at multiple sites geographically dispersed throughout the state. Schedules of times, locations, and registration requirements will be announced in a timely manner by the Department or designated contractor.
- 5. The competency examination (both written, oral, and skills components) may be administered in the facility of the candidate's employment unless the facility is disqualified by the Department under criteria specified in Section V, item B.
- 6. Each candidate must have appropriate verification of the training requirements. (see item D of this section and Section IV of these rules).
- 7. The Department will be responsible for paying the examination fee one (1) time for individuals who are employed by a Medicaid certified long-term nursing facility or those individuals that have a commitment ("letter of intent" as defined in Section X (A) (2) of these rules) to be employed in a Medicaid certified nursing facility. Letters of intent to hire from Medicaid certified nursing facilities must be dated within twelve (12) months immediately preceding the date of the application to take the examination. Independent examination candidates who are taking the competency examination without an employment connection to a long-term care facility will be responsible to pay their own examination fee. In accordance with 42 CFR § 483.154, no nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency examination program may be charged for any portion of the program.
- 8. If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than twelve (12) months after completing a nurse aide training and competency examination program, the State must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the

individual is employed as a nurse aide.

D. Candidate Qualifications

The following is a list of qualifications for the state competency exam.

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

1. Nursing assistants who were trained in **approved** non-facility programs (for example: career colleges, Vo-Tech schools, or proprietary schools) after January 1, 1989.
2. Nursing assistants who were trained in **approved** facility (nursing homes) programs after July 1, 1989.
3. Registered Nurses or students who have finished the basic nursing course (for example: Introduction to Nursing, or Fundamentals of Nursing). The individual must provide a copy of their school transcript, or documentation showing successful completion of the basic nursing course, to qualify for the state competency examination.
4. Registered nurses or licensed practical nurses that have had disciplinary action resulting in suspension, revocation, or voluntary surrender of license due to disciplinary action, shall not be allowed an exemption to training or be allowed to challenge the state examination.
5. Home health aides who have met appropriate federal training or examination requirements for HHA certification. Verification must show completion of a minimum of seventy-four (74) hours classroom training, and sixteen (16) hours of supervised practical training, or federal testing requirements as a home health aide. This provision does not apply to "personal care aides" as their training requirements of forty (40) hours does not meet the ninety (90) hour requirement for the LTCF Nursing Assistant Training Program's.
6. Individuals from other states who can verify completion of a state approved geriatric nursing assistant training program but were not tested and registered. If registered in the other state, see Section VIII for reciprocity transfers without further examination. Verification of course completion rests with the individual and must be submitted to the DHS designated contractor for approval to take the Arkansas competency examination.
7. Nursing assistants whose certification has become inactive based on the



recertification requirements (see Section VIII, item C). These individuals shall be required to be retested for recertification. Permission for retesting shall require an "admission slip" obtained from the examination agency prior to the specified examination date.

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

### **Arkansas Code §17-4-106 Certified Nursing Assistant Licensures of Uniformed Service Members, Veterans, and Spouses**

To comply with Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, the following rules apply to uniformed service members, uniformed service veterans, and their spouses for licensure as defined below:

1. A uniformed service member stationed in the State of Arkansas;
2. A uniformed service veteran who resides in or establishes residency in the State of Arkansas and makes an application within one (1) year of his or her discharge from uniformed service; and
3. The spouse of:
  - a. A uniformed service member stationed in the State of Arkansas;
  - b. A uniformed service veteran who resides in or establishes residency in the State of Arkansas;
  - c. A uniformed service member who is assigned a tour of duty that excludes the uniformed service member's spouse from accompanying the uniformed service member and the spouse relocates to this state; and
  - d. A uniformed service member who is killed or succumbs to his or her injuries or illness in the line of duty if the spouse establishes residency in the state.

It is the intent of the Department to prevent removal of occupational licensure barriers for CNA licensures that may impede the launch and sustainability of civilian occupational careers and employment faced by uniformed service members, uniformed service veterans, and their spouses due to frequent uniformed service assignment by providing;

1. Automatic Certified Nursing Assistant (CNA) Licensures. Automatic CNA licensures will be provided to current license holders in order to expedite their entry into the workforce of this state by means of reciprocity. Reciprocity may be granted without further training or testing.
  - a. The process of reciprocity includes completion of the following with the state Vendor:
    - i. Form 9110AR- Out of State Employment Verification for AR Registry Renewal
    - ii. Form DD214-DD 214/Separation Documents
    - iii. Form DMS-798- Interstate Transfer Form/CNA Reg. Exemption/Reciprocity Request.
    - iv. Image/copy of individuals social security card
    - v. Image/copy of valid US government issued photo identification; and

- vi. Proof of service education, training, experience, and service-issued credentials by means of a Joint Service Transcript (JST).
  - b. Reciprocity is granted to those who meet the following criteria:
    - i. Completion of a training and competency evaluation program to become registered as a nursing assistant in another state, territory, or district of the United States that meets federal guidelines.
    - ii. A holder in good standings with CNA licensure within a similar scope of practice by another state, territory, or district of the United States.
2. Temporary or Provisional Certified Nursing Assistant (CNA) Licensures. Temporary or provisional CNA licensures to initial CNA licensure candidates will be provided while expediting full licensure by recognizing uniformed service education, training, experience, and service issued credentials of uniformed service members and uniformed service veterans applying for initial CNA licensure. The following criteria will be classified as meeting service education, training, experience, and credentials;
- a. Ninety (90) hours of approved education, training, or experience in healthcare.
  - b. Sixteen (16) hours of supervised practical skills training in an Arkansas facility; and
  - c. passing the Arkansas Nurse Aide Testing with three (3) given attempts in one hundred eighty (180) days post application.
3. Extension of License Expiration and Continuing Education Requirements. Extension of license expiration and any continuing education requirements for CNA licensure renewal for a deployed uniformed service member or their spouse will be granted the following:
- a. An extension of the expiration date of a CNA licensure for one hundred eighty (180) days following the date of the uniformed service member's return from deployment.
  - b. An extension from continuing education requirements for one hundred eighty (180) days following the date of the uniformed service member or from the uniformed service member's return from deployment.

The Department may require evidence of completion of continuing education before granting a subsequent CNA licensure or authorizing the renewal of a CNA licensure to allow full or partial exemption from continuing education requirements.

Uniformed service members, veterans and spouses who successfully meet the criteria and standards within the provisions shall be placed on the CNA registry and issued a state certificate. Information regarding Military Member Licensure can be found on the DHS-Division of Provider Services and Quality Assurance website at: <http://humanservices.arkansas.gov/about-dhs/dms/office-of-long-term-care>.

## Section VIII

## CNA REGISTRY

### A. Function and Content

1. The Department shall establish and maintain a registry of all individuals who have satisfactorily completed the training and competency examination program requirements. The nursing assistant registry shall be incorporated into the Long-Term Care Facility Employment Clearance Registry (ECR), which shall include substantiated administrative findings of abuse, neglect, or misappropriation of resident property for CNAs.
2. The information in the registry shall be made available to the public and open for inquiries twenty-four (24) hours per day, seven (7) days per week (except for scheduled maintenance or at times of technical problems), by computer through an online website system (see Subsection B of this section).
3. The Certified Nursing Assistant registry record, for each individual who has successfully obtained certification as a LTCF nursing assistant shall contain the following information:
  - Individual's full name;
  - Date of birth;
  - Name and date of the State approved training program successfully completed;
  - Certification number and date of issuance;
  - Current active or inactive status; and
  - Most recent re-certification date.
4. The Department shall review and investigate allegations of neglect, abuse, or misappropriation of resident property by a nursing assistant. A nursing assistant shall be given written notice by the Department of a finding on an allegation and must request, in writing, a formal hearing within thirty (30) days of receipt of the notice or the right to a hearing shall be waived. Following any appeal, the registry and the nursing assistant shall be notified of the findings. If the finding is substantiated either by the individual's failure to appeal or by issuance of a final administrative order, the registry shall include the documented findings involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. (See Subsection E of this Section for the process to petition to remove findings of neglect.)

5. The Department, in the case of inquiries to the registry, shall verify if the individual is listed in the registry and shall disclose any information concerning a finding of resident neglect, resident abuse, or misappropriation of resident property involving an individual listed in the registry. It shall also disclose any statement by the individual related to the finding or a clear and accurate summary of such a statement.

B. Inquiry Process

1. A facility must inquire of the registry as to information in the registry concerning any individual to be used as a nursing assistant. A facility may not use an individual as a nursing assistant until registry inquiry and clearance is obtained. Registry inquiries shall be performed within five calendar days of the offer of employment and prior to any resident contact. A facility must document all inquiries and must include such documentation in the personnel file of each nursing assistant used by the facility.

2. Registry clearance shall be obtained by computer access to the online website system. The URL address to the online website system shall be issued by the Department, or its designated agent, and may be subject to change. If needed, facilities should contact the Department for the latest contact information for the system.

3. The online website system will maintain an internal log of each inquiry made by Arkansas nursing facilities using a numeric code (Registry Identification Number) assigned to each facility. The internal log shall be monitored by the Department to verify each facility's compliance with inquiry requirements.

4. The online website system is capable of providing a printable registry clearance verification report document for the nursing facility's use in record keeping. The facility shall be required to print the registry clearance report and maintain this report in the employee's personnel file.

5. Registry clearances accessed through the online system require the nursing assistant's Social Security Number (SSN) and date of birth. Facilities are required to access by using the SSN or certification number in order to assure an accurate inquiry.

**NAME SEARCHES ARE POSSIBLE ON THE ONLINE SYSTEM BUT ACCURACY IS NOT ASSURED. NAME SEARCHES MAY ALSO BE OBTAINED BY CALLING THE DEPARTMENT. PLEASE NOTE, HOWEVER, THAT NAME SEARCHES BY CALLING THE DEPARTMENT DO NOT GENERATE A VERIFICATION LOG OF THE CLEARANCE. THEREFORE, FACILITIES SHALL AVOID THE USE OF NAME SEARCHES WHEN THE NEED FOR DOCUMENTATION AND ACCURACY OF THE REGISTRY CHECK IS REQUIRED.**

C. Inter-state (Reciprocity) Transfer

1. If an individual has completed a training and competency examination program and become certified as a nursing assistant in other state(s) that meet federal guidelines, reciprocity may be granted without further training or testing. The DMS-798, Interstate Transfer Form, must be submitted to the DHS designated contractor with a copy of each state's certificate or registration document. The DHS designated contractor will contact the other state to clear the individual's status for the transfer of their certification through reciprocity. The facility may not use the individual until each other state's registry is cleared. Once that information is received, the CNA may be added to the CNA registry.

Some of these individuals may qualify for registration under certain criteria; some may be required to take the Arkansas state test, and some may be required to complete both training and testing.

D. Certification Renewal

The initial certification period is valid for twenty-four (24) months. Each certificate contains an expiration date. The Department will develop a plan and procedure to renew each nursing assistant certification listed in the registry on a biennial basis (every two years). The renewal process will require the nursing assistant to document having worked as a nursing assistant for monetary compensation during the prior two years. This provision shall be defined by at least one documented day (e.g., eight (8) hours) of employment providing nursing or nursing-related services for monetary compensation in any setting.

CNAs who provide services for private pay clients must include a check stub and a notarized letter from the employer, which should include CNA duties performed within the twenty-four (24) month period, to verify current employment or employment within the last twenty-four (24) month period.

1. Employing facilities and/or individuals shall be required to submit updated information to the registry to establish ongoing eligibility for active status. The registry shall make "inactive" those individuals who cannot document having worked in an aide capacity within a twenty-four (24) month period. Nursing assistants who are currently employed as a nursing assistant at the time of their renewal will be renewed for twenty-four (24) months. Nursing assistants who are not currently employed will be renewed for twenty-four (24) months beginning with the last day employed as a nursing assistant. A certification that has been expired for a period longer than twenty-four (24) months cannot be renewed and the individual shall retest and complete sixteen (16) hours of clinical to re-certify to an active status.

2. An individual will be required to successfully complete a new competency evaluation test to become recertified (see Section VII, item D-7) if documentation of having worked in an aide capacity within the previous twenty-four (24) month period cannot be provided or for any certification that has been expired for over twenty-four (24) months.

3. The process to renew a nursing assistant certification shall be overseen by the Department or its agent. Each certified nursing assistant shall be responsible for renewing their certification online approximately sixty (60) calendar days before the expiration of their certification.
4. Individuals listed on the LTCF Employment Clearance Registry with a disqualification status due to a substantiated administrative finding of abuse, neglect, misappropriation of resident property or a disqualifying criminal record in accordance with Ark. Code Ann. § 20-38-101 et seq shall not be eligible to renew their certification. Individuals approved for removal of a neglect finding pursuant to Subsection VIII (E) shall be eligible to renew their certification.
5. Nursing assistant certifications may not be renewed more than sixty (60) calendar days prior to the expiration date.
6. Renewals may be completed through the online website. The Department or its designated agent shall provide instructions for the online renewal process.
7. The Arkansas Nursing Assistant Registry renewal must be fully completed by the CNA, and the information must be accurate to the best of their knowledge. Failure to fully complete the renewal or provide false or inaccurate information, , shall constitute the basis for denial of certification renewal.
8. When a nursing assistant renewal is processed and the nursing assistant is determined to be eligible for renewal, a new certificate showing the new expiration date will be available online for the CNA to print and their registry record shall be updated to reflect the new certification period.

E. Petition to Remove Neglect Findings

Pursuant to federal law 42 U.S.C. § 1395i-3(g)(1)(D), in the case of a finding of neglect under Subsection A of Section VIII of these rules, the Department shall establish a procedure that permits a certified nursing assistant to petition for the removal of a substantiated finding of neglect.

1. Factors that must be met are:
  - a. The certified nursing assistant must have a substantiated finding of neglect. There shall not be a Petition process available for substantiated findings of physical abuse, verbal abuse or misappropriation of resident property.
  - b. The Department makes a determination that the Petitioner's employment and personal record does not reflect a pattern of abusive behavior or neglect. Factors to be considered shall include, but shall not be limited to:
    - The neglect that resulted in a finding was a singular

- occurrence as identified in the incident investigation file.
  - The Petitioner does not have a criminal conviction related to neglect, abusive behavior, or physical violence.
  - The Petitioner's name does not appear on the Adult and Long-Term Care Facility Resident Maltreatment Central Registry or the DHS/Division of Children and Family Services' Child Abuse Registry.
  - Whether a pattern of abusive behavior or neglect is discovered through reference checks with prior employers or other parties.
  - Character references as provided by the Petitioner.
- c. At least one year has passed since the Petitioner's substantiated finding of neglect was placed on the Registry.
2. The procedure to file for a Petition to remove a neglect finding shall include the following:
- a. Petitioner shall submit a letter requesting the removal of the neglect finding. The letter shall be addressed to:
- Division of Provider Services  
and Quality Assurance  
Nursing Assistant Training  
Program  
Mail Slot S-405, P.O. Box 8059  
Little Rock, AR 72203-8059
- b. The Petitioner must provide the following information with their request letter:
- Full name and current mailing address;
  - Day-time phone number;
  - Social Security Number;
  - Date of birth;
  - Name and day-time phone number of at least two (2) personal character references;
  - Letters of reference from any employment within the previous year from the date of the Petition. This letter must include a statement attesting to the Petitioner's work performance in relation to the lack of any incidents involving abusive or negligent behavior;
  - A current criminal record report from the Arkansas State Police. If the Petitioner is currently or has recently (within the previous twelve (12) months) lived in another state, a criminal record report must be provided from that state. All criminal record reports must be an original document and copies will not be accepted.

3. The Department shall review each Petition for consideration for removal of the neglect finding. The review shall be conducted by an administrative review panel consisting of at least three (3) members appointed by the Division Director. The panel shall meet within thirty (30) days of any Petition. The review panel shall consider all information submitted by the Petitioner and may conduct additional research as needed.
4. The review panel shall render a decision within thirty (30) calendar days of the panel's review, and the Petitioner shall be notified in writing within ten (10) business days of the review committee's final determination.
5. If the Petition to remove the neglect finding is approved, the Registry shall be updated within ten (10) business days to show the Petitioner no longer has the neglect record and shall be eligible for employment in Arkansas long term care facilities. Note that any CNA whose certification has been expired for over twenty-four (24) months must successfully complete the state competency test to re-establish employment eligibility as a certified nursing assistant.
6. Any applicant whose Petition has been denied may not re-apply for a subsequent Petition request for a period of at least twelve (12) months from the date of the previous denial.
7. If the Petition to remove the neglect finding is denied by the review panel, any further appeals of the committee's determination shall be based on the appeals procedures as listed below:
  - a. Administrative hearings are available to persons, herein referred to as Petitioners, who disagree with determinations to deny a Petition to remove a neglect finding made by the Department as described in these rules.
  - b. If a Petitioner wishes to appeal, they may do so by mailing a written notice of appeal to the Office of Appeals and Hearings Arkansas Department of Human Services, P.O. Box 1437-Slot N401, Little Rock, Arkansas 72203. The notice shall be mailed by certified mail, return receipt requested. The notice of appeal shall state the following:
    1. Name of the Petitioner;
    2. Address of the Petitioner;
    3. Date of birth of the Petitioner;
    4. Phone number, if any, of the Petitioner;



5. The Petitioner's place of employment;
  6. A short statement explaining why the Petitioner believes the determination/decision is in error.
- c. The notice of appeal must be postmarked by the Appeals and Hearing Office within thirty (30) calendar days from the receipt of the notification of denial of the petition. No appeal shall be accepted after thirty (30) calendar days of receipt of the determination/decision.
  - d. A hearing shall be conducted by the Office of Appeals and Hearings, Department of Human Services. The procedures to conduct the hearing are as follows:
    1. The hearing record will contain all documents, exhibits and testimony admitted into evidence by the hearing officer. Within twenty (20) calendar days of receipt of notice that a Petitioner has requested a hearing, the Petitioner and the Department will prepare a file to be submitted to the Office of Appeals and Hearings and mail a copy of the file by certified mail, return receipt requested, to the other party. The file will contain only documentary evidence supporting or tending to support each party's allegations. The Department will also submit an Administrative Hearing Statement summarizing the determination/decision. This statement is not evidence. Only such portions of each file as determined by the hearing officer to be relevant shall be included in the Administrative Hearing Record.
    2. Both parties will be advised by the Office of Appeals and Hearings via certified mail, return receipt requested, that they have ten (10) calendar days from the date the certified mail receipt was signed to review the hearing file and submit a request to subpoena witnesses. The request shall include the name, address and telephone number of all witnesses not employed by DHS. DHS employees will be expected to attend hearings and present testimony without the benefit of a subpoena and will be notified by the Office of Appeals and Hearings of their required presence at the hearing. Each party will be notified of any witnesses requested and will have five (5) business days from the receipt of this notice to request subpoenas for rebuttal witnesses.

The Department of Human Services, Office of Chief Counsel, will issue the subpoenas, pursuant to the terms and authority of Ark. Code Ann. § 20-76-103.

3. After the time frame has expired for subpoenaing witnesses, the hearing officer will schedule the hearing to afford the Petitioner, the Department, and their attorneys, if any, at least ten (10) calendar days' notice of the date, place and time of the hearing. The scheduling letter, sent via certified mail with return receipt requested, shall also contain the name of the hearing officer who will conduct the hearing. In the event the Petitioner, the Department representative, or an attorney representing the Petitioner suffers from illness or cannot attend the hearing due to scheduling conflicts, that party may request the hearing be continued. The hearing will be rescheduled by the hearing officer upon a showing of good cause. A request for continuance made by the Petitioner or the Petitioner's attorney will constitute a waiver of any objection as to timeliness of the hearing. In each case, the hearing and hearing record must be completed within one hundred twenty (120) calendar days of receipt of the request for a hearing.

4. The hearing will take place at a place, time, and manner determined by the Office of Appeals and Hearing. Hearings may be conducted by telephone, by personal appearance of the parties, or by record review by the Office of Appeals and Hearings.

5. If the Petitioner fails to appear for the hearing when conducted by telephone or by personal appearance of the parties and does not contact the Office of Appeals and Hearings prior to the date of the hearing of their inability to attend, the appeal will be deemed abandoned. The Petitioner will be advised of this fact in the scheduling letter.

6. It is the responsibility of the Department to designate a representative prior to the time of the hearing. The representative should be familiar with the circumstances of the determination/decision and be able to summarize the pertinent aspects of the situation and present the documentation to support the basis for the determination/decision. The representative should also be able to answer questions posed by the Petitioner or the hearing officer relative to the issues and should be prepared to cross examine adverse witnesses. The representative may request the services of an Office of Chief Counsel attorney for representation at the hearing.

7. If any party is to be represented by an attorney, notice shall be given to all parties and to the Office of Appeals and Hearings at least ten (10) calendar days prior to the hearing. Failure to furnish notice shall entitle other parties to a continuance to obtain counsel. Petitioner's failure to furnish notice shall constitute a waiver of objection as to timeliness of the hearing.

8. The hearing will be conducted by a hearing officer from the Office of Appeals and Hearings who had no part in the determination/decision upon which the hearing is being conducted.
  9. The Petitioner may be accompanied by friends or other persons and may be represented by a friend, legal counsel, or other designated representative.
  10. The hearing officer may not review the case record or other material either prior to or during the hearing unless such material is made available to the Petitioner or their representative.
  11. The hearing will be conducted in an informal but orderly manner. The hearing officer will explain the hearing procedure to the Petitioner. The administrative hearing statement will be read by the Department representative. The Department shall then present its case. After completion of the Department's case, the Petitioner's case will be presented. The parties shall have the opportunity to present witnesses, advance arguments, offer additional evidence, and to confront and cross examine adverse witnesses. If the Petitioner is unable to present their evidence in a logical manner, the hearing officer will assist the Petitioner. Questioning of all parties will be confined to the issue(s) involved.
  12. The hearing officer will prepare a comprehensive report of the proceedings. The report will consist of an introduction, findings of fact, conclusions of law and decision. The report shall constitute the final agency determination. The determination shall be mailed to the Petitioner and the Department.
- e. Any further review must be pursued in accordance with the Administrative Procedure Act, Arkansas Code Annotated § 25-15-101 et seq.

## Section IX

### METHODOLOGY FOR REVIEW OF COMPLIANCE WITH PROGRAM REQUIREMENTS

#### A. Monitoring

1. A program is subject to inspection at any reasonable time by personnel authorized by the Department. After initial approval of a training program, the Department has the right to do an onsite or virtual visit review to determine the program's implementation of and compliance with the requirements. To ensure ongoing compliance, the Department has the right to complete unannounced, onsite, or virtual visits at a minimum of once every two (2) years.
2. Program reviews may be comprehensive or partial. Based on the findings of the most current review, or overall test scores, a program may be reviewed more often and in depth.
3. The inspector will generate a report that will specify strengths and deficiencies of the program. The Department will terminate programs that do not meet minimum requirements and that do not provide an acceptable plan for correcting deficiencies within the specified timeframe as established by the Department.
4. The program will be able to re-apply for in-person or virtual instruction after the one (1) year suspension.
5. If a training program is deficient, a corrective action plan must be submitted to the Department within ten (10) business days of receiving the notification. The corrective action plan may be returned to the program for further clarification, if the plan does not accurately describe a plan that corrects the deficient practice. The Department will send notification to the program upon approval of the corrective action plan. The corrective action plan must include, at a minimum, the following:
  - Activities to correct deficiencies;
  - Person responsible for correcting the deficiencies;
  - Implementation date; and
  - Signature of the primary instructor.

Failure to respond or inadequate corrective actions may cause suspension of the Department's approval of the program.

#### B. Items Subject to Monitoring

1. Maintenance of Secure Records - Each training program shall provide for secure maintenance of records. Records to be maintained and protected shall include at a minimum, the following:

- Names of enrollees;
- Names of those who successfully complete the program
- Begin and end dates of each class; Curriculum and/or revisions of curriculum, with approval from the Department;
- Tests, grades, course documents, skills checklist;
- Credentials of instructors;
- Documentation of all state approvals; and
- Record of complaints (i.e., nature of complaint, date of complaint, investigation summary and outcome).

2. Compliance with the following program related curriculum content,

- (a) Program length;
- (b) Ratio of classroom to skills training;
- (c) Qualifications of instructors;
- (d) Quality of skills training supervision;
- (e) Access for clinical training in a nursing facility that was not disqualified based on criteria specified in Section V (B);
- (f) Physical (classroom and lab) facilities; and
- (g) Virtual classroom capabilities.

2. Quality of Care - The quality of care provided by individual nursing assistants monitored during a licensure and/or survey and certification survey

Success Rate - The graduates' success rate of both virtual and in-person trainees on the state competency examination will be monitored by the Department and shall be utilized as a criterion for revoking program approval.

4. Any other requirements included in this manual.

## Section X

## REIMBURSEMENTS

### A. General Provisions

1. This section sets forth policy for direct reimbursement for allowable nursing assistant training costs incurred by Medicaid certified nursing facilities. Allowable training costs will be separately tracked, documented, and submitted monthly as described herein. All reimbursements shall be made directly to the Medicaid certified nursing facility.
2. Based on Federal regulations, nursing assistants who are employed by (or who have a “letter of intent” to be employed by) a Medicaid certified nursing facility may not be charged for any portion of the program (including any fees for textbooks or other required course material). The Department shall be responsible to pay for the training costs one (1) time for individuals who are employed by or have a “letter of intent” to be employed, by a Medicaid certified nursing facility as set forth in this Section.

The criteria required for reimbursements under the “letter of intent” arrangement must meet the following:

  - a. Letters of intent must be on the facility letterhead, dated within twelve (12) months immediately preceding the training and signed by the facility Administrator. Copies of the Administrator’s signature are not allowed;
  - b. The facility must have on file a job application completed and signed by the individual receiving the letter of intent;
  - c. The facility must complete a criminal record check on the individual in accordance with Ark. Code Ann. § 20-38-101 et seq; and
  - d. The facility must retain copies of documents to verify compliance with these provisions as specified in Subsection E of this section.
3. Allowable costs for nursing assistant training reimbursement may include the costs for operation of an approved nursing assistant training program, the costs associated with a cooperative training effort with a neighboring approved training program (not claimed by that program) and the costs of having nursing assistants trained in an approved non-facility-based training program (paid by the facility). **Nursing Assistant salaries and fringe benefits, including amounts paid while in training, and in-service/continuing education costs are not directly reimbursable but are included on the facility's annual cost report and reimbursed through the per diem rates.**
4. Reimbursement of nursing facility costs for training of nursing assistants must be allocated between Medicaid, Medicare, and private pay patients. Medicaid may not be charged for that portion of these costs that are properly

charged to Medicare or private pay activities. Therefore, the Department will pay only the percentage of the total billed or maximum limit (see item D) for nursing assistant training based on the percentage of Medicaid recipients indicated on the billing. Facilities should continue to bill for the total amount of expenses incurred. The recipient information should reflect the midnight census for the last day of the month.

B. Allowable Costs

The following costs are allowable for nursing assistant training:

1. Nursing Assistant Transportation Expenses. The dollar amount of transportation expenses paid directly to or reimbursed for the NA to attend training or to travel to a NA competency evaluation site.
2. Books. The dollar amount spent for books purchased specifically for use in the NA training program.
3. Instructional Equipment. The dollar amount spent for equipment such as SMARTBoards, iPads and Apple TV, Chromebooks, multi-media projectors, DVDs, etc. purchased specifically for use in the NA training program.
4. Instructional Videos. The dollar amount spent for instructional videos, , etc. purchased specifically for use in the NA training program.
5. Other Training Materials. The dollar amount spent for other approved training materials purchased specifically for use in the NA training program.
6. Training Space. The dollar amount spent for the rent of classroom space (outside the facility), lab equipment, etc. specifically for the NA training program. Construction costs for training facilities will not be authorized.
7. Instructor Wages. The dollar amount of wages paid to the NA Instructor for training time, only while the NA Instructor is not included in the NF's staffing pattern providing nursing services.

Facilities should not include the time spent proctoring the skills test as a training activity for reimbursement. Information reported to DHS on the DMS-755 is strictly for training, **not testing activity**.

8. Instructor Fringe Benefits. The dollar amount paid for fringe benefits for the NA Instructor while training, only while the NA Instructor is not included in the NF's staffing pattern providing nursing services.
9. Nursing Assistant Consultant Training Fees. The dollar amount paid to a consultant trainer for NA training.

10. Consultant Reimbursable Expenses. The dollar amount paid to a consultant trainer for reimbursable expenses such as travel and lodging.
11. Instructor Workshop Fees. The amount of tuition and registration fees paid for NA training program instructors to attend instructor workshops. Instructor workshops must meet requirements established by the Office of Long-Term Care to qualify for reimbursement and participants must be approved for attendance by the Office of Long-Term Care.
12. Instructor Workshop Travel Expenses. Travel expenses and lodging paid directly or reimbursed for NA training program instructors to attend instructor workshops.
13. Nursing Assistant Training Tuition. The dollar amount spent on tuition for employees (and potential employees given a "letter of intent", dated within twelve (12) months immediately preceding the date of the completion of training) to attend NA training in an approved non-facility training program. The actual amount of tuition paid for a student, up to a **maximum of \$480.00 per student**, will be reimbursed as allowable cost. This amount is based on the provision of the minimum ninety (90) hours training required by the Department.

C. Claims Submission

1. Claims for reimbursement of expenses incurred for NA training costs shall be submitted to the Department monthly on form DMS- 755. Claims for the expense month can be submitted no earlier than the first day of the month or the last day of the month following the expense month. The report forms will be designed to capture the above cost categories by use area in either formal "approved" or combined/cooperative training. Therefore, documentation of these costs should be accounted for in a manner consistent with these categories.
2. Claims must be submitted to the Department within thirty (30) calendar days following the end of the expense month. **Claims not submitted timely or claims that are incomplete will not be accepted for payment and shall be returned to the facility. Corrected claims must be submitted within fifteen (15) calendar days of the date returned.**
3. A claim for reimbursement may not be submitted for any month in which no students completed training. Unclaimed costs in this circumstance may be carried over to the month when students complete training and will still be subject to the \$480.00 maximum cost limit per student (see item D - Maximum Cost Limit).
4. All submitted claims must include a copy of each trainee's Certificate of Completion from the training program and a copy of the DHS issued CRC



Determination Letter. In accordance with Section 203.1 of the Rules for Conducting Criminal Record Checks for Employees of Long-Term Care Facilities, the facility must complete the criminal record check for each trainee prior to conducting the nursing assistant training or prior to sponsoring the trainee through the “letter for intent to employ” provisions as specified in item A (2) and B (13) of this section.

**5. Reimbursements are not allowed and shall be denied to facilities for the following:**

**a. Individuals listed on the LTCF Employment Clearance Registry with a disqualification status due to a substantiated administrative finding of abuse, neglect, misappropriation of resident property or a disqualifying criminal record in accordance with Ark. Code Ann. § 20-38-101 et seq.**

**b. Individuals listed on the LTCF Employment Clearance Registry with an expired certification. These individuals are not required to be retrained and may retest in accordance with Section VII (D) (6) of these rules.**

**c. Individuals who, prior to training, did not complete a criminal record check in accordance with Ark. Code Ann. § 20-38-101 et seq.**

6. All claim forms (DMS-755) must be submitted with original signatures of the nursing facility Administrator. Copies will not be accepted.

**D. Maximum Cost Limit**

1. In an effort to establish proper and efficient administration of training costs reimbursements, a reasonable maximum cost limit shall be imposed. Based on analysis of nursing assistant training costs, \$480.00 per student will be the maximum paid to facilities on their claims. This limit shall be imposed based on the number of students who finish the training program. Claims must show actual costs incurred and reimbursements will be made for actual costs but not to exceed the maximum limit of \$480.00 per student who complete the training.

2. Example: Claim form shows actual costs is \$1250.00 with four students completing the course. As \$1250.00 is less than \$1920.00 (four (4) students x \$480 = \$ 1920 maximum) the actual costs will be reimbursed. If this example had only two students completing, the maximum would be \$960.00 (2 students x \$480) and the reimbursement would be capped at \$960.00 rather than paying the full \$1250.00 actual expenses.

**E. Cost Reporting and Record Retention**

1. NA training costs directly reimbursed by the Department of Human Services shall be included in the nursing facility's annual Financial and Statistical Cost Report (FSR) and shall be reported as revenue offsets to NA training costs. Facilities must retain receipts/documentation of NA training costs submitted to

the Department for reimbursement for a period of no less than five (5) years or until all audit findings are final. Any facility claiming reimbursement for costs not actually incurred or not properly documented will be required to provide restitution to the Department of Human Services and will be subject to fines and/or prosecution as authorized by State and/or Federal statutes.

# **METHODOLOGY FOR REVIEW OF COMPLIANCE WITH VIRTUAL TRAINING**

## **VIRTUAL INSTRUCTION ONLY APPLIES TO LECTURE PORTION OF TRAINING**

All content taught to students remains the same whether the program offers in-person or virtual instruction. If the program chooses to offer virtual instruction, the expectation of delivery of information remains the same as in-person. Virtual instruction must be indicated on the application and a virtual plan must be submitted to the Department for approval. If the program fails to meet the guidelines, it will result in temporary suspension and/or a deficiency. In addition to complying with rules, the following requirements must be met.

### **A. Requirements**

1. A program is subject to inspection of virtual instruction at any time by Department personnel. A program who provides virtual instruction must have practical capabilities and set forth expectations including, but not limited to, the following:

- a) Internet capabilities for the program and the participants;
  - b) Requirements of logging into the virtual site at least fifteen (15) minutes prior to the beginning of class and staying connected virtually until class ends;
  - c) A camera that is turned on during instruction.
  - d) Individual logins must be tracked and maintained for auditing purposes by the Department;
2. Virtual programs are responsible for ensuring that the Department has the virtual link to audit compliance with these rules. The link must be functional and active at all times.
3. All participants must be able to have visible access to observe all curriculum activities (i.e., hands-on demonstration, notes on board, and all instruction provided by the program).
4. All videos to be viewed must be included in the curriculum for in-person and virtual training.
5. All skills labs must be in-person.
6. The programs must provide training materials prior to class, including but not limited, web access to materials.

## **Nursing Assistant Training Cost Reimbursement Claim Form**

The Nursing Assistant Training Cost Reimbursement Claim Form (DMS-755) is specific to each facility.

To obtain a form DMS-755, or email [natpcertification@dhs.arkansas.gov](mailto:natpcertification@dhs.arkansas.gov) or visit [Arkansas Department of Human Services - DPSQA](#).