

## DEPARTMENT OF HUMAN SERVICES, DIVISION OF PROVIDER SERVICES AND QUALITY ASSURANCE, OFFICE OF LONG-TERM CARE

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**SUBJECT:** Rules for the Arkansas Long-Term Care Facility Nursing Assistant Training Program, 20 CAR pt. 403 & REPEAL Rules for Conducting Criminal Records Checks for Employees of Long-Term Care Facilities, 20 CAR pt. 404

### **DESCRIPTION:**

#### Statement of Necessity

The Division of Provider Services & Quality Assurance (DPSQA) promulgates rules to implement Act 105 of 2025. The Act adds a definition of “General Nursing Experience”, amends the time period from five (5) years to ten (10) years in which a registered nurse must possess one year of long-term care nursing experience in a nursing facility in order to qualify as a primary instructor for the Nursing Assistant Training Program, and now requires primary instructors to attend an eight-hour class authorized by the Department of Human Services that updates attendees on applicable laws and rules, best practices, and common issues encountered in long-term care facilities. The rule also updates required training hours to reflect clock hours of training required by 42 C.F.R. § 483.152.

#### Summary

To implement the Act, DPSQA amends 20 CAR part 404, Rules for the Arkansas Long-Term Care Facility Nursing Assistant Training Program. The new definition for “General Nursing Experience” it added to 20 CAR § 403-102. The definition for “Primary Care Instructor” is updated to reflect the time period change and the eight-hour class training requirement, with identical updates made to the Primary Care Instruction subpart 20 CAR § 403-401.

Required training hours were updated to match 42 C.F.R. § 483.152, which now requires seventy-five (75) clock hours of training, previously seventy-four (74). The additional hour led to a corresponding change of total training hours from ninety (90) hours to ninety-one (91) hours. Where needed, grammar and typographic improvements were made within the rule. All links and emails contacts were made current as well.

Repeals pursuant to the Governor’s Executive Order 23-02:

1. 20 CAR part 404: “Rules for Conducting Criminal Records Checks for Employees of Long-Term Care Facilities”; and
2. N/A

**PUBLIC COMMENT:** No public hearing was held on this rule. The public comment period expired on April 27, 2026. The agency indicated that it received no comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, made the following observation and received the following response:

Section 403-102(11), the definition of general nursing experience, includes language indicating that “general nursing experience” is not limited to the items listed. Section 403-401 also lists items that constitute general nursing experience but does not include the “without limitation”/“not limited to” language. **RESPONSE:** We corrected those two sections to match exactly.

The proposed effective date is July 1, 2026.

**FINANCIAL IMPACT:** The agency indicated that this rule has no financial impact.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 105 of 2025. The Act, sponsored by Senator Missy Irvin, amended the definition of primary instructor within the Long-Term Care Aide Training Act.



ARKANSAS  
DEPARTMENT OF  
**HUMAN  
SERVICES**

Office of Policy and Rules

P.O. Box 1437, Slot S295, Little Rock, AR 72203-1437

P: 501.320.6383 F: 501.404.4619

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March 29, 2026

Mrs. Rebecca Miller-Rice  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
#1 Capitol, 5<sup>th</sup> Floor  
Little Rock, AR 72201

Dear Mrs. Rebecca Miller-Rice:

**Re: To Amend the Rule for the Arkansas Long-Term Care Facility Nursing Assistant Training Program**

Please arrange for this rule to be reviewed by the ALC-Administrative Rules Subcommittee. If you have any questions or need additional information, please contact me at 501-320-6383 or by emailing [Mac.E.Golden@dhs.arkansas.gov](mailto:Mac.E.Golden@dhs.arkansas.gov).

Sincerely,

*Mac Golden*

Mac Golden  
Attorney III  
Office of Policy and Rules

Attachments

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH  
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT Department of Human Services

BOARD/COMMISSION Division of Provider Services and Quality Assurance

BOARD/COMMISSION DIRECTOR Martina Smith

CONTACT PERSON Mac Golden

ADDRESS 700 Main Street, Little Rock, AR 72205

PHONE NO. (501) 320-6383 EMAIL Mac.E.Golden@dhs.arkansas.gov

NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING  
Martina smith

PRESENTER EMAIL(S) Martina.Smith@dhs.arkansas.gov

**INSTRUCTIONS**

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, [miller-ricer@blr.arkansas.gov](mailto:miller-ricer@blr.arkansas.gov), for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, [garritym@blr.arkansas.gov](mailto:garritym@blr.arkansas.gov), for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

\*\*\*\*\*

1. What is the official title of this rule?  
To Amend the Rule for the Arkansas Long-term Care Facility Nursing Assistant Training Program
2. What is the subject of the proposed rule? Nursing Assistant Training Program
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes  No

*If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).*

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes  No

4. Is this rule being filed for permanent promulgation? Yes  No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes  No

If yes, what was the effective date of the emergency rule? \_\_\_\_\_

On what date does the emergency rule expire? \_\_\_\_\_

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes  No

If yes, please provide the federal statute, rule, and/or regulation citation.

[42 C.F.R. § 483.152](#)

6. Is this rule required to comply with a *state* statute or rule? Yes  No

If yes, please provide the state statute and/or rule citation.

[Arkansas Code § 20-10-701 et seq.; Act 105 of 2025](#)

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes  No

If yes, please list the rules being repealed.

If no, please explain.

[Yes, but only one rule is being repealed.](#)

[1. 20 CAR Part 404: "Rules for Conducting Criminal Records Checks for Employees of Long-Term Care Facilities"](#)

8. Is this a new rule? Yes  No

Does this repeal an existing rule? Yes  No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes  No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Arkansas Code Arkansas Code § 20-10-705

[The 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; 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; The Federal Omnibus Budget Reconciliation Act of 1987, 1989, 1990, and 1993

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?  
Yes  No

If yes, please provide the year of the act(s) and act number(s).

Act 105 of 2025

11. What is the reason for this proposed rule? Why is it necessary?

In order to comply with the passage of the new act and update in conformity with federal regulations, changes to the Code of Arkansas Rules under Title 20. Chapter X. Subchapter A. Part 403. were necessary.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

[ar.gov/dhs-proposed-rules](http://ar.gov/dhs-proposed-rules)

13. Will a public hearing be held on this proposed rule? Yes  No

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

*Please be sure to advise Bureau Staff if this information changes for any reason.*

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. [04/27/2026](#) \_\_\_\_\_

15. What is the proposed effective date for this rule? [July 1, 2026](#) \_\_\_\_\_

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

[None](#)

19. Is the rule expected to be controversial? Yes  No

If yes, please explain.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY.**

**DEPARTMENT** Department of Human Services  
**BOARD/COMMISSION** Division of Provider Services and Quality Assurance  
**PERSON COMPLETING THIS STATEMENT** Andy Morgan  
**TELEPHONE NO.** (501) 534-4125      **EMAIL** Andy.Morgan@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

**TITLE OF THIS RULE** To Amend the Rule for the Arkansas Long-term Care Facility Nursing Assistant Training Progra

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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 0  
Federal Funds 0  
Cash Funds 0  
Special Revenue 0  
Other (Identify) 0

Total \$ 0.00

**Next Fiscal Year**

General Revenue 0  
Federal Funds 0  
Cash Funds 0  
Special Revenue 0  
Other (Identify) 0

Total \$ 0.00

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

**Current Fiscal Year**

General Revenue 0  
Federal Funds 0  
Cash Funds 0  
Special Revenue 0  
Other (Identify) 0

Total \$ 0.00

**Next Fiscal Year**

General Revenue 0  
Federal Funds 0  
Cash Funds 0  
Special Revenue 0  
Other (Identify) 0

Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

**Current Fiscal Year**

\$ 0.00

**Next Fiscal Year**

\$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or 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**

\$ 0.00

**Next Fiscal Year**

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (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.

**From:** [Legal Ads](#)  
**To:** [Thomas Herndon](#)  
**Subject:** Re: Full Run Ad - To Amend the Rule for the Arkansas Long-Term Care Facility Nursing Assistant Training Program  
**Date:** Thursday, March 26, 2026 8:10:34 AM  
**Attachments:** [image001.png](#)

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**CAUTION: External Email**

Scheduled for Sun 3/29, Mon 3/30, and Tues 3/31. Thanks.

Gregg Sterne, Legal Advertising  
Arkansas Democrat-Gazette  
[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)

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**From:** "Thomas Herndon" <[Thomas.Herndon@dhs.arkansas.gov](mailto:Thomas.Herndon@dhs.arkansas.gov)>  
**To:** "legalads" <[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)>  
**Cc:** "Mac Golden" <[Mac.E.Golden@dhs.arkansas.gov](mailto:Mac.E.Golden@dhs.arkansas.gov)>, "Lakeya Gipson" <[Lakeya.Gipson@dhs.arkansas.gov](mailto:Lakeya.Gipson@dhs.arkansas.gov)>, "Rebecca Murphy" <[Rebecca.A.Murphy@dhs.arkansas.gov](mailto:Rebecca.A.Murphy@dhs.arkansas.gov)>  
**Sent:** Wednesday, March 25, 2026 8:39:50 AM  
**Subject:** Full Run Ad - To Amend the Rule for the Arkansas Long-Term Care Facility Nursing Assistant Training Program

Good morning,

Please run the attached Notice of Rulemaking in the *Arkansas Democrat-Gazette* on the following days:

- Sunday, March 29, 2026
- Monday, March 30, 2026
- Tuesday, March 31, 2026

I am aware that the print version will only be provided to all counties on Sundays.

**Invoice to:** AR Dept of Human Services

**P.O. Box 1437**

**Slot S535**

**Little Rock, AR 72203**

**ATTN: Lakeya Gipson**

**([Lakeya.Gipson@dhs.arkansas.gov](mailto:Lakeya.Gipson@dhs.arkansas.gov))**



**Thomas Herndon**

Rules & Regulations Coordinator

Arkansas Department of Human Services

Office of Policy and Rules

P: 501.534.6398

[thomas.herndon@dhs.arkansas.gov](mailto:thomas.herndon@dhs.arkansas.gov)

[humanservices.arkansas.gov](http://humanservices.arkansas.gov)

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**From:** [Thomas Herndon](#)  
**To:** [Arkansas Register](#)  
**Cc:** [Mac Golden](#); [Lakeya Gipson](#); [Rebecca Murphy](#); [Kyler Simmons](#)  
**Subject:** SOS - DHS/DPSQA - Proposed Filing - To Amend the Rule for the Arkansas Long-Term Care Facility Nursing Assistant Training Program  
**Date:** Friday, March 27, 2026 7:55:00 AM  
**Attachments:** [image001.png](#)  
[SOS Proposed Rule Packet.pdf](#)

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*Department of Human Services/Division of Provider Services and Quality Assurance.* The notice of rulemaking will be published in the Arkansas Democrat-Gazette (ADG) March 29, 2026 – March 31, 2026. The public comment period will end April 27, 2026.

Please let me know if you need anything else.

**NOTE: Please confirm receipt of this rule.**

Thank you,



**Thomas Herndon**

Rules & Regulations Coordinator  
Arkansas Department of Human Services  
Office of Policy and Rules

P: 501.534.6398

[thomas.herndon@dhs.arkansas.gov](mailto:thomas.herndon@dhs.arkansas.gov)

[humanservices.arkansas.gov](http://humanservices.arkansas.gov)

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## NOTICE OF RULEMAKING

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: Arkansas Code §§ 20-10-203, 20-10-705, 20-76-201, and 25-10-129. The proposed effective date of the rule is July 1, 2026. There is no fiscal impact.

The Director of the Division of Provider Services & Quality Assurance (DPSQA) promulgates rules to implement Act 105 of 2025. DPSQA amends 20 CAR Part 404, Rules for the Arkansas Long-Term Care Facility Nursing Assistant Training Program by adding a new definition for “General Nursing Experience”. The definition for “Primary Care Instructor” is updated to reflect changes in the Act regarding an update of the time period from five (5) years to ten (10) years in which a registered nurse must possess one year of long-term care nursing experience in a nursing facility to qualify as a primary instructor for the Nursing Assistant Training Program. Primary instructors now must attend an eight-hour class authorized by the Department of Human Services that updates attendees on applicable laws and rules, best practices, and common issues encountered in long-term care facilities. Required training hours were updated to match 42 C.F.R. § 483.152, which now requires seventy-five (75) clock hours of training, with a corresponding increase of total training hours to ninety-one (91). Grammar, typographic corrections, and other general updates were made to the rule.

Pursuant to the Governor’s Executive Order 23-02, DHS repeals one rule. Rule 20 CAR Part 404, “Rules for Conducting Criminal Records Checks for Employees of Long-Term Care Facilities” shall be repealed.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Policy and Rules, 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 [ar.gov/dhs-proposed-rules](https://www.ar.gov/dhs-proposed-rules). Public comments can 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 27, 2026. 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 Policy and Rules at 501-320-6428. 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. **4502292178**

Martina Smith, Director  
Division of Provider Services and Quality Assurance

**Statement of Necessity and Rule Summary  
To Amend the Rule for the Arkansas Long-term Care Facility  
Nursing Assistant Training Program**

**Statement of Necessity**

The Division of Provider Services & Quality Assurance (DPSQA) promulgates rules to implement Act 105 of 2025. The Act adds a definition of “General Nursing Experience”, amends the time period from five (5) years to ten (10) years in which a registered nurse must possess one year of long-term care nursing experience in a nursing facility in order to qualify as a primary instructor for the Nursing Assistant Training Program, and now requires primary instructors to attend an eight-hour class authorized by the Department of Human Services that updates attendees on applicable laws and rules, best practices, and common issues encountered in long-term care facilities. The rule also updates required training hours to reflect clock hours of training required by 42 C.F.R. § 483.152.

**Summary**

To implement the Act, DPSQA amends 20 CAR Part 404, Rules for the Arkansas Long-Term Care Facility Nursing Assistant Training Program. The new definition for “General Nursing Experience” it added to 20 CAR § 403-102. The definition for “Primary Care Instructor” is updated to reflect the time period change and the eight-hour class training requirement, with identical updates made to the Primary Care Instruction subpart 20 CAR § 403-401.

Required training hours were updated to match 42 C.F.R. § 483.152, which now requires seventy-five (75) clock hours of training, previously seventy-four (74). The additional hour led to a corresponding change of total training hours from ninety (90) hours to ninety-one (91) hours.

Where needed, grammar and typographic improvements were made with in the rule. All links and emails contacts were made current as well.

Repeals pursuant to the Governor’s Executive Order 23-02:

1. 20 CAR Part 404: "Rules for Conducting Criminal Records Checks for Employees of Long-Term Care Facilities"; and
2. N/A

# Proposed Rulemaking

## To Amend the Rule for the Arkansas Long-term Care Facility Nursing Assistant Training Program

Promulgated by:  
Office of Long-Term Care

### **Title 20. Public Health and Welfare**

#### **Chapter X. Office of Long-Term Care, Division of Provider Services and Quality Assurance, Department of Human Services**

#### **Subchapter A. Generally**

#### **Part 403. Rules for the Arkansas Long-Term Care Facility Nursing Assistant Training Program**

#### **Subpart 1. Generally**

##### **20 CAR § 403-101. Purpose.**

(a) The purpose of this part is 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.

(b)(1) These requirements are designed to assist long-term care facilities and other educational institutions with training and competency programs for nursing assistants.

(2) The objective of the Long-Term Care Facility 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;

**DRAFT**

02/20/2025 02:19:45 PM

(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; and

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

(c)(1) The training program must:

(A) Teach skills to enhance knowledge in promoting healthy functioning of residents both physically and emotionally; and

(B) Focus on the restoration and maintenance of the resident.

(2) These attitudes and behaviors of staff must be demonstrated in the facility on a day-to-day basis.

### **20 CAR § 403-102. Definitions.**

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

(1) "Abuse" means 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;

(2)(A) "Act" means the Federal Nursing Home Reform Act, Subtitle C of the Omnibus Budget and Reconciliation Act of 1987, Pub. L. No. 100-203, and technical amendments of the Omnibus Budget and Reconciliation Act of 1989, Pub. L. No. 101-239, and the Omnibus Budget and Reconciliation Act of 1990, Pub. L. No. 101-508.

(B) "Act" may also refer to the Long-Term Care Aide Training Act, Arkansas Code § 20-10-701 et seq.;

(3) "Additional instructor" means a registered nurse (RN) or licensed practical nurse (LPN) who, under the general supervision of the primary instructor, may provide

classroom and skills training;

(4) "Centers for Medicare and Medicaid Services" means the federal agency that oversees programs including Medicare, Medicaid, the [Children's Health -Insurance Program](#), and the state and federal health insurance marketplaces;

(5) "Certified nursing assistant (CNA)" means individuals trained and certified to help nurses by providing nonmedical assistance to patients, such as help with bathing, dressing, and using the bathroom;

(6) "Competency examination" means an examination that includes manual (skills) and written (or oral component for those with limited literacy skills) evaluations;

(7) "Educational institution" means an institution that is licensed by the State Board of Private Career Education within the Division of Higher Education as defined by Acts 1989, No. 906 (examples include but are not limited to career colleges and proprietary schools);

(8) "Examination" means a competency examination that includes manual (skills) and written evaluations;

(9)(A) "Facility" means a long-term care facility or nursing facility (nursing home) licensed by the Office of Long-Term Care.

(B) A nursing facility that provides nursing care and supportive care on a twenty-four-hour basis to residents.

(C) Facility "premises" include all structures and surrounding property;

(10) "Facility-based program" means a nursing assistant training program offered by or in a long-term care facility;

(11) "General nursing experience" means [nursing](#) experience ~~which~~ ~~which may include, without limitation, obtained through~~ may include, but is not limited to;

(A) employment,

(B) internship,

(C) externship, or

(D) other means including working in:

(i) A nursing assistant education program;

(ii) A long-term care facility;

(iii) Supervising of nursing students in a long-term care facility or unit;

(iv) A geriatrics department, excluding geriatric psychiatry; ~~or~~

(v) A long-term acute care hospital (recuperative care);

(vi) Home healthcare;

(vii) Hospice care; or

(viii) Other long-term care setting.

~~employment, internship, externship, or other means and includes without limitation employment in a nursing assistant education program or employment in or supervision of nursing students in a nursing facility or unit, long-term care facility or unit, a geriatrics department (excluding a geriatric psychiatry department), a long-term acute care hospital, home healthcare, hospice care, or other long-term care setting (Arkansas Code § 20-10-702(2)(C)(ii));~~

(12) "Guest speaker" means a registered nurse, licensed practical nurse, or other licensed health professional who conducts specific classroom lectures based upon an expertise in a given subject area under the direct supervision of the primary instructor;

(13) "Licensed health professional" means a:

(A) Physician;

(B) Physician assistant;

(C) Nurse practitioner;

(D) Physical, speech, or occupational therapist;

(E) Physical therapist assistant or occupational therapist assistant;

(F) Registered professional nurse;

(G) Licensed practical nurse; or

(H) Certified social worker;

(14) "Misappropriation of resident property" means 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;

(15) "Neglect" means 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;

(16)(A) "Nonfacility-based program" means a nursing assistant training program not offered by or in a facility.

(B) Examples include but are not limited to:

- (i) Career colleges;
- (ii) Community colleges;
- (iii) Vocational or technical schools; and
- (iv) Proprietary schools;

(17) "Nursing assistant" means 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 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;

(18) "Office" means the Long-Term Care Facility Nursing Assistant Training Program within the Division of Provider Services and Quality Assurance;

(19)(A) "Orientation program" means a program which provides the nursing assistant with explanations of:

- (i) Facility structure;
- (ii) Policies;
- (iii) Procedures;
- (iv) Philosophy of care;
- (v) Description of the resident population; and
- (vi) Employee rules.

(B) This orientation phase is not included as part of the Long-Term Care

Facility Nursing Assistant Training Program;

(20) "Petitioner" is 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;

(21) "Primary instructor" means 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, Arkansas Code § 17-87-601 et seq., to Arkansas and meets all requirements for licensure in Arkansas, does not have any disciplinary action regarding their license by the licensing entity or authority; and

(A) ; and P 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) ten (10) years; , and

(B) . a Annually attends an eight (8) hour class, authorized by the Department of Human Services, regarding updates to applicable laws and rules, best practices, and common issues encountered in long-term care facilities. (Arkansas Code § 20-10-702);

(22) "Resident" means an individual who resides in long-term care facilities who receives a range of services, including medical and personal care;

(23) "Skills training" means 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;

(24) "Supervised practical training" means, pursuant to 42 C.F.R. § 483.152, 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;

(25) "Task performance record" means a list of the major duties and skills to be learned in the program and the trainee's performance of each;

(26) "Trainee" means 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; and

(27) "Virtual instruction" or "virtual training" means 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.

## **Subpart 2. Nursing Assistant Training**

### **20 CAR § 403-201. General rule.**

A facility must not use any individual working in the facility as a nursing assistant for more than four (4) months (meaning one hundred twenty (120) calendar days) unless that individual has successfully completed a training program and competency examination approved by the Department of Human Services as required by the Centers for Medicare and Medicaid Services.

### **20 CAR § 403-202. Training.**

(a) Nursing assistant training programs must include materials that provide a basic level of both knowledge and demonstrable skills for each individual completing the program.

(b)(1) Each course must be prepared and administered in accordance with the training course guidelines prescribed in the Arkansas Long-Term Care Facility Nursing Assistant Training Curriculum.

(2) This curriculum is to be used as a guide for conducting in-person or virtual training in both facility and nonfacility programs.

(c)(1) 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.

(2) The content provides fundamental information and leaves open the

opportunity for an instructor to function as necessary in response to perceived student requirements.

(3) It is important to recognize that the curriculum guidelines identify the limitations, for example, limitations to the scope of practice, of the long-term care facility nursing assistants' direct care responsibilities.

(d)(1) Each in-person or virtual training program must use the behavioral stated objectives in the Arkansas Long-Term Care Facility Nursing Assistant Training Curriculum for each unit of instruction.

(2) These objectives state the measurable performance criteria that serve as the basis for the state competency examination.

(3) 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.

(e)(1) Upon successful completion of the required in-person or virtual training, the trainee must pass the state competency examination administered by the Department of Human Services (see 20 CAR § 403-501 et seq.).

(2) An individual must complete the state competency examination within twelve (12) months of graduation from a training program or retraining will be required.

### **20 CAR § 403-203. Implementation requirements.**

(a)(1) Pursuant to 42 C.F.R. § 483.152, a nurse aide training and competency examination program must include, at a minimum, a combination of classroom (in-person or virtual) and clinical instruction.

(2) The requirement for state certification shall include a minimum of ninety-~~one~~ (91~~0~~) hours of training which consist of no less than seventy-~~fivefour~~ (75~~4~~) clock hours of training, including sixteen (16) hours of supervised practical training, for a total of ninety-~~one~~ (91~~0~~) hours.

(b) 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 20 CAR § 403-302.

(c)(1) A minimum of sixteen (16) hours initial classroom, in-person or virtual, instruction is required in Part I.

(2) This will include both theory instruction and skills demonstration in the classroom lab.

(3) During Part I, the trainee is not allowed on the floor as part of a facility's staffing pattern.

(4) 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.

(5) Documentation of acceptable performance of all skills and duties shall be on file with the primary instructor (see 20 CAR § 403-204, nursing assistant trainee activities).

(d)(1) Parts II and III require the completion of the remaining ~~seventy-five~~ **seventy-four** (74) clock hours of training consisting of theory, classroom lab, and clinical skills training.

(2) 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.

(3) Clinical skills training assignment or supervision by another nursing assistant is prohibited.

(e) The ratio of trainees to instructors in the in-person or 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 (1) instructor.

(f)(1) Staff in training can be employed after completing lessons one through eleven (1 – 11) for a total of sixteen (16) hours of course work and may continue to work on the floor while they are actively progressing through the Long-Term Care Facility Nursing Assistant Training Program (NATP).

(2) However, they cannot be included in the staffing ratio if they are actively participating in class instruction.

(g)(1) 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:

(A) Program's name;

(B) NATP license number;

(C) 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:

(i) State or national identification card;

(ii) Alien registration card;

(iii) Military identification; or

(iv) Passport;

(D) Begin date and end date; and

(E) Signature of the primary instructor.

(2) 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.

#### **20 CAR § 403-204. Nursing assistant trainee activities.**

(a)(1) Each trainee shall wear identification during all skills training portions that identifies them as a trainee.

(2) Identification must be visible to:

(A) Residents;

(B) Family members;

(C) Visitors; and

(D) Staff.

(b)(1) 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.

(2) 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.

(c)(1) Documentation of each trainee's acceptable performance of each skill or procedure must be maintained by the primary instructor on the Task Performance Record (DMS-741 form) provided by the Department of Human Services.

(2) This record consists of the following:

- (A) Tasks performed, which includes duties and skills completed;
- (B) Satisfactory performance date; and
- (C) The instructor's signature supervising the performance.

(d)(1) 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.

(2) The program establishes procedures for a review of the allegations when requested by the trainee.

(3) The program shall inform the department of any trainees terminated under these circumstances.

### **20 CAR § 403-205. In-person facilities and resources.**

(a) The nursing assistant training program shall require the provision of physical facilities as follows:

- (1) Temperatures conducive to the weather;
- (2) Clean and safe conditions;
- (3) Adequate lighting;
- (4) Space to accommodate all students; and
- (5) All equipment for simulating resident care in a classroom or lecture (see instructional equipment under 20 CAR § 403-902(3)).

(b) The physical facilities including classrooms, laboratories, conference space, library, and educational materials shall be adequate to meet the needs of the:

- (1) Program;
- (2) Number of trainees; and
- (3) Instructional staff.

(c) Suggested training materials or resources may include, but are not limited to a:

- (1) Blackboard;
- (2) Flipchart;
- (3) Projector or screen;
- (4) DVD;
- (5) Anatomical chart;
- (6) Mannequin;
- (7) Bed; and
- (8) Lavatory or sink.

(d) The Department of Human Services will not require or endorse any single textbook or other material; examples include but are not limited to videotape or film.

(e) There are several resources on the market and each facility or school will have the choice in selecting their textbooks or other training materials.

(f) 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.

#### **20 CAR § 403-206. Virtual training.**

See 20 CAR § 403-801.

#### **20 CAR § 403-207. Orientation program.**

(a) All nursing assistants must receive an orientation program that includes, but is not limited to, an explanation of:

- (1) The organizational structure of the facility;
- (2) Policies and procedures, including but not limited to disaster plans, for example, fire, earthquake, flood, or tornado;
- (3) The philosophy of care of the facility;
- (4) The description of the resident population; and
- (5) Employee rules.

(b) This facility orientation training program is not included in the required ninety-

one (910) hours of nursing assistant training.

**20 CAR § 403-208. Ongoing in-service training.**

(a)(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.

(2) Each nursing assistant must receive one (1) hour of in-service training per month.

(b)(1) 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.

(2) The in-service training should address areas of weakness and be sufficient to ensure the continuing competence of the nursing assistants.

(c)(1) 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.

(2) Training can be received on the unit, as long as it is:

(A) Directed toward skills improvement;

(B) Provided by appropriately trained staff; and

(C) Documented, for example, skills demonstration with return demonstration recorded on a check list.

(d)(1) Effective July 1, 2006, facilities are strongly encouraged to offer in-service training for nursing-home-employed certified nursing assistants who were certified in Arkansas prior to July 1, 2006, that covers the Barbara Broyles Alzheimer and Dementia Training that is included in the Arkansas Long-Term Care Facility Nursing Assistant Training Curriculum.

(2)(A) Facilities should maintain records that verify each employee who was certified in Arkansas prior to July 1, 2006, has received this training.

(B) After July 1, 2006, and ongoing, the new Alzheimer's training is strongly encouraged for certified nursing assistants registered in Arkansas through reciprocity from other states and test candidates who are allowed to challenge the state

competency test based on exemptions found in 20 CAR § 403-504.

**20 CAR § 403-209. Nonpermanent employees.**

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

**Subpart 3. Approval of Programs**

**20 CAR § 403-301. Location.**

(a)(1) Nursing assistant training programs may be offered by or in nursing facilities, as well as outside facilities.

(2) The clinical portion of the training must be conducted in all cases and must utilize a nursing facility and its residents.

(3)(A) Nursing facilities may offer a complete training program or may contract with another organization, or both, to provide the training unless they are sanctioned.

(B) Sanctioned nursing facilities cannot offer the training.

(b) Other groups or institutions (examples include but are not limited to employee organizations, vocational or technical schools, community colleges, and private institutions) may conduct programs upon the Department of Human Services' approval.

(c)(1) 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.

(2) This provision would not apply to the state schools (such as a vocational, technical, or community college) or programs offered by long-term care facilities who train their own employees or potential on-call employees.

**20 CAR § 403-302. Restrictions.**

(a)(1) The Department of Human Services shall not approve a program offered by or in a nursing facility which, in the previous two (2) 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:

(i) A civil money penalty of no less than five thousand dollars (\$5,000);

(ii) Denial of payment for new admissions;

(iii) Appointment of temporary management;

(iv) Closure; or

(v) Transfer of residents to another facility.

(2) "Extended survey", as defined for this section, means a survey which includes a review of facility policy and procedures pertinent to Level A deficiencies in:

(A) Resident rights;

(B) Resident behavior and facility practices;

(C) Quality of life; or

(D) Quality of care.

(3) "Partial extended survey" means a survey conducted as a result of a deficiency in Level A requirements other than those listed above in the extended survey definition.

(b) Facility-based training programs are prohibited from charging tuitions or 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 20 CAR § 403-901 et seq.).

### **20 CAR § 403-303. Application.**

(a)(1) Each facility or entity that desires to offer a program shall file an Application for Program Approval form prescribed by the Department of Human Services (Form DMS-724).

(2) Application forms are available on the [Department of Human Services - Division for Provider Services and Quality Assurance website](#) or you can request an

application by emailing: [natpcertification@dhs.arkansas.gov](mailto:natpcertification@dhs.arkansas.gov).

(b)(1) An outline showing the lesson plans and teaching modules utilized to cover the curriculum contents must be attached to the application.

(2) This should specify the:

- (A) Elements covered in each module;
- (B) Hours of classroom theory;
- (C) Hours of lab (return demonstrations); and
- (D) Hours in the clinical area in a nursing home.

(3) Each facility's application must also include the following:

- (A) Primary instructor resumes or work history to establish long-term care experience;
- (B) Assistant instructor resume or work history to establish long-term care experience;
- (C) Waiver letter from the department if utilizing a sanctioned long-term care facility;
- (D) Professional license verification; and
- (E) Additional information, as requested by the department.

(c)(1) When applicable for renewals, verification of school licensure by the State Board of Private Career Education within the Division of Higher Education will be required.

(2) A notarized copy of the school licensure must be included with applications for new programs and for renewal of programs.

(3) Notification to the division verifying additional instructors and any changes in instructors will be required with each application.

(d) Application must be submitted to the department and approved by the department prior to the start of the first course.

(e) An application must be completed and signed by the primary instructor.

(f)(1) Applications that are received incomplete may cause postponement of the program starting date.

(2) A notice of deficiency in the application will be mailed to an applicant

within fifteen (15) business days of the date of filing.

(3) The applicant will be given an opportunity to correct any deficiencies.

(g)(1) 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.

(2) If the application is to be disapproved, the reasons for disapproval shall be given in the notice.

(h)(1) 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 Director of the Division of Higher Education.

(2) If no request is made, the entity is deemed to have waived the opportunity for a hearing.

#### **20 CAR § 403-304. Changes in programs.**

(a) Prior to major changes in the course, an application must be resubmitted for approval.

(b) Major changes include, but are not limited to:

- (1) Change in training provider;
- (2) Change in delivery site, such as from classroom to virtual;
- (3) Change in clinical site;
- (4) Change in instructor; and
- (5) Complete revision of course structure, including change in hours allotted to one (1) or more modules.

(c) Major changes do not include:

- (1) Change in materials, such as handouts, textbooks, or videos;
- (2) Change in order in which modules are taught; or
- (3) Addition of modules or tasks not required by rules or guidelines.

#### **20 CAR § 403-305. Withdrawal of approval.**

(a)(1) Provisions for monitoring and review of compliance with program requirements are specified in this section.

(2) The Department of Human Services shall withdraw approval of a training program when:

(A) The program has one (1) or more restrictions;

(B)(i) The entity offering the program refuses to permit visits by the department, whether announced or unannounced.

(ii) 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 this part 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-year period and after opportunities to address the failure rate through enhanced monitoring;

(E)(i) Renewal is not completed prior to renewal date.

(ii) Long-Term Care Facility Nursing Assistant Training Program 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 20 CAR § 403-901 et seq.;

(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 reapproval;

(I) The program makes or causes to be made any false statement or representation that the amount of training costs is greater than the actual cost of the training to obtain Medicaid reimbursement, as allowed in 20 CAR § 403-901 et seq., 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 this part; or

(K) The state determines that any of the applicable requirements of 42 C.F.R. § 483.152 or 42 C.F.R. § 483.154 are not met by the program.

(b) When the state withdraws approval of a nurse aide training and competency evaluation program or competency evaluation program:

(1) The state must notify the program in writing, indicating the reason or reasons for withdrawal of approval from the program; and

(2) Students who have started a training and competency evaluation program from which approval has been withdrawn must be allowed to complete the course.

(c)(1) 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.

(2) The reconsideration shall be forwarded to the Division of Higher Education.

#### **Subpart 4. Qualification of Instructors**

##### **20 CAR § 403-401. Primary instructor.**

(a) The primary instructor shall:

(1) 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, Arkansas Code § 17-87-601 et seq., to Arkansas and meets all requirements for licensure in Arkansas;

(2)(A) Not be under any current disciplinary action by the Arkansas State Board of Nursing.

(B) Disciplinary action includes, but is not limited to, probation, suspension, revocation, or voluntary surrender of license due to disciplinary action; and

(3)(A) Possess a minimum of two (2) years of 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)~~ ten (10) years (Arkansas Code § 20-10-

702).

~~(bB)~~ "General nursingNursing experience" means nursing experience which may include, but is not limited to;

~~(i) Employment;~~

~~(ii) Internship;~~

~~(iii) Externship; or~~

~~(iv) Other means including working in:~~

~~(1a) A nursing assistant education program;~~

~~(b) A long-term care facility;~~

~~(2) A long-term care facility, or the~~

~~(c) Supervising supervisor of nursing students in a long-term care facility or unit;~~

~~(3d) A geriatrics department, excluding geriatric psychiatry; —~~  
or ~~(e) A long-term acute care hospital (recuperative care);~~

~~(f) A homeHome health care;~~

~~(g) A hospice Hospice care; or~~

~~(h) Other long-term care setting.~~

~~(eb)~~ 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).

~~(de)~~(1) 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.

(2) This must include nursing experience, supervisory experience, and either teaching experience or certificate of attendance in an instructor workshop.

~~(ed)~~ The individual must annually submit proof annually of attendance in of an eight-(8)-hour class authorized by the Department of Human Services regarding updates to applicable laws and rules, best practices, and common issues encountered in long-term care facilities.

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**20 CAR § 403-402. Primary instructor responsibilities.**

(a)(1) There must be only one (1) primary instructor (PI).

(2) A PI may oversee a maximum of four (4) sites.

(3) All questions and correspondence pertaining to the site will be directed to the PI.

(4) The PI shall participate in the planning of each lesson or teaching module, including clinical instruction, whether or not the PI teaches the lesson.

(b) The PI of a nursing assistant training program shall be responsible for supervision of the program and ensuring that the following requirements are met:

(1) Course objectives are accomplished;

(2) Each trainee exhibits the appropriate skills and knowledge to conduct any part of the training;

(3)(A) 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.

(B) Performance reviews of instructors must be documented and maintained;

(4)(A) The provision of direct individual care to assigned residents by a trainee is limited to appropriately supervised clinical experience.

(B) Instructors shall serve as supervisor of trainees while in clinical areas and providing resident care;

(5)(A) Each trainee shall demonstrate competence in clinical skills and fundamental principles of resident care.

(B) The task performance record must be approved and signed or initialed by the primary instructor;

(6)(A) Records are kept in order to verify the participation and performance of each trainee in each phase of the training program.

(B) Satisfactory completion of the training program shall be attested on each trainee's record; and

(7) Each trainee is issued a certificate of completion within ten (10) calendar

days of course completion and as described in 20 CAR § 403-203(g).

**20 CAR § 403-403. Additional instructor or guest speaker.**

(a)(1) 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.

(2) Examples include but are not limited to:

- (A) Pharmacists;
- (B) Dietitians;
- (C) Social workers;
- (D) Sanitarians;
- (E) Advocates;
- (F) Gerontologists;
- (G) Nursing home administrators; and
- (H) Nurse aid program staff.

(3) 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.

(b)(1) Additional instructors such as registered nurses or licensed practical nurses may be used to provide instruction, skills training, or supervision.

(2) 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.

(3) 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.

(4) All final skills check-off reviews must be approved by the primary instructor.

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

## Subpart 5. Requirements for Examination and Certification

### 20 CAR § 403-501. Transition.

The initial implementation of these training and examination requirements has covered three (3) basic phases:

(1)(A) Deemed equivalence waivers.

(B) 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:

(i) Completed a program that offered a minimum of sixty (60) hours of nursing assistant training before July 1, 1989, and if such received before July 1, 1989, up to fifteen (15) hours of supervised and practical nursing assistant training or regular in-service nursing assistant education (initial training must be at least seventy-five (75) hours of classroom instruction, as well as sixteen (16) hours of supervised practical training, a total of ninety-one (91) hours);

(ii) 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

(iii) 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.

(C)(i) 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.

(ii) They will be required to complete a new training program and state examination to obtain current certification.

(D) Facilities who wish to obtain certification for the above-described individuals should submit to the Department of Human Services an Interstate Transfer Form (DMS-798) with attached copies of documents or certificates verifying course

completion and the number of hours in a course;

(2)(A) Employment status as of July 1, 1989.

(B) 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.

(C) These individuals were not required to complete the ninety-one (91~~0~~) total hours of training.

(D) These ninety-one (91~~0~~) hours consisted of seventy-five~~our~~ (75~~4~~) hours of formal classroom training course as well as sixteen (16) hours of supervised practical training.

(E) After October 1, 1990, nursing assistants must now complete the ninety-one-hour training requirements to qualify to take the state examination, regardless of past employment status on July 1, 1989; and

(3)(A) July 1, 1989 – ongoing.

(B) 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 this part.

### **20 CAR § 403-502. Examination.**

(a)(1) The Department of Human Services or its appointed agency shall be responsible for administering the competency examination.

(2) The examination shall be based upon the training curriculum requirements specified in the Arkansas Long-Term Care Facility Nursing Assistant Training Curriculum.

(b)(1) The examination will be in English.

(2) Translation of this examination will be offered, if needed.

(3) Additional accommodations can be made by the department or contractor based on a documented need, however, an additional fee may be required.

(c)(1) The competency examination shall consist of two (2) components, a written or oral examination and a skills demonstration.

(2) Each examination candidate will be allowed to choose between a written or oral examination.

(3) The oral examination will be read from a prepared text in a neutral manner.

(d)(1) Foreign language translation dictionaries must be shown to the registered nurse test observer at check-in and to the knowledge test proctor when entering the knowledge test room.

(2) No electronic dictionaries are allowed.

(3)(A) No definitions or instances of writing are allowed in the translation dictionary.

(B) If there are any definitions or instances of writing, the translation dictionary will not be permitted to be used during testing.

(e)(1) The written or oral component shall be developed from a pool of examination questions.

(2) Only a portion will be used in the exam.

(3) The skills demonstration shall consist of five (5) randomly selected questions drawn from a pool of tasks ranked based on the level of difficulty.

(f) The skills demonstration component will be performed in a facility, not disqualified by criteria specified in 20 CAR § 403-402, or laboratory setting.

(g) 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.

(h)(1) 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.

(2) Proctoring will not be approved in facilities prohibited as specified in 20 CAR § 403-402.

(i)(1) To complete the competency examination successfully, an individual must pass both the written or oral examination and the skills demonstration.

(2) 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.

(j)(1) All candidates will be allowed up to three (3) attempts within a twelve-month period to successfully complete all portions of the competency examination.

(2) Failure after three (3) attempts will require retraining in order to qualify to sit for the competency examination.

(3) An individual has twelve (12) months to successfully pass the test after retraining.

(k)(1) 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.

(2) Based on the program rules, these individuals may maintain their employment status if they ~~reenroll~~ ~~enroll~~ in a new training program.

(3) 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-one (91) hours of training.

(4) Upon successful completion of their training, they should be scheduled for the next available competency examination.

(l)(1) All individuals who successfully complete the examination shall be placed on the Certified Nursing Assistant/Employment Clearance Registry and issued a state certificate.

(2) Information on the registry shall be made available for public inquiry (see 20 CAR § 403-701 et seq.).

### **20 CAR § 403-503. Examination fees, dates, and locations.**

(a)(1) The Department of Human Services does not require an initial fee for this occupational license, however, there is a fee to take the state examination.

(2) The amount of the examination fee will be announced in a timely manner

by the department or designated contractor.

(b) If there were to be an initial fee, per Arkansas Code § 17-5-104, the following individuals would not be required to pay an initial fee for this license:

(1) An individual receiving assistance through the:

(A) Arkansas Medicaid Program;

(B) Supplemental Nutrition Assistance Program;

(C) Special Supplemental Nutrition Program for Women, Infants, and Children;

(D) Temporary Assistance for Needy Families Program; or

(E) Lifeline Assistance Program;

(2) An individual who was approved for unemployment within the last twelve (12) months; or

(3) An individual who has an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.

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

(1) A criminal background check;

(2) An examination or a test; or

(3) A medical or drug test.

(d)(1) The examination will be given at multiple sites geographically dispersed throughout the state.

(2) Schedules of times, locations, and registration requirements will be announced in a timely manner by the department or designated contractor.

(e) The competency examination, including 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 20 CAR § 403-402.

(f) Each candidate must have appropriate verification of the training requirements (see 20 CAR § 403-301 et seq., and 20 CAR § 403-504).

(g)(1) 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 20 CAR §

403-901(b)) to be employed in a Medicaid-certified nursing facility.

(2) 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.

(3) 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.

(4) In accordance with 42 C.F.R. § 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.

(5) 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.

#### **20 CAR § 403-504. Candidate qualifications.**

(a)(1) The following is a list of qualifications for the state competency exam:

(A) Nursing assistants who were trained in approved nonfacility programs, for example, career colleges, vocational or technical schools, or proprietary schools, after January 1, 1989;

(B) Nursing assistants who were trained in approved facility (nursing homes) programs after July 1, 1989;

(C)(i) Registered nurses or students who have finished the basic nursing course, for example, Introduction to Nursing or Fundamentals of Nursing.

(ii) 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;

(D) 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;

(E)(i) Home health aides who have met appropriate federal training or examination requirements for home health aide certification.

(ii) Verification must show completion of a minimum of seventy-~~five~~ (75) hours classroom training and sixteen (16) hours of supervised practical training or federal testing requirements as a home health aide.

(iii) This provision does not apply to personal care aides as their training requirements of forty (40) hours do not meet the ninety-~~one~~ hour requirement for the Long-Term Care Facility Nursing Assistant Training Program;

(F)(i) Individuals from other states who can verify completion of a state-approved geriatric nursing assistant training program but were not tested and registered.

(ii) If registered in the other state, see 20 CAR § 403-505 for reciprocity transfers without further examination.

(iii) Verification of course completion rests with the individual and must be submitted to the Department of Human Services-designated contractor for approval to take the Arkansas competency examination; and

(G)(i) Nursing assistants whose certification has become inactive based on the recertification requirements (see 20 CAR § 403-603).

(ii) These individuals shall be required to be retested for recertification.

(iii) Permission for retesting shall require an admission slip obtained from the examination agency prior to the specified examination date.

(iv) **Note.** Individuals listed on the long-term care facility Certified Nursing Assistant/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 Arkansas Code § 20-38-

101 et seq., shall not be eligible to take the competency examination.

(b)(1) 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.

(2) 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.

**20 CAR § 403-505. Certified nursing assistant licensure of uniformed service members, veterans, and spouses.**

(a) Pursuant to Arkansas Code § 17-4-101 et seq., the following rules apply to licensure for 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
- (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 their injuries or illness in the line of duty if the spouse establishes residency in the state.

**(b) Automatic certified nursing assistant licensure.**

(1) Automatic certified nursing assistant licensure will be provided to current license holders to expedite their entry into the workforce of this state by means of reciprocity.

(2) Reciprocity may be granted without further training or testing.

(3) The process of reciprocity includes the following:

(A) Completion of an application with all required forms;

(B) Submission of DD 214/DD-214/separation documents;

(C) Submission of DMS-798, Interstate Transfer Form/CNA Reg.

Exemption/Reciprocity Request;

(D) Submission of an image or copy of individual's Social Security card;

(E) Submission of an image or copy of valid United States Government-issued photo identification; and

(F) Proof of service education, training, experience, and service-issued credentials by means of a joint service transcript.

(c) Reciprocity is granted to those who meet the following criteria:

(1) 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; and

(2) A holder in good standing with certified nursing assistant licensure within a similar scope of practice by another state, territory, or district of the United States.

**(d) Temporary or provisional certified nursing assistant licensure.**

(1) A temporary or provisional certified nursing assistant licensure will be granted to a uniformed service member, or their spouse, or a uniformed service veteran, or their spouse, while expediting full licensure when considering an application for initial licensure.

(2)(A) The Department of Human Services will consider education, training, national certification, experience, and service-issued credentials of uniformed service members and uniformed service veterans that are applying for initial certified nursing assistant licensure.

(B) The following criteria will be classified as meeting service education, training, national certification, experience, and credentials:

(i) Ninety-one (91) hours of approved education, training, or experience in healthcare; or

(ii) Passing the Arkansas nurse aide testing with three (3) given attempts within one hundred eighty (180) days post application.

**(e) Extension of license expiration and continuing education requirements for uniformed service members, uniformed service veterans, and their spouses.** The department will extend the expiration date and any continuing education requirements for certified nursing assistant licensure renewal for a deployed uniformed service member or their spouse as follows:

(1) An extension of the expiration date of a certified nursing assistant licensure for one hundred eighty (180) days following the date of the uniformed service member's return from deployment; and

(2)(A) 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.

(B) The department may require evidence of completion of continuing education before granting a subsequent certified nursing assistant licensure or authorizing the renewal of a certified nursing assistant licensure to allow full or partial exemption from continuing education requirements.

(f)(1) Uniformed service members, veterans, and spouses who successfully meet the criteria and standards within the provisions shall be placed on the Certified Nursing Assistant/Employment Clearance Registry and issued a state certificate.

(2) Information regarding military member licensure can be found on the [Department of Human Services-Division of Provider Services and Quality Assurance](#) website.

**20 CAR § 403-506. Automatic occupational licensure of out-of-state individuals.**

(a) Pursuant to the Automatic Occupational Licensure for Out-of-State Licensure Act, Arkansas Code § 17-7-101 et seq., a nursing assistant from another state may qualify as a nursing assistant in Arkansas if they meet the following criteria and provide documentation that reflects this:

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(1) They do not have a disqualifying criminal offense under Arkansas Code § 17-3-102 or any additional state law relating to the occupational licensure;

(2) They do not have a complaint, allegation, or investigation pending for their occupational activity; or

(3) They are in good standing for one (1) year with an occupational licensure of similar scope of practice issued by another state, territory, or district of the United States or they have worked:

(A) In another state, territory, or district of the United States that does not use an occupational licensure to regulate an occupation or profession but is regulated by occupational licensure in this state; and

(B) At least three (3) years in the occupation.

(b) An individual who is granted automatic occupational licensure under this section shall meet all other occupational licensure requirements for a resident of this state and all renewal requirements of the occupational licensure, including without limitation a criminal background check and continuing education hours.

(c) The Department of Human Services may require an applicant to pass an examination.

(d) The department shall require an applicant to furnish a bond, financial statement, or proof of insurance coverage, if required by state law.

## **Subpart 6. Certified Nursing Assistant/Employment Clearance Registry**

### **20 CAR § 403-601. Function and content.**

(a)(1) The Department of Human Services shall establish and maintain a registry of all individuals who have satisfactorily completed the training and competency examination program requirements.

(2) The Certified Nursing Assistant/Employment Clearance Registry shall be incorporated into the Adult and Long-term Care Facility Resident Maltreatment Central Registry which shall include substantiated administrative findings of abuse, neglect, or misappropriation of resident property for certified nursing assistants.

(b) The information in the Certified Nursing Assistant/Employment Clearance 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 20 CAR § 403-602).

(c) The Certified Nursing Assistant/Employment Clearance Registry record, for each individual who has successfully obtained certification as a long-term care facility nursing assistant shall contain the following information:

- (1) Individual's full name;
- (2) Date of birth;
- (3) Name and date of the successfully completed state-approved training program;
- (4) Certification number and date of issuance;
- (5) Current active or inactive status; and
- (6) Most recent recertification date.

(d)(1) The department shall review and investigate allegations of neglect, abuse, or misappropriation of resident property by a nursing assistant.

(2) 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.

(3) Following any appeal, the Certified Nursing Assistant/Employment Clearance Registry and the nursing assistant shall be notified of the findings.

(4) If the finding is substantiated either by the individual's failure to appeal or by issuance of a final administrative order, the Certified Nursing Assistant/Employment Clearance Registry shall include the documented findings involving an individual listed in the Certified Nursing Assistant/Employment Clearance Registry, as well as any brief statement of the individual disputing the findings (see 20 CAR § 403-604 for the process to petition to remove findings of neglect).

(e)(1) The department, in the case of inquiries to the Certified Nursing Assistant/Employment Clearance Registry, shall verify if the individual is listed in the

Certified Nursing Assistant/Employment Clearance 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 Certified Nursing Assistant/Employment Clearance Registry.

(2) It shall also disclose any statement by the individual related to the finding or a clear and accurate summary of such a statement.

**20 CAR § 403-602. Inquiry process.**

(a)(1) A facility must inquire of the Certified Nursing Assistant/Employment Clearance Registry as to information in the registry concerning any individual to be used as a nursing assistant.

(2) A facility may not use an individual as a nursing assistant until registry inquiry and clearance is obtained.

(3) Registry inquiries shall be performed within five (5) calendar days of the offer of employment and prior to any resident contact.

(4) A facility must document all inquiries and must include such documentation in the personnel file of each nursing assistant used by the facility.

(b)(1) Registry clearance shall be obtained by computer access to the online website system.

(2) The URL address to the online website system shall be issued by the Department of Human Services, or its designated agent, and may be subject to change.

(3) If needed, facilities should contact the department for the latest website information.

(c)(1) 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.

(2) The internal log shall be monitored by the department to verify each facility's compliance with inquiry requirements.

(d)(1) The online website system is capable of providing a printable registry clearance verification report document for the nursing facility's use in recordkeeping.

(2) The facility shall be required to print the registry clearance report and maintain this report in the employee's personnel file.

(e)(1) Registry clearances accessed through the online system require the nursing assistant's Social Security number and date of birth.

(2) Facilities must have the Social Security number or certification number in order to ensure an accurate inquiry.

(3) Name searches are possible on the online system but accuracy is not assured.

(4)(A) Name searches may also be obtained by calling the department.

(B)(i) Please note, however, that name searches by calling the department do not generate a verification log of the clearance.

(ii) Therefore, facilities shall avoid the use of name searches when the need for documentation and accuracy of the registry check is required.

### **20 CAR § 403-603. Certification renewal.**

(a)(1) The initial certification period is valid for twenty-four (24) months.

(2) Each certificate contains an expiration date.

(3) The Department of Human Services will develop a plan and procedure to renew each nursing assistant certification listed in the Certified Nursing Assistant/Employment Clearance Registry on a biennial basis (every two (2) years).

(4) The renewal process will require the nursing assistant to document having worked as a nursing assistant for monetary compensation during the prior two (2) years.

(5) This provision shall be defined by at least one (1) documented day (meaning eight (8) hours) of employment providing nursing or nursing-related services for monetary compensation in any setting.

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

(c)(1) Employing facilities ~~and~~/or individuals shall be required to submit updated information to the Certified Nursing Assistant/Employment Clearance Registry to establish ongoing eligibility for active status.

(2) The Certified Nursing Assistant/Employment Clearance Registry shall make inactive those individuals who cannot document having worked in an aide capacity within a twenty-four-month period.

(3) Nursing assistants who are currently employed as a nursing assistant at the time of their renewal will be renewed for twenty-four (24) months.

(4) 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.

(5) 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 training to recertify to an active status.

(d) An individual will be required to successfully complete a new competency evaluation test to become recertified (see 20 CAR § 403-504(a)(1)(G)), if documentation of having worked in an aide capacity within the previous twenty-four-month period cannot be provided, or for any certification that has been expired for over twenty-four (24) months.

(e)(1) The process to renew a nursing assistant certification shall be overseen by the department or its agent.

(2) Each certified nursing assistant shall be responsible for renewing their certification online approximately sixty (60) calendar days before the expiration of their certification.

(f)(1) Individuals listed on the Adult and Long-term Care Facility Resident Maltreatment Central 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 Arkansas Code § 20-38-101 et seq., shall not be eligible to renew their certification.

(2) Individuals approved for removal of a neglect finding pursuant to 20 CAR § 403-604 shall be eligible to renew their certification.

(g) Nursing assistant certifications may not be renewed more than sixty (60) calendar days prior to the expiration date.

(h)(1) Renewals may be completed through the online website.

(2) The department or its designated agent shall provide instructions for the online renewal process.

(i)(1) The Certified Nursing Assistant/Employment Clearance Registry renewal must be fully completed by the certified nursing assistants and the information must be accurate to the best of their knowledge.

(2) Failure to fully complete the renewal or provide false or inaccurate information shall constitute the basis for denial of certification renewal.

(j) 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 certified nursing assistant to print and their Certified Nursing Assistant/Employment Clearance Registry record shall be updated to reflect the new certification period.

**20 CAR § 403-604. Petition to remove neglect findings.**

(a) Pursuant to federal law 42 U.S.C. § 1395i-3(g)(1)(D), in the case of a finding of neglect under 20 CAR § 403-601, the Department of Human Services shall establish a procedure that permits a certified nursing assistant to petition for the removal of a substantiated finding of neglect.

(b) Factors that must be met are:

(1)(A) The certified nursing assistant must have a substantiated finding of neglect.

(B) There shall not be a petition process available for substantiated findings of:

(i) Physical abuse;

(ii) Verbal abuse; or

(iii) Misappropriation of resident property;

(2)(A) The department makes a determination that the petitioner's

employment and personnel record does not reflect a pattern of abusive behavior or neglect.

(B) Factors to be considered shall include, but shall not be limited to:

(i) The neglect that resulted in a finding was a singular occurrence as identified in the incident investigation file;

(ii) The petitioner does not have a criminal conviction related to neglect, abusive behavior, or physical violence;

(iii) The petitioner's name does not appear on the Adult and Long-term Care Facility Resident Maltreatment Central Registry or the department or the Division of Children and Family Services' Child Maltreatment Central Registry;

(iv) Whether a pattern of abusive behavior or neglect is discovered through reference checks with prior employers or other parties; and

(v) Character references as provided by the petitioner; and

(3) At least one (1) year has passed since the petitioner's substantiated finding of neglect was placed on the Adult and Long-term Care Facility Resident Maltreatment Central Registry or the Child Maltreatment Central Registry.

(c) The procedure to file for a petition to remove a neglect finding shall include the following:

(1)(A) Petitioner shall submit a letter requesting the removal of the neglect finding.

(B) 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

; and

(2) The petitioner must provide the following information with their request

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letter:

(A) Full name and current mailing address;

(B) Daytime phone number;

(C) Social Security number;

(D) Date of birth;

(E) Name and daytime phone number of at least two (2) personal character references;

(F)(i) Letter of reference from any employment within the previous year from the date of the petition.

(ii) 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; and

(G)(i) A current criminal record report from the Division of Arkansas State Police.

(ii) 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.

(iii) All criminal record reports must be an original document and copies will not be accepted.

(d)(1) The department shall review each petition for consideration for removal of the neglect finding.

(2)(A) The review shall be conducted by an administrative review panel consisting of at least three (3) members appointed by the Director of the Division of Provider Services and Quality Assurance.

(B) The panel shall meet within thirty (30) days of any petition.

(C) The review panel shall consider all information submitted by the petitioner and may conduct additional research as needed.

(e) 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.

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(f)(1) If the petition to remove the neglect finding is approved, the Certified Nursing Assistant/Employment Clearance 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.

(2) Note that any certified nursing assistant whose certification has been expired for over twenty-four (24) months must successfully complete the state competency test to reestablish employment eligibility as a certified nursing assistant.

(g) Any applicant whose petition has been denied may not reapply for a subsequent petition request for a period of at least twelve (12) months from the date of the previous denial.

(h) 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:

(1) 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 this part;

(2)(A) If a petitioner wishes to appeal, they may do so by mailing a written notice of appeal to:

Office of Appeals and Hearings  
Arkansas Department of Human Services  
P.O. Box 1437-Slot S101  
Little Rock, Arkansas 72203

(B) The notice shall be mailed by certified mail, with return receipt requested.

(C) The notice of appeal shall state the following:

- (i) Name of the petitioner;
- (ii) Address of the petitioner;
- (iii) Date of birth of the petitioner;

(iv) Phone number, if any, of the petitioner;  
(v) The petitioner's place of employment; and  
(vi) A short statement explaining why the petitioner believes the determination or decision is in error;

(3)(A) The notice of appeal must be postmarked by the Office of Appeals and Hearings within thirty (30) calendar days from the receipt of the notification of denial of the petition.

(B) No appeal shall be accepted after thirty (30) calendar days of receipt of the determination or decision; and

(4)(A) A hearing shall be conducted by the Office of Appeals and Hearings.

(B) The procedures to conduct the hearing are as follows:

(i)(a) The hearing record will contain all documents, exhibits, and testimony admitted into evidence by the hearing officer.

(b) 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.

(c) The file will contain only documentary evidence supporting or tending to support each party's allegations.

(d) The department will also submit an administrative hearing statement summarizing the determination or decision. This statement is not evidence.

(e) Only such portions of each file as determined by the hearing officer to be relevant shall be included in the administrative hearing record;

(ii)(a) 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 in order to review the hearing file and submit a request to subpoena witnesses.

(b) The request shall include the name, address, and telephone number of all witnesses not employed by the department.

(c) Department 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.

*(d)* 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.

*(e)* The Office of Chief Counsel will issue the subpoenas, pursuant to the terms and authority of Arkansas Code § 20-76-103;

*(iii)(a)* 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.

*(b)* 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.

*(c)* In the event that 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.

*(d)* The hearing will be rescheduled by the hearing officer upon a showing of good cause.

*(e)* 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.

*(f)* 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;

*(iv)(a)* The hearing will take place at a place, time, and manner determined by the Office of Appeals and Hearings.

*(b)* Hearings may be conducted by telephone, by personal appearance of the parties, or by record review by the Office of Appeals and Hearings;

(v)(a) 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.

(b) The petitioner will be advised of this fact in the scheduling letter;

(vi)(a) It is the responsibility of the department to designate a representative prior to the time of the hearing.

(b) The representative should be familiar with the circumstances of the determination or decision and be able to summarize the pertinent aspects of the situation and present the documentation to support the basis for the determination or decision.

(c) 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.

(d) The representative may request the services of an Office of Chief Counsel attorney for representation at the hearing;

(vii)(a) 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.

(b) Failure to furnish notice shall entitle other parties to a continuance to obtain counsel.

(c) Petitioner's failure to furnish notice shall constitute a waiver of objection as to timeliness of the hearing;

(viii) The hearing will be conducted by a hearing officer from the Office of Appeals and Hearings who had no part in the determination or decision upon which the hearing is being conducted;

(ix) The petitioner may be accompanied by friends or other persons and may be represented by a friend, legal counsel, or other designated representative;

(x) 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;

(xi)(a) The hearing will be conducted in an informal but orderly manner.

(b) The hearing officer will explain the hearing procedure to the petitioner.

(c) The administrative hearing statement will be read by the department representative.

(d) The department shall then present its case.

(e) After completion of the department's case, the petitioner's case will be presented.

(f) The parties shall have the opportunity to present witnesses, advance arguments, offer additional evidence, and to confront and cross-examine adverse witnesses.

(g) If the petitioner is unable to present their evidence in a logical manner, the hearing officer will assist the petitioner.

(h) Questioning of all parties will be confined to the issue or issues involved;

(xii)(a) The hearing officer will prepare a comprehensive report of the proceedings.

(b) The report will consist of an introduction, findings of fact, conclusions of law, and decision.

(c) The report shall constitute the final agency determination.

(d) The determination shall be mailed to the petitioner and the department; and

(xiii) Any further review must be pursued in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

## **Subpart 7. Methodology for Review of Compliance with Program**

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## **20 CAR § 403-701. Monitoring.**

(a)(1) A program is subject to inspection at any reasonable time by personnel that are authorized by the Department of Human Services.

(2) 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.

(3) 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.

(b)(1) Program reviews may be comprehensive or partial.

(2) Based on the findings of the most current review or overall test scores, a program may be reviewed more often and in depth.

(c)(1) The inspector will generate a report that will specify strengths and deficiencies of the program.

(2) 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.

(d) The program will be able to reapply for in-person or virtual instruction after the one-year suspension.

(e)(1) 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.

(2) 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.

(3) The department will send notification to the program upon approval of the corrective action plan.

(4) The corrective action plan must include, at a minimum, the following:

- (A) Activities to correct deficiencies;
- (B) Person responsible for correcting the deficiencies;
- (C) Implementation date; and

(D) Signature of the primary instructor.

(5) Failure to respond or inadequate corrective actions may cause suspension of the department's approval of the program.

**20 CAR § 403-702. Items subject to monitoring.**

**(a) Maintenance of secure records.**

(1) Each training program shall provide for secure maintenance of records.

(2) Records to be maintained and protected shall include, at a minimum, the following:

(A) Names of enrollees;

(B) Names of those who successfully complete the program;

(C) Begin and end dates of each class;

(D) Curriculum and any revisions of curriculum, with approval from the Department of Human Services;

(E) Tests, grades, course documents, skills checklist;

(F) Credentials of instructors;

(G) Documentation of all state approvals; and

(H) Record of complaints, for example:

(i) Nature of complaint;

(ii) Date of complaint;

(iii) Investigation summary; and

(iv) Outcome.

**(b) Compliance with the following program-related curriculum content:**

(1) Program length;

(2) Ratio of classroom-to-skills training;

(3) Qualifications of instructors;

(4) Quality of skills training supervision;

(5) Access for clinical training in a nursing facility that was not disqualified based on criteria specified in 20 CAR § 403-402;

(6) Physical (classroom and lab) facilities; and

(7) Virtual classroom capabilities.

(c) **Quality of care.** The quality of care provided by individual nursing assistants monitored during a licensing survey or certification survey.

(d) **Success rate.** The graduates' success rate of both virtual and in-person trainees on the state competency examination:

(1) Will be monitored by the department; and

(2) Shall be utilized as a criterion for revoking program approval.

(e) Any other requirements included in this part.

### **Subpart 8. Methodology for Review of Compliance with Virtual Training**

#### **20 CAR § 403-801. Virtual instruction only applies to lecture portion of training.**

(a) All content taught to students remains the same whether the program offers in-person or virtual instruction.

(b)(1) If the program chooses to offer virtual instruction, the expectation of delivery of information remains the same as in-person.

(2) Virtual instruction must be indicated on the application and a virtual plan must be submitted to the Department of Human Services for approval.

(3) If the program fails to meet the guidelines, it will result in temporary suspension, deficiency, or both.

(c) In addition to complying with this part, the following requirements must be met:

(1)(A) A program is subject to inspection of virtual instruction at any time by department personnel.

(B) A program that provides virtual instruction must have practical capabilities and set forth expectations including, but not limited to, the following:

(i) Internet capabilities for the program and the participants;

(ii) 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;

(iii) A camera that is turned on during instruction; and  
(iv) Individual logins that must be tracked and maintained for auditing purposes by the department;

(2)(A) Virtual programs are responsible for ensuring that the department has the virtual link to audit compliance with this part.

(B) The link must be functional and active at all times;

(3)(A) All participants must be able to have visible access to observe all curriculum activities.

(B) Examples include, but are not limited to, 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; and

(6) The programs must provide training materials prior to class, including but not limited to web access to materials.

## **Subpart 9. Reimbursements**

### **20 CAR § 403-901. General provisions.**

(a)(1) This section sets forth policy for direct reimbursement for allowable nursing assistant training costs incurred by Medicaid-certified nursing facilities.

(2) Allowable training costs will be separately tracked, documented, and submitted monthly as described herein.

(3) All reimbursements shall be made directly to the Medicaid-certified nursing facility.

(b)(1) 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.

(2) The Department of Human Services 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.

(c) The criteria required for reimbursements under the letter of intent arrangement must meet the following:

(1) The facility must have on file a job application completed and signed by the individual receiving the letter of intent;

(2) The facility must complete a criminal record check on the individual in accordance with Arkansas Code § 20-38-101 et seq.; and

(3) The facility must retain copies of documents to verify compliance with these provisions as specified in 20 CAR § 403-905.

(d)(1) Allowable costs for nursing assistant training reimbursement may include the costs:

(A) For operation of an approved nursing assistant training program;

(B) Associated with a cooperative training effort with a neighboring approved training program, not claimed by that program; and

(C) Of having nursing assistants trained in an approved nonfacility-based training program, paid by the facility.

(2) Nursing assistant salaries and fringe benefits, including amounts paid while in training, and in-service or continuing education costs are not directly reimbursable but are included on the facility's annual cost report and reimbursed through the per diem rates.

(e)(1) Reimbursement of nursing facility costs for training of nursing assistants must be allocated between Medicaid, Medicare, and private pay patients.

(2) Medicaid may not be charged for that portion of these costs that are properly charged to Medicare or private pay activities.

(3) Therefore, the department will pay only the percentage of the total billed or maximum limit (see 20 CAR § 403-904) for nursing assistant training based on the percentage of Medicaid recipients indicated on the billing.

(4) Facilities should continue to bill for the total amount of expenses incurred.

(5) The recipient information should reflect the midnight census for the last

day of the month.

## **20 CAR § 403-902. 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 nursing assistant to attend training or to travel to a nursing assistant competency evaluation site;

(2) **Books.** The dollar amount spent for books purchased specifically for use in the nursing assistant training program;

(3)(A) **Instructional equipment.**

(B) The dollar amount spent for equipment.

(C) Examples include, but are not limited to, SMARTBoards, iPads, Apple TV, Chromebooks, multi-media projectors, and DVDs purchased specifically for use in the nursing assistant training program;

(4) **Instructional videos.** The dollar amount spent for things such as instructional videos purchased specifically for use in the nursing assistant training program;

(5) **Other training materials.** The dollar amount spent for other approved training materials purchased specifically for use in the nursing assistant training program;

(6)(A) **Training space.**

(B) The dollar amount spent for the rent of classroom space (outside the facility) and things such as lab equipment specifically for the nursing assistant training program.

(C) Construction costs for training facilities will not be authorized;

(7)(A) **Instructor wages.**

(B) The dollar amount of wages paid to the nursing assistant instructor for training time, only while the nursing assistant instructor is not included in the nursing facility's staffing pattern providing nursing services.

(C) Facilities should not include the time spent proctoring the skills test as

a training activity for reimbursement.

(D) Information reported to the Department of Human Services on Form DMS-755 is strictly for training, not testing activity;

(8)(A) **Instructor fringe benefits.**

(B) The dollar amount paid for fringe benefits to the nursing assistant instructor is for their training services only.

(C) The nursing assistant instructor is not to be included in the nursing facility's staffing pattern for providing nursing services;

(9) **Nursing assistant consultant training fees.** The dollar amount paid to a consultant trainer for nursing assistant training;

(10) **Consultant reimbursable expenses.** The dollar amount paid to a consultant trainer for reimbursable expenses such as travel and lodging;

(11)(A) **Instructor workshop fees.**

(B) The amount of tuition and registration fees paid for nursing assistant training program instructors to attend instructor workshops.

(C) 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;

(12) **Instructor workshop travel expenses.** Travel expenses and lodging paid directly or reimbursed for nursing assistant training program instructors to attend instructor workshops; and

(13)(A) **Nursing assistant training tuition.**

(B) 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 nursing assistant training in an approved nonfacility training program.

(C) The actual amount of tuition paid for a student, up to a maximum of four hundred eighty dollars (\$480) per student, will be reimbursed as allowable cost.

(D) This amount is based on the provision of the minimum ninety-one (91~~0~~) hours training required by the department.

**20 CAR § 403-903. Claims submission.**

(a)(1) Claims for reimbursement of expenses incurred for nursing assistant training costs shall be submitted to the Department of Human Services monthly on Form DMS-755.

(2) 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.

(3)(A) The report forms will be designed to capture the above cost categories by use area in either formal approved or combined cooperative training.

(B) Therefore, documentation of these costs should be accounted for in a manner consistent with these categories.

(b)(1) Claims must be submitted to the department within thirty (30) calendar days following the end of the expense month.

(2) Claims not submitted timely or claims that are incomplete will not be accepted for payment and shall be returned to the facility.

(3) Corrected claims must be submitted within fifteen (15) calendar days of the date returned.

(c)(1) A claim for reimbursement may not be submitted for any month in which no students completed training.

(2) Unclaimed costs in this circumstance may be carried over to the month when students complete training and will still be subject to the four hundred eighty dollars (\$480) maximum cost limit per student (see 20 CAR § 403-904, maximum cost limit).

(d) All submitted claims must include a copy of each trainee's Certificate of Completion from the training program and a copy of the department-issued criminal records check.

(e) **Determination letter.** In accordance with 20 CAR § 404-203(a)(1), 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 of intent to employ provisions as specified in 20 CAR §§ 403-901(b) and 403-902(13).

(f) Reimbursements are not allowed and shall be denied to facilities for the following:

(1) Individuals listed on the Adult and Long-term Care Facility Resident Maltreatment Central 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 Arkansas Code § 20-38-101 et seq.;

(2)(A) Individuals listed on the registry with an expired certification.

(B) These individuals are not required to be retrained and may retest in accordance with 20 CAR § 403-603(c); and

(3) Individuals who, prior to training, did not complete a criminal record check in accordance with Arkansas Code § 20-38-101 et seq.

(g)(1) All claim forms (DMS-755) must be submitted with original signatures of the nursing facility administrator.

(2) Copies will not be accepted.

**20 CAR § 403-904. Maximum cost limit.**

(a) In an effort to establish proper and efficient administration of training costs reimbursements, a reasonable maximum cost limit shall be imposed.

(b)(1) Based on analysis of nursing assistant training costs, four hundred eighty dollars (\$480) per student will be the maximum paid to facilities on their claims.

(2) This limit shall be imposed based on the number of students who finish the training program.

(c) Claims must show actual costs incurred and reimbursements will be made for actual costs but not to exceed the maximum limit of four hundred eighty dollars (\$480) per student who completes the training.

**Example:** Claim form shows actual costs are one thousand two hundred fifty dollars (\$1,250) with four (4) students completing the course. As one thousand two hundred fifty dollars (\$1,250) is less than one thousand nine hundred twenty dollars (\$1,920) (four (4) students multiplied by four

hundred eighty dollars (\$480) equals one thousand nine hundred twenty dollars (\$1,920) maximum) the actual costs will be reimbursed. If this example had only two (2) students completing, the maximum would be nine hundred sixty dollars (\$960) (two (2) students multiplied by four hundred eighty (480)) and the reimbursement would be capped at nine hundred sixty dollars (\$960) rather than paying the full one thousand two hundred fifty dollars (\$1,250) actual expenses.

**20 CAR § 403-905. Cost reporting and record retention.**

(a) Nursing assistant training costs directly reimbursed by the Department of Human Services shall be included in the nursing facility's annual Financial and Statistical Cost Report and shall be reported as revenue offsets to nursing assistant training costs.

(b) Facilities must retain receipts and documentation of nursing assistant 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.

(c) Any facility claiming reimbursement for costs that were not actually incurred, or not properly documented, will be required to provide restitution to the department and will be subject to fines, prosecution, or both, as authorized by state and federal statutes.

**20 CAR § 403-906. Nursing assistant training cost reimbursement claim form.**

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

(b) To obtain a Form DMS-755, email [natpcertification@dhs.arkansas.gov](mailto:natpcertification@dhs.arkansas.gov) or visit: [Department of Human Services – Division of Provider Services & Quality Assurance](#).

## **RULES SUBMITTED FOR REPEAL**

**Rule #1: 20 CAR Part 404 – To Amend the Rule for the Arkansas Long-Term Care Facility Nursing Assistant Training Program**

# Proposed Rulemaking

## Title

Promulgated by:

Division of Provider Services and Quality Assurance, Department of Human Services  
Office of Long-Term Care

### Title 20. Public Health and Welfare

#### Chapter X. Office of Long-Term Care, Division of Provider Services and Quality Assurance, Department of Human Services

#### Subchapter A. Generally

#### Part 404. Rules for Conducting Criminal Records Checks for Employees of Long-Term Care Facilities

#### Subpart 1. Generally

#### ~~20 CAR § 404-101. Definitions.~~

~~As used in this part, the following definitions shall apply unless the policy clearly states otherwise:~~

~~(1) "Bureau" means the Identification Bureau of the Division of Arkansas State Police;~~

~~(2) "Care" means the treatment, services, assistance, education, training, instruction, or supervision for which the service provider is compensated either directly or indirectly;~~

~~(3) "Determination" means the determination made by the licensing agency that a service provider, operator, applicant for employment with, or employee of, a service provider is or is not disqualified from licensure, exemption from licensure, any other operating authority, or employment based on the criminal history of the service provider, operator, applicant, or employee;~~

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~~\_\_\_\_\_ (4) "Elderly" means persons sixty-five (65) years of age or older;~~

~~\_\_\_\_\_ (5)(A) "Employee" means a person who:~~

~~\_\_\_\_\_ (i) Has unsupervised access to residents (clients) of a service provider except as provided in subdivision (5)(B) of this section;~~

~~\_\_\_\_\_ (ii) Provides care to residents (clients) of a service provider on behalf of, under supervision of, or by arrangement with the service provider;~~

~~\_\_\_\_\_ (iii) Is employed by a service provider to provide care to residents (clients) of the service provider;~~

~~\_\_\_\_\_ (iv) Is a temporary employee placed by an employment agency with a service provider to provide care to residents (clients) of the service provider; or~~

~~\_\_\_\_\_ (v) Resides in an alternative living home in which services are provided to individuals with developmental disabilities.~~

~~\_\_\_\_\_ (B) "Employee" does not include a person who:~~

~~\_\_\_\_\_ (i) Is a family member of a resident (client) receiving care from a service provider;~~

~~\_\_\_\_\_ (ii) Is a volunteer; or~~

~~\_\_\_\_\_ (iii) Works in an administrative capacity and does not have direct access to residents (clients) of a service provider;~~

~~\_\_\_\_\_ (6)(A) "Employment clearance registry (ECR)" means a database system maintained by the Office of Long-Term Care of previously conducted criminal record checks that result in the employment disqualification of an individual.~~

~~\_\_\_\_\_ (B) This database also contains employment disqualification information on individuals based on substantiated administrative findings of patient abuse, neglect, or theft against employees of long-term care facilities;~~

~~\_\_\_\_\_ (7) "Individuals with disabilities" means persons with a mental or physical impairment who require assistance to perform one (1) or more of the following tasks of daily living:~~

~~\_\_\_\_\_ (A) Feeding;~~

~~\_\_\_\_\_ (B) Mobility;~~

~~\_\_\_\_\_ (C) Toileting; or~~

~~—————(D) Medication;~~

~~—————(8) "Licensing agency" means the state agency (Department of Human Services/Division of Provider Services and Quality Assurance/Office of Long Term Care) charged with licensing, exemption from licensure, or granting other operating authority to a service provider;~~

~~—————(9) "National criminal history check" means a review of national criminal records based on fingerprint identification or other positive identification methods;~~

~~—————(10) "Operator" means a person responsible for signing an application for an initial or renewal license to operate as a service provider;~~

~~—————(11) "Report" means a statement of the criminal history of an applicant, employee, or operator issued by the Identification Bureau of the Division of Arkansas State Police;~~

~~—————(12)(A) "Service provider" means a long term care facility as defined by Arkansas Code § 20-10-101 or § 20-10-702, "...a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long term medical or personal care".~~

~~—————(B)(i) **Note.** Additional service providers covered by Arkansas Code § 20-38-101 et seq. (formerly Arkansas Code § 20-33-201 et seq.) include home health agencies and hospice providers.~~

~~—————(ii) These service providers shall perform their criminal record checks through their licensing agency, the Division of Health Facility Services of the Department of Health.~~

~~—————(C)(i) Also covered are individuals or entities that provide services designated as Elderchoices providers.~~

~~—————(ii) These service providers shall perform their criminal record checks through the Division of Aging Adult and Behavioral Health Services of the Department of Human Services.~~

~~—————(B) **Note.** Prior to September 1, 2009, the term "qualified entity" was the same term and definition as "service provider"; and~~

~~—————(13) "State criminal history check" means a review of state criminal records conducted by the Identification Bureau of the Division of Arkansas State Police.~~

## **Subpart 2. Implementation**

### ~~—————20 CAR § 404-202. Conducting criminal history records checks.~~

~~—————Criminal record checks shall be conducted periodically as follows:~~

~~—————(1)(A) The requirement for a criminal record check for an operator shall apply to the first application signed by an operator and shall be required to undergo periodic criminal record checks no less than one (1) time every five (5) years.~~

~~—————(B) Upon the yearly licensure renewal of a long-term care facility, the operator signing the renewal application shall not be subject to a criminal record check unless the operator has not had an initial criminal record check or a periodic criminal record check conducted within the previous five (5) years as required by this part; and~~

~~—————(2)(A) Periodic criminal record checks shall be performed on all applicable employees on an ongoing basis.~~

~~—————(B) Each long-term care facility shall implement a schedule to conduct criminal record checks on applicable employees so that no applicable employee exceeds five (5) years without a new criminal record check.~~

### ~~—————20 CAR § 404-203. Nursing assistant trainees.~~

~~—————(a) Nursing assistant trainees shall be subject to a criminal record check under the following provisions:~~

~~—————(1)(A) Prior to a nursing home placing a person in a facility-based nursing assistant training program or sponsoring a person in a nonfacility-based training program, the facility shall conduct a criminal record check on the person.~~

~~—————(B) This is based on the requirement that a job offer has been made to the person to be an employee of the facility, or an on-call employee of the facility and sponsored through an intent to employ by the nursing home; and~~

~~—————(2) Nursing assistants who have received training as an independent student and not connected to an employment offer as discussed in subdivision (a)(1) of this section will be subject to a criminal record check at the time an employment offer has been made by any type of long-term care facility.~~

~~——(b)(1)(A) **Note.** The above requirements do not apply to independent (nonemployment status) trainees performing clinical training in a long-term care facility.~~

~~—————(B) Clinical training does not involve the provision of “care” as that term is defined herein.~~

~~—————(2)(A) Trainees, independent of an employment connection to a facility, are not required to have a criminal record check.~~

~~—————(B) However, nursing assistant trainees who are employed while still in training and used in staffing by a facility to provide care are subject to a criminal record check.~~

#### ~~——**20 CAR § 404-204. Temporary employees.**~~

~~——(a) When a long-term care facility determines the need to utilize temporary employees as provided by a private placement agency, contract staffing agency, or contract for care provided by an outside vendor, it shall be the responsibility of the private placement agency, contract staffing agency, or outside vendor to initiate the criminal record check as provided by this part prior to the placement of the person in the long-term care facility.~~

~~——(b) The process to implement this provision is as follows:~~

~~—————(1) When a long-term care facility determines the need to utilize a private placement agency, contract staffing agency, or contract for care provided by an outside vendor, the long-term care facility shall notify such agency/vendor to contact the Office of Long-Term Care for inclusion in the process to conduct criminal record checks as specified in this part;~~

~~—————(2) Upon contact by a private placement agency or contract agency/vendor as defined above, the office shall issue the necessary packet containing the rules, forms,~~

and numerical code to the agency/vendor to conduct criminal record checks in accordance with this part;

~~—————(3)(A) The private placement agency or contract agency/vendor shall initiate criminal record checks on applicable employees as prescribed in 20 CAR § 404-301 et seq.~~

~~—————(B) The office shall issue the "determination letter" to the agency/vendor;~~

~~—————(4)(A) Upon the assignment of a person to work in a long term care facility, the long term care facility must obtain a copy of the person's determination letter from the private placement agency or contract agency/vendor to verify compliance with this provision prior to the placement to work in the facility.~~

~~—————(B) **Note.** Pursuant to federal regulations, prior to placement to work with or access to residents, a long term care facility shall be responsible for conducting the "Registry" clearance on certified nursing assistants as described in 20 CAR § 404-302 and maintain verifying documentation of such clearance at the facility; and~~

~~—————(5)(A) Criminal record checks on persons assigned from private placement agencies or contract agencies/vendors must comply with the twelve month time limit provision specified in 20 CAR § 404-501.~~

~~—————(B) These persons are not eligible for the periodic record check provisions in 20 CAR § 404-202(2) and shall be subject to yearly criminal record checks.~~

~~—————(C) Each long term care facility must establish a procedure for periodically reviewing, at least annually, documentation provided pursuant to subdivision (b)(4) of this section.~~

~~—————**20 CAR § 404-205. State and national checks.**~~

~~—————(a)(1) Criminal record checks as required in this part shall include both a state and national record check.~~

~~—————(2) A "state only" criminal record check is allowed if the facility can verify the applicant has lived continuously in the State of Arkansas for the past five (5) years.~~

~~—(b)(1) **Note.** Examples of evidence that can be used to verify the above may include, but not limited to, employment records, payroll check stubs, tax records, rent/house payment records, utility bills, school records, etc.~~

~~———(2) Facilities shall maintain copies of such verification evidence in cases where a state only criminal record check was conducted.~~

~~———**20 CAR § 404-206. Right to obtain copy of check.**~~

~~——(a) If requested, each employee who has had a criminal record check conducted pursuant to this part has a right to obtain a copy, from the initiating entity, of the report issued by the Identification Bureau of the Division of Arkansas State Police and a copy of the determination letter issued by the Office of Long Term Care.~~

~~——(b) In all criminal record checks resulting in the disqualification of an individual, a copy of the determination letter issued by the office must be provided to the individual by the facility.~~

~~——(c) This provision shall apply in all cases, regardless of the payment source of the fee or fees.~~

~~———**20 CAR § 404-207. Completeness or accuracy of check.**~~

~~——(a) A person may challenge the completeness or accuracy of criminal history information issued by the Identification Bureau of the Division of Arkansas State Police in accordance with Arkansas Code § 12-12-1013.~~

~~——(b) The Office of Long Term Care shall make determinations based on the information obtained from the bureau and shall not be responsible for allegations regarding the disposition, expungement, or accuracy of the information.~~

~~——(c) Any challenges to the accuracy of the report should be directed to:~~

~~———Division of Arkansas State Police/Identification Bureau~~

~~———(501) 618-8500~~

~~———#1 State Police Plaza Drive~~

~~Little Rock, Arkansas 72209~~

~~**20 CAR § 404-208. Checks confidential.**~~

~~(a) All reports obtained under this part are confidential and are restricted to the exclusive use of the:~~

~~(1) Arkansas Crime Information Center;~~

~~(2) Identification Bureau of the Division of Arkansas State Police;~~

~~(3) Licensing agency; and~~

~~(4) Person who is the subject of the report.~~

~~(b) The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and are specifically exempt from disclosure under the Arkansas Freedom of Information Act, Arkansas Code § 25-19-101 et seq., except that the Office of Long Term Care is authorized and directed to furnish "determinations" to long term care facilities/service providers.~~

~~(c) **Note.** Arkansas Code § 12-12-1013 states that criminal history information may be provided to:~~

~~(1) The subject;~~

~~(2) The subject's attorney; or~~

~~(3) Other designee authorized in writing by the subject.~~

~~**20 CAR § 404-209. Records.**~~

~~(a) Each long term care facility shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Division of Arkansas State Police, or the licensing agency:~~

~~(1) Evidence that criminal record checks have been initiated on all applicable operators and employees; and~~

~~(2) A copy of the determinations received from the Office of Long Term Care.~~

~~(b)(1) The facility shall monitor all pending criminal record check applications to ensure results are received within:~~

- ~~\_\_\_\_\_ (A) Thirty (30) calendar days for a state record check; and~~
- ~~\_\_\_\_\_ (B) One hundred twenty (120) calendar days for a national record check.~~
- ~~\_\_\_\_\_ (2) The facility shall:~~
  - ~~\_\_\_\_\_ (A) Make all efforts to resolve pending applications that exceed these timeframes; and~~
  - ~~\_\_\_\_\_ (B) Document those efforts.~~
  - ~~\_\_\_\_\_ (c) For persons assigned from an applicable private placement agency or contracted agency/vendor, the facility shall maintain on file copies of the determination letter issued by the office.~~

### ~~**Subpart 3. Application Process for Employees**~~

#### ~~**20 CAR § 404-301. When to conduct check.**~~

- ~~\_\_\_\_\_ (a) A criminal record check must be conducted:~~
  - ~~\_\_\_\_\_ (1) When a person applies for a position as an employee, as defined by this part; and~~
  - ~~\_\_\_\_\_ (2) The long term care facility intends to make an offer of employment to the applicant.~~
- ~~\_\_\_\_\_ (b) The same process as described in this section shall also be used when incumbent employee's names are submitted for criminal record checks as required by 20 CAR § 404-202.~~

#### ~~**20 CAR § 404-302. Employment clearance registry.**~~

- ~~\_\_\_\_\_ (a)(1) The Office of Long Term Care shall maintain an online employment clearance registry database (ECR) of previously conducted criminal record checks on applicants of long term care facilities that resulted in an employment disqualification determination.~~
- ~~\_\_\_\_\_ (2) The online ECR shall also contain certification information for nursing assistants, plus administrative findings of abuse/neglect/theft and employment restriction information for:~~

~~—————(A) Nursing assistants;~~

~~—————(B) Various employees; and~~

~~—————(C) Job applicants.~~

~~——(b)(1) The online ECR system shall be available for inquiries by computer access to an online website system.~~

~~————(2) The URL address to the online website system shall be issued by the office, or its designated agent, and may be subject to change.~~

~~————(3) If needed, facilities should contact the office for the latest contact information for the system.~~

~~——(c)(1) The online ECR system shall be available twenty four (24) hours per day, seven (7) days per week (except for scheduled maintenance or at times of technical problems).~~

~~————(2) Past disqualification determinations shall be entered onto the online ECR system by the person's name and social security number.~~

~~——(d) The process to check the ECR shall be as follows:~~

~~————(1) At the time the facility intends to make an offer of employment to an applicant and prior to submitting any forms for a criminal record check, the facility shall contact the ECR online;~~

~~————(2) The facility shall enter their four digit "Registry Identification Number" assigned to all facilities by the office;~~

~~————(3)(A) The facility shall search by either the applicant's SSN and date of birth or the CNA certification number and date of birth.~~

~~————(B)(i) Name searches are possible on the online system but accuracy is not ensured.~~

~~————(ii) Name searches may also be obtained by calling the office.~~

~~————(iii) Please note, however, that name searches do not generate a verification log of the clearance.~~

~~————(iv) Therefore, facilities shall avoid the use of name searches when the need for documentation and accuracy of the registry check is required;~~

~~—————(4)(A) If no disqualification record exists in the online ECR system, the display screen shall respond as follows:~~

~~—————(i) For non-nursing assistants, "Inquiry Status — Not Found"; or~~

~~—————(ii) For nursing assistants, "Inquiry Status — Found" and shall display the individual's certification status and indicate in another field that the individual does not have any employment restrictions.~~

~~—————(B)(i) The online ECR system shall also provide the inquiring facility the ability to print a report of the search results.~~

~~—————(ii) Facilities shall be required to print the registry clearance report document and maintain this report in the applicant's or employee's file.~~

~~—————(C)(i) The statements quoted above mean that there have not been previous employment restrictions listed for that person.~~

~~—————(ii) See 20 CAR §§ 404-303 — 404-306 for further process instructions if no employment restriction was listed;~~

~~—————(5)(A) For the online ECR system, if a disqualification record does exist, for either nursing assistants or other employee positions, the system shall display "Inquiry Status — Found" and display on screen the results showing the employment restriction and direct the inquiring facility to contact the office for further details.~~

~~—————(B) Facilities shall be required to:~~

~~—————(i) Print the registry report document; and~~

~~—————(ii) Maintain this report in the applicant's or employee's file; and~~

~~—————(6)(A) Applicants with past disqualification determinations are ineligible for further employment unless a waiver has been granted.~~

~~—————(B) The facility has no further actions to make if the applicant has been previously disqualified for employment and has not been granted a waiver.~~

~~—————(C) If employment is offered to a person who has been granted a waiver, the facility shall conduct or have evidence of a current criminal record check in the same manner as if hiring a person who has no previous criminal history (see 20 CAR §§ 404-303 — 404-306).~~

~~—————(D)(i) **Note.** Waivers, as discussed in this context, shall include only those waivers granted from October 1, 1997 through October 1, 2001.~~

~~—————(ii) Effective October 1, 2001, waivers and the waiver process described in 20 CAR § 404-601 et seq. are not available.~~

~~—————**20 CAR § 404-303. State criminal records check.**~~

~~————If, after checking the online ECR system maintained by the Office of Long-Term Care, there was no previous disqualification determination listed on the applicant, the facility shall perform an on-line state criminal record check on the applicant before the facility offers the applicant employment, using the procedures required by the Identification Bureau of the Division of Arkansas State Police.~~

~~—————**20 CAR § 404-304. National criminal background check.**~~

~~————(a)(1) If the facility cannot verify that the applicant has lived continuously in the state for the past five (5) years, the facility shall also perform a national criminal history records check on the applicant.~~

~~————(2) The facility shall provide the applicant with the following:~~

~~————(A) A form DMS-736;~~

~~————(B) A preprinted fingerprint card provided by the Office of Long-Term Care;~~

~~————(C) A form FBI-1 DHS Verification; and~~

~~————(D) An envelope addressed as provided in DMS-736.~~

~~————(b) The facility may assist the applicant with the completion of the documents.~~

~~————(c) The applicant shall take the documents to law enforcement and request that law enforcement complete the:~~

~~————(1) Fingerprint process;~~

~~————(2) Fingerprint card; and~~

~~————(3) FBI-1 DHS Verification Form.~~

~~————(d)(1) Law enforcement shall then place those items, along with the DMS-736, into the envelope, addressed as provided in DMS-736, and seal the envelope.~~

- ~~—————(2) The applicant shall return the sealed envelope to the facility.~~
- ~~————(e)(1) The facility shall place the sealed envelope from the applicant into a second envelope, addressed as provided in DMS 736, along with any checks/payments/fees.~~
- ~~————(2) The facility shall seal the second envelope and return it to the office.~~
- ~~————(f)(1) **Note.** A national criminal history records check shall not be performed on any individual whom the facility can verify has lived continuously in the state for the past five (5) years or who provides care to residents of a service provider subject to a professional license.~~
- ~~————(2) See 20 CAR § 404-503 for the complete list of excluded professions.~~

~~———— **20 CAR § 404-305. Waiting for official check results.**~~

- ~~————(a) After employment clearance is obtained from the online ECR system maintained by the Office of Long-Term Care and the person has not listed prior criminal convictions on the DMS 736 form, a facility may make an offer of temporary employment to an applicant or continued employment to an incumbent employee while waiting for the official criminal record check results.~~
- ~~————(b) Facilities may choose to deny the applicant/employee unsupervised access to a person to whom the facility provides care until the criminal record check and determination of employment status have been completed.~~

~~———— **20 CAR § 404-306. Completion of checks.**~~

- ~~————(a) Upon completion of the criminal record check on an applicant or employee, the Identification Bureau of the Division of Arkansas State Police shall issue a report to the Office of Long-Term Care or the requesting facility, depending upon the results.~~
- ~~————(b) The office shall:~~
  - ~~————(1) Determine whether the applicant or employee is disqualified from employment; and~~
  - ~~————(2)(A) Issue its letter of determination to the:~~
    - ~~————(i) Applicant or employee; and~~
    - ~~————(ii) Facility or requesting entity.~~

~~—————(B) The letter of determination to the facility or requesting entity shall only state whether the applicant or employee is qualified or disqualified from employment.~~

~~——(c)(1) If the criminal record report issued by the Identification Bureau of the Division of Arkansas State Police lists any conviction, of any type or nature, the facility shall be required to remove from unsupervised direct care duties any person who was offered temporary or continued employment until the office's letter of determination has been received.~~

~~————(2) If the applicant or employee is disqualified from employment, the facility shall terminate the employment of the employee or deny employment to the applicant.~~

#### **Subpart 4. Application Process for Operators**

##### ~~——20 CAR § 404-401. Operator application for license.~~

~~——(a) When an operator applies for a license to operate a long term care facility, the operator shall complete a criminal record check form (DMS-736) and national record check fingerprint card obtained from the Office of Long Term Care.~~

~~——(b) The forms and appropriate fees shall be submitted to the office attached to the application for licensure of the facility.~~

~~——(c) Upon the determination that an applicant has submitted all necessary information for licensure, the office shall forward the criminal record check request form and fee payments to the Identification Bureau of the Division of Arkansas State Police.~~

~~——(d) Upon completion of the state and national record checks, the bureau shall issue a report to the office for a determination whether the operator is disqualified from licensure.~~

~~——(e) The determination results shall be forwarded to the facility seeking licensure.~~

##### ~~——20 CAR § 404-402. Timing and frequency of criminal record checks.~~

~~—(a) The requirement for a criminal record check for an operator shall apply to the first application signed by an operator and the operator shall undergo periodic criminal record checks no less than one (1) time every five (5) years.~~

~~—(b) Upon the yearly licensure renewal of a long-term care facility, the operator signing the renewal application shall not be subject to a criminal record check unless the operator has not had an initial or a periodic criminal record check conducted within the previous five (5) years.~~

#### ~~—20 CAR § 404-403. Provisional license.~~

~~—(a) The Office of Long-Term Care shall issue a forty-five calendar day provisional license to a long-term care facility whose operator has been determined to be disqualified based on these provisions.~~

~~—(b) A long-term care facility that is issued a provisional license based on the criminal record disqualification of the operator may resubmit the application for licensure with a new operator.~~

~~—(c) The new application must have evidence of submission of criminal record check for the new operator.~~

~~—(d) If the facility does not resubmit the correctly completed application within fifteen (15) calendar days of the issuance of the provisional license, then the facility's license shall be immediately denied or revoked.~~

#### ~~—20 CAR § 404-404. Failure or refusal to cooperate.~~

~~—If an operator or long-term care facility fails or refuses to cooperate in obtaining criminal record checks, such circumstances shall be grounds to deny or revoke the facility's license or operating authority, provided that the process of obtaining criminal record checks shall not delay the process of the application for a license or other operating authority.~~

### **Subpart 5. Exceptions/Exclusions**

~~— **20 CAR § 404-501. When check not required.**~~

~~— (a)(1) Any person who submits evidence of having maintained employment in the State of Arkansas for the past twelve (12) months and of successfully completing a criminal record check within the last twelve (12) months or in accordance with that person's professional license shall not be required to apply for a new criminal record check.~~

~~— (2) Copies of the previous criminal record check and determination letter issued by the Office of Long Term Care must be maintained by the facility for verification of this provision.~~

~~— (3) These persons shall be subject to the same periodic checks as other employees as described in 20 CAR § 404-202.~~

~~— (b)(1) **Note.** The acceptance of a previously conducted criminal record check is contingent upon compliance with provisions set forth in this part.~~

~~— (2) All provisions, such as the requirement for a national record check, must have been completed, if applicable.~~

~~— (3) The criminal record check must have been processed and a determination of employment status made by the office.~~

~~— **20 CAR § 404-502. Valid and transferable employment determination.**~~

~~— (a) Under some circumstances, an employment determination performed by other offices or divisions of the Department of Human Services and the criminal history records check used to make the determination for an applicant or employee of a service provider are valid and transferrable for purposes of meeting the requirements of this part for application or employment in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) and the ICF/MR is not required to conduct any further criminal records check except for periodic checks as described in 20 CAR § 404-202.~~

~~— (b) A valid and transferrable employment determination must meet the following conditions:~~

~~— (1) The determination must be made by:~~

~~—————(A) The Division of Child Care and Early Childhood Education for an applicant or employee of a child care facility or church exempt child care facility; or~~

~~—————(B) The Division of Developmental Disabilities Services for:~~

~~—————(i) An Alternative Community Services Waiver Program provider;~~

~~—————(ii) An early intervention provider; or~~

~~—————(iii) A nonprofit community program;~~

~~—————(2) The ICF/MR employee or applicant will be continuously employed by the service provider in one (1) or more of the service provider types listed in subdivision (b)(1)(A) or (B) of this section;~~

~~—————(3) The service provider types listed in subdivision (b)(1)(A) or (B) of this section, in which the employee or applicant will be employed are operated and administered by the same service provider;~~

~~—————(4) The ICF/MR or the parent service provider maintains evidence acceptable to the Office of Long Term Care that the service provider types listed in subdivision (b)(1)(A) or (B) of this section, are operated and administered by the same service provider; and~~

~~—————(5) The ICF/MR and all service provider types listed in subdivision (b)(1)(A) or (B) of this section, in which the employee or applicant is employed maintains an original or copy of the determination letter by the divisions listed in subdivision (b)(1)(A) or (B) of this section.~~

~~—————**20 CAR § 404-503. Professional licenses.**~~

~~————The requirement for a criminal record check under this part shall not apply to persons who render care subject to professional licenses obtained for the following occupations:~~

~~—————(1) Licensed professional counselors;~~

~~—————(2) Social workers;~~

~~—————(3) Dentists;~~

~~—————(4) Registered or licensed practical nurses;~~

~~—————(5) Occupational therapists;~~

- ~~—— (6) Pharmacists;~~
- ~~—— (7) Physical therapists;~~
- ~~—— (8) Physicians and surgeons;~~
- ~~—— (9) Podiatrists;~~
- ~~—— (10) Psychologists and psychological examiners; or~~
- ~~—— (11) Speech language pathologists and audiologists.~~

## **Subpart 6. Waivers**

### ~~—— **20 CAR § 404-601. Waivers.**~~

~~—— (a) For the period from October 1, 1997, through October 1, 2001, the Office of Long Term Care offered a waiver process to individuals who had been disqualified from employment based on their criminal history.~~

~~—— (b) Pursuant to Acts 2001, No. 1710, the office is prohibited from granting waivers.~~

~~—— (c)(1) For purposes of this part, effective October 1, 2001, waivers and the previous waiver process are not available.~~

~~—— (2) However, previously granted waivers shall remain in effect unless revoked as described in 20 CAR § 404-604.~~

### ~~—— **20 CAR § 404-602. Disqualification.**~~

~~—— (a) If the employment disqualification has been previously waived, the individual's status on the employment clearance registry (see 20 CAR § 404-301 et seq.) shall continue to list the individual with a disqualification.~~

~~—— (b) The inquiring party shall be transferred to staff at the Office of Long Term Care to receive additional information regarding the waiver approval.~~

### ~~—— **20 CAR § 404-603. Effect of waiver.**~~

~~—— (a) A facility is not obligated to employ or offer permanent employment to an applicant or retain an employee who has been granted a waiver.~~

~~—(b) If employment is offered to a person who has been granted a waiver, the hiring facility shall conduct a current criminal record check to determine if additional convictions exist since the waiver was initially granted.~~

~~—(c) Incumbent employees who have been previously granted a waiver shall continue to be subject to the periodic criminal record checks as described in this part and shall be subject to the provisions of this section.~~

#### ~~**20 CAR § 404-604. Revocation of waiver.**~~

~~—(a) Any further criminal convictions of any nature or substantiated administrative findings of abuse, neglect, or theft shall be grounds to revoke a waiver.~~

~~—(b) A person who has a waiver revoked shall not be eligible for another waiver.~~

### ~~**Subpart 7. Sanctions/Penalties**~~

#### ~~**20 CAR § 404-701. Penalties generally.**~~

~~—(a) A long term care facility that violates or fails to comply with requirements to obtain and maintain on file documentation of criminal record checks as specified in this part shall be assessed civil money penalties or shall be grounds to deny or revoke the facility's license.~~

~~—(b) The decision regarding penalties shall be made by the Director of the Office of Long Term Care.~~

~~—(c) The director, in his or her discretion, may:~~

~~—(1) Elect to assess the penalties as outlined in this part; or~~

~~—(2) Allow a specified period of time for correction of said violation or violations.~~

#### ~~**20 CAR § 404-702. Criteria for assessing penalties.**~~

~~—In determining whether a penalty is to be assessed and in affixing the type and/or amount of monetary penalty, the Director of the Office of Long Term Care shall consider:~~

- ~~—————(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted;~~
- ~~—————(2) The severity and scope of the actual or potential harm;~~
- ~~—————(3) The extent to which the provisions of the applicable statutes or rules were violated; and~~
- ~~—————(4)(A) The "good faith" exercised by the facility.~~
- ~~—————(B) Indications of good faith include, but not limited to:~~
  - ~~—————(i) Awareness of the applicable statutes and rules and reasonable diligence in securing compliance;~~
  - ~~—————(ii) Prior accomplishments manifesting the facility's desire to comply with the requirements;~~
  - ~~—————(iii) Efforts to correct; and~~
  - ~~—————(iv) Any other mitigating factors in favor of the facility.~~

~~—————**20 CAR § 404-703. Violations.**~~

~~—————(a)(1) Violations or failures to comply with these requirements are subject to a Class C civil penalty as described in Subpart 13, Fines and Sanctions, of Rules for Nursing Homes, 20 CAR pt. 400, and Appendix B of the Rules for the Licensure of Residential Long-Term Care Facilities, 20 CAR pt. 401.~~

~~—————(2) All Class C violations shall be based on a point system as contained in "Fines and Sanctions" sections in the facility's licensure manual.~~

~~—————(b) Class C violations are subject to a civil penalty not to exceed five hundred dollars (\$500) for each violation.~~

~~—————(c) Each subsequent Class C violation within a six-month period from the first violation shall subject the facility to a civil penalty double that of the preceding violation until a maximum of one thousand dollars (\$1,000) per violation is reached.~~

~~—————**20 CAR § 404-704. Notification of violations.**~~

Notifications of violations and any subsequent hearings shall conform to such provisions as outlined in Subpart 13, Fines and Sanctions, of Rules for Nursing Homes, 20 CAR pt. 400, as listed above.

~~— 20 CAR § 404-705. Misdemeanor.~~

~~— Any unlicensed long-term care facility violating this part shall be guilty of a Class A misdemeanor for each violation.~~

**Subpart 8. Appeals**

~~— 20 CAR § 404-801. Hearings.~~

~~— (a) Administrative hearings are available to persons, herein referred to as petitioners, who disagree with determinations of employment or licensure disqualification made by the Office of Long-Term Care as described in this part.~~

~~— (b) These provisions do not apply to a person's challenge of the record obtained from the Identification Bureau of the Division of Arkansas State Police (see 20 CAR § 404-207).~~

~~— 20 CAR § 404-802. Notice of appeal.~~

~~— (a) When a petitioner wishes to appeal, he or she may do so by mailing a written notice of appeal to:~~

~~— Department of Human Services~~

~~— Office of Chief Counsel, Appeals and Hearings (Slot 1001)~~

~~— P.O. Box 1437~~

~~— Little Rock, Arkansas 72203~~

~~— (b)(1) The notice shall be mailed by certified mail, return receipt requested.~~

~~— (2) The notice of appeal shall state the following:~~

~~— (A) Name of the petitioner;~~

- ~~\_\_\_\_\_ (B) Address of the petitioner;~~
- ~~\_\_\_\_\_ (C) Date of birth of the petitioner;~~
- ~~\_\_\_\_\_ (D) Phone number, if any, of the petitioner;~~
- ~~\_\_\_\_\_ (E) The petitioner's place of employment; and~~
- ~~\_\_\_\_\_ (F) A short statement explaining why the petitioner believes the determination/decision is in error.~~
- ~~\_\_\_\_\_ (c) The notice of appeal must be received within thirty (30) calendar days from the mailing date of the notification document of the determination of employment disqualification or waiver denial.~~
- ~~\_\_\_\_\_ (d) No appeal shall be accepted prior to such a determination/decision.~~

~~\_\_\_\_\_ **20 CAR § 404-803. Hearing procedures.**~~

- ~~\_\_\_\_\_ (a) A hearing shall be conducted by the Appeals and Hearings Section.~~
- ~~\_\_\_\_\_ (b) The procedures to conduct the hearing are as follows:~~
  - ~~\_\_\_\_\_ (1)(A) The hearing record will contain all documents, exhibits, and testimony admitted into evidence by the hearing officer.~~
  - ~~\_\_\_\_\_ (B)(i) Within twenty (20) calendar days of receipt of notice that a petitioner has requested a hearing, the petitioner and the Office of Long Term Care will prepare a file to be submitted to the Appeals and Hearings Section and mail a copy of the file by certified mail, return receipt requested, to the other party.~~
  - ~~\_\_\_\_\_ (ii) The file will contain only documentary evidence supporting or tending to support each party's allegations.~~
  - ~~\_\_\_\_\_ (C)(i) The Office of Long Term Care will also submit an administrative hearing statement summarizing the determination/decision.~~
  - ~~\_\_\_\_\_ (ii) This statement is not evidence.~~
  - ~~\_\_\_\_\_ (D) Only such portions of each file as are determined by the hearing officer to be relevant shall be included in the administrative hearing record;~~
  - ~~\_\_\_\_\_ (2)(A) Both parties will be advised by the Appeals and Hearings Section 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.~~

~~—————(B) The request shall include the name, address, and telephone number of all witnesses not employed by the department.~~

~~—————(C) Department employees will be:~~

~~—————(i) Expected to attend hearings and present testimony without the benefit of a subpoena; and~~

~~—————(ii) Notified by the Appeals and Hearings Section of their required presence at the hearing.~~

~~—————(D) Each party will:~~

~~—————(i) Be notified of any witnesses requested; and~~

~~—————(ii) Have five (5) working days from the receipt of this notice to request subpoenas for rebuttal witnesses.~~

~~—————(E) The department's Office of Chief Counsel will issue the subpoenas, pursuant to the terms and authority of Arkansas Code § 20-76-103;~~

~~—————(3)(A) After the time frame has expired for subpoenaing witnesses, the hearing officer will schedule the hearing to afford the petitioner, the Office of Long-Term Care, and their attorneys, if any, at least ten (10) calendar days' notice of the date, place, and time of the hearing.~~

~~—————(B) 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.~~

~~—————(C) In the event the petitioner, the Office of Long-Term Care 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.~~

~~—————(D) The hearing will be rescheduled by the hearing officer upon a showing of good cause.~~

~~—————(E) 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.~~

~~\_\_\_\_\_ (F) 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 and time convenient for the petitioner;~~

~~\_\_\_\_\_ (5)(A) If the petitioner fails to appear for the hearing and does not contact the Appeals and Hearings Section prior to the date of the hearing of his or her inability to attend, the appeal will be deemed abandoned.~~

~~\_\_\_\_\_ (B) The petitioner will be advised of this fact in the scheduling letter;~~

~~\_\_\_\_\_ (6)(A) It is the responsibility of the Office of Long-Term Care to designate a representative prior to the time of the hearing.~~

~~\_\_\_\_\_ (B) The representative should be:~~

~~\_\_\_\_\_ (i) Familiar with the circumstances of the determination/decision; and~~

~~\_\_\_\_\_ (ii) Able to summarize the pertinent aspects of the situation and present the documentation to support the basis for the determination/decision.~~

~~\_\_\_\_\_ (C) The representative should also be:~~

~~\_\_\_\_\_ (i) Able to answer questions posed by the petitioner or the hearing officer relative to the issues; and~~

~~\_\_\_\_\_ (ii) Prepared to cross-examine adverse witnesses.~~

~~\_\_\_\_\_ (D) The representative may request the services of an Office of Chief Counsel attorney for representation at the hearing;~~

~~\_\_\_\_\_ (7)(A) If any party is to be represented by an attorney, notice shall be given to all parties and to the Appeals and Hearings Section at least ten (10) calendar days prior to the hearing.~~

~~\_\_\_\_\_ (B) Failure to furnish notice shall entitle other parties to a continuance to obtain counsel.~~

~~\_\_\_\_\_ (C) 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 Appeals and Hearings Section who had no part in the determination/decision upon which the hearing is being conducted;~~

- ~~(9) The petitioner may be:~~
- ~~(A) Accompanied by friends or other persons; and~~
  - ~~(B) Represented by:~~
    - ~~(i) A friend;~~
    - ~~(ii) Legal counsel; or~~
    - ~~(iii) 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 his or her representative;~~
- ~~(11)(A) The hearing will be conducted in an informal but orderly manner.~~
- ~~(B) The hearing officer will explain the hearing procedure to the petitioner.~~
  - ~~(C) The administrative hearing statement will be read by the Office of Long Term Care representative who will present his or her case, which includes introducing evidence and questioning witnesses.~~
  - ~~(D)(i) After completion of the Office of Long Term Care's case, the petitioner's case will be presented.~~
    - ~~(ii) This includes the opportunity to:~~
      - ~~(a) Present witnesses;~~
      - ~~(b) Advance arguments;~~
      - ~~(c) Offer additional evidence;~~
      - ~~(d) Question the representative; and~~
      - ~~(e) Confront and cross-examine adverse witnesses.~~
    - ~~(iii) If the petitioner is unable to present his or her evidence in a logical manner, the hearing officer will assist him or her.~~
  - ~~(E) Questioning of all parties will be confined to the issue or issues involved; and~~
- ~~(12)(A) The hearing officer will prepare a comprehensive report of the proceedings.~~
- ~~(B) The report will consist of:~~

- ~~\_\_\_\_\_ (i) An introduction;~~
- ~~\_\_\_\_\_ (ii) Findings of fact;~~
- ~~\_\_\_\_\_ (iii) Conclusions of law; and~~
- ~~\_\_\_\_\_ (iv) A decision.~~
- ~~\_\_\_\_\_ (C) The report shall constitute the final agency determination.~~
- ~~\_\_\_\_\_ (D) The determination shall be mailed to the petitioner and the Office of Long Term Care.~~

~~\_\_\_\_\_ **20 CAR § 404-804. Further review.**~~

~~\_\_\_\_\_ Any further review must be pursued in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.~~

REPEALED