

Proposed Rulemaking

Rules for Home Health Agencies in Arkansas

Promulgated by:
Department of Health

Title 20. Public Health and Welfare

Chapter I. Generally, Department of Health

Subchapter B. Health Facilities

Part 46. Rules for Home Health Agencies in Arkansas

Subpart 1. Generally

20 CAR § 46-101. Preface.

(a)(1) This part has been prepared for the purpose of establishing a criterion for minimum standards for the licensure of home health agencies in Arkansas that is consistent with current trends in patient care practices.

(2) By necessity they are of a regulatory nature but are considered to be practical minimal design and operational standards for these facilities.

(3) These standards are:

(A) Not static; and

(B) Are subject to periodic revisions in the future as new knowledge and changes in patient care trends become apparent.

(b) However, it is expected that facilities will:

(1) Exceed these minimum requirements; and

(2) Not be dependent upon future revisions in these standards as a necessary prerequisite for improved services.

(c) Each home health agency has a strong moral responsibility for providing optimum patient care and treatment for the patients it serves.

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20 CAR § 46-102. Purpose.

(a) In accordance with Arkansas Code § 20-10-801 et seq., rules and minimum standards for home health programs operating in the State of Arkansas are hereby established.

(b) This part:

(1) Will ensure high quality professional care for patients in their homes by providing for the safe, appropriate care of all admitted to a home health program regardless of setting; and

(2) Shall apply to both new and existing agencies.

20 CAR § 46-103. Definitions.

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

(1) "Administrator" means a person who is:

(A) An agency employee; and

(B) A physician, registered nurse, or an individual with at least one (1) year of supervisory or administrative experience in:

(i) Home health care; or

(ii) Related health provider programs;

(2) "Aide assignment sheet aide service plan" means written assignments developed and supervised by a qualified supervisor for the tasks to be completed by the aide;

(3)(A) "Branch office" means a location or site, other than the Arkansas primary agency's principal office location, from which a home health agency provides services within its geographic service area.

(B) The primary agency provides direct support and administrative control of its branches;

(4)(A) "Certified agency" means a home health agency that is:

(i) Primarily engaged in providing:

- (a) Skilled nursing services; and
 - (b) Other therapeutic services; and
 - (ii) Licensed pursuant to state law.
- (B) The agency shall meet the:
 - (i) Conditions of participation as a home health agency under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.; and
 - (ii) Regulations adopted thereunder (42 C.F.R. § 405.1201 et seq.),which regulations are incorporated by reference herein for all purposes;
- (5) "Clinical manager" means a licensed:
 - (A) Physician;
 - (B) Physical therapist;
 - (C) Speech language pathologist;
 - (D) Occupational therapist;
 - (E) Audiologist;
 - (F) Social worker; or
 - (G) Registered nurse;
- (6) "Clinical note" means a dated, written or electronic, and signed notation by agency personnel of a contact with a patient, including a description of:
 - (A) Signs and symptoms;
 - (B) Treatment ~~and~~/or medication given;
 - (C) The patient's response;
 - (D) Other health services provided; and
 - (E) Any changes in physical and/or emotional condition;
- (7) "Clinical record" means an accurate account of services:
 - (A) Provided for each patient; and
 - (B) Maintained by the agency;
- (8) "Contractor" means an entity or individual providing services for the agency who does not meet the definition of employee;
- (9) "Coordinating" means bringing needed services into a common action, movement, or condition of the health of the patient;

(10) "Department" means the Department of Health's Division of Health Facilities Services;

(11) "Discharge summary" means a recapitulation of all services provided by the home health agency before discharge of a patient;

(12) "Employee" means any individual for whom the agency is required to issue a Form W-2;

(13) "Health" means the condition of being sound in body, mind, and spirit, especially freedom from physical disease or pain;

(14) "Health assessment" means a determination of a patient's physical and mental status performed by medical professionals;

(15) "Home health agency" means any person, partnership, association, corporation, or other organization, whether public or private, proprietary or nonprofit, that provides a home health service for pay or other consideration in a patient's residence;

(16) "Home health aide" means a person who provides home health aide services for a person in the home under the supervision of a licensed healthcare professional;

(17) "Home health services" means the providing or coordinating of acute, restorative, rehabilitative, maintenance, preventive, or health promotion services through professional nursing or by other therapeutic services such as physical therapy, speech therapy, occupational therapy, medical social services, home health aide, or personal services in a client's residence;

(18) "Licensed practitioner" means an individual permitted by law and by the home health agency to prescribe care;

(19) "Maintenance" means to keep in an existing state;

(20) "Parent agency" means the Medicare-certified agency physically located within the state that develops and maintains administrative control of branches;

(21) "Patient care conference" means a documented conference among the home health agency staff or contractors providing care to a patient to evaluate:

(A) Patient care needs; and

(B) The delivery of service;

(22) "Personal care" means medically prescribed health-related assistance in activities of:

(A) Daily living;

(B) Hygiene; and

(C) Grooming;

(23) "Personal care aide" means a person with training as defined in 20 CAR § 46-109(b) who provides personal care services for a person in their home;

(24) "Physician" means a person who is currently licensed under the Arkansas Medical Practices Act, Arkansas Code § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;

(25) "Place of business" means any office of a home health agency that:

(A) Maintains home health service patient records; or

(B) Directs home health services;

(26) "Plan of care" means a written plan that:

(A) Specifies scope, frequency, and duration of services; and

(B) Is signed by a qualified practitioner;

(27) "Preventive" means to keep from happening or existing;

(28) "Quality of care" means clinically competent care, supported and directed in a planned pattern to achieve maximum dignity at the required level of comfort, preventive health measures, and self-management;

(29) "Rehabilitative" means to restore or bring to a condition of health or useful and constructive activity;

(30) "Residence" means a place where a person resides, including a:

(A) Home;

(B) Nursing home;

(C) Residential care facility; or

(D) Convalescent home for the disabled or aged;

(31) "Restorative" means something that serves to restore to:

(A) Consciousness;

(B) Vigor; or

(C) Health;

(32) "Service area" means the land area for which the agency shall be licensed that shall be:

(A) Consistent with its Certificate of Need (CON) or Permit of Approval (POA); and

(B) Up to one hundred (100) miles from the primary and/or branch office;

(33) "Skilled care services" includes:

(A) Skilled nursing services;

(B) Physical therapy;

(C) Respiratory therapy services;

(D) Speech-language pathology services;

(E) Occupational therapy;

(F) Medical social work services; and

(G) Physician services;

(34) "Skilled professional" means a person licensed and trained to provide skilled services according to their applicable licensing board;

(35) "Supervision" means authoritative procedural guidance by a qualified person acting within his or her applicable scope of practice to a function or activity;

(36)(A) "Supervisor" means:

(i) A skilled professional; or

(ii) One who has completed two (2) years of full-time study at an accredited institution of higher education.

(B) An individual who has a high school diploma or GED may substitute one (1) year of full-time employment in a supervisory capacity in a healthcare facility or community-based agency for one (1) year at an institution of higher education; and

(37) "Visit" means a face-to-face visit:

(A) In the client's residence; or

(B) By the use of information technology.

20 CAR § 46-104. Agency location.

(a)(1) No person, partnership, association, corporation, or other organization, whether public or private, proprietary or nonprofit, shall provide home health services in the State of Arkansas without a licensed fully operational physical location within the state.

(2) Each agency office:

(A) Will be located within the geographic area identified in the Certificate of Need or Permit of Approval; and

(B) May provide services up to one hundred (100) miles from the parent agency or branch office.

(b) Branch office.

(1)(A)(i) The parent home health agency shall submit an application to notify the Division of Health Facilities Services in advance of the plan to establish a branch office by completing the Home Health Agency Notification for Branch Office form.

(ii) See Form HHA-001.

(B) Included in the notification application shall be a description of:

(i) The services to be provided;

(ii) The geographic area to be served by the branch office; and

(iii) A description of exactly how supervision by the parent agency will occur.

(C) All branch offices shall be subject to survey by the division.

(2) The parent agency must provide direct support and administrative control of its branches, to include:

(A) Board of directors or other corporate governing body oversight;

(B) Contracted services;

(C) Quality assurance and performance improvement plan;

(D) Policy and procedure implementation;

(E) Staffing;

(F) Human resource management;

(G) Disposition of closed clinical records; and

(H) Staff training.

20 CAR § 46-105. Exemptions.

(a)(1) The act exempts from its licensing requirements persons who:

(A) Hold other licenses; or

(B) Engage in certain limited activities.

(2) A person providing home health services as defined in the act, in addition to the limited activities for which an exemption would otherwise be available, shall obtain a license to provide the home healthcare services.

(b) The following persons are not required to be licensed under Arkansas Code § 20-10-802:

(1) A physician, dentist, registered nurse, or physical therapist who is currently licensed under the laws of Arkansas who provides home health services only to a patient as a part of his or her private office practice, and the services are incidental to such office practice;

(2) The following healthcare professionals providing home health service as a sole practitioner:

(A) A registered nurse;

(B) A licensed vocational nurse;

(C) A physical therapist;

(D) An occupational therapist;

(E) A speech therapist;

(F) A medical social worker; or

(G) Any other healthcare professional as determined by the Division of Health Facilities Services;

(3) A nonprofit registry operated by a national or state professional association or society of licensed healthcare practitioners, or a subdivision thereof, that:

(A) Operates solely as a clearinghouse to put consumers in contact with licensed healthcare practitioners who will give care in a patient's residence; and

(B) Neither maintains the official patient records nor directs patient services;

(4) An individual whose permanent residence is in the patient's residence;

(5) An employee of a person holding a license under this act who:

(A) Provides home health services only as an employee of the licensed person; and

(B) Receives no benefit for providing home health services other than wages from the employer;

(6) A home, nursing home, convalescent home, or other institution for the disabled or aged that provides health services only to residents of the home or institution;

(7) A person who provides one (1) health service through a contract with a person licensed;

(8) A durable medical equipment supply company;

(9) A pharmacy or wholesale medical supply company that furnishes those services, to persons in their homes, that relate to drugs and supplies;

(10) A hospital or other licensed healthcare facility serving only inpatient residents;

(11) A visiting nurse service or home aide service constructed by and for the adherents of a religious denomination for the purpose of providing service for those who depend upon spiritual means through prayer alone for healing; and

(12) Persons providing services to one (1) or more developmentally disabled persons, as defined in Arkansas Code § 20-48-101, under a license or certificate from the Division of Developmental Disabilities Services of the Department of Human Services;

(13) A licensed, certified Program of All-Inclusive Care for the Elderly (PACE) provider in good standing under the administration of the Arkansas Medicaid Program and providing services to enrolled PACE participants as part of the participants' documented individual care plans within PACE; and

(14) An entity that solely provides therapy services not reimbursed under Medicare Part A by healthcare professionals licensed under Arkansas Code §§ 17-93-101 – 17-93-312, Arkansas Code § 17-88-101 et seq., or Arkansas Code §§ 17-100-102 – 17-100-308.

(c) Claims of exemption under the act should be presented to the Division of Health Facilities Services in writing with supporting documentation.

20 CAR § 46-106. Application for license.

(a) Any person, partnership, association, corporation, or other organization, whether public or private, proprietary or nonprofit, who supplies individuals to provide any of the services listed below shall be considered an agency.

(b)(1) Agencies shall be required to obtain a license if the following services are provided to an individual in their home or place of residence.

(2) These services include:

- (A) Skilled nursing services;
- (B) Physical therapy services;
- (C) Occupational therapy services;
- (D) Speech-language pathology services;
- (E) Medical social work services;
- (F) Home health aide services;
- (G) Personal care aide services; and
- (H) Extended care services.

(c)(1) Prior to applying for a license, an agency shall obtain a Permit of Approval (POA).

(2) Each agency:

- (A) Must serve the area that is consistent with its Certificate of Need or POA; and
- (B) May serve up to a one-hundred-mile radius of the parent agency or branch office.

(3) Only under conditional emergency circumstances approved by the Division of Health Facilities Services may an agency provide care outside the boundaries of its POA.

(4) See requirements for conditional emergency service, 20 CAR § 46-114.

(d)(1) Annual license applications shall be:

(A) On forms prescribed by the division; and

(B) Effective on a calendar-year basis with an expiration date of December

31.

(2)(A) Each agency shall receive either a Class A or Class B license.

(B) If the agency is certified to participate in the Medicare program, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq., a Class A license shall be issued.

(C) A Class A agency shall meet the conditions of participation as a home health agency under Title XVIII of the Social Security Act and the regulations adopted thereunder (42 C.F.R. § 405.1201 et seq.), which regulations are adopted by reference herein for all purposes.

(3) If the agency is not certified to participate in the Medicare program but provides home health services as defined by Arkansas Code § 20-10-801 et seq., a Class B license shall be issued.

(4)(A) Any agency holding a Class A license may obtain a derivative Class B license from the division provided that the agency holding said Class A license meets the licensing standards set forth in Arkansas Code § 20-10-801 et seq., and the rules herein for Class B licensure.

(B) A Class B license so issued to the holder of a Class A license shall not be severed from the underlying Class A license nor separately extended into geographic areas apart from the Class A service area.

(C) A separate POA from the holder of a Class A license shall not be required by the division in order to issue a derivative Class B license.

(5) Each Class A or Class B license shall designate whether an agency provides the following categories of service:

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- (A) Intermittent skilled care;
- (B) Extended care; and/or
- (C) Personal care.

(6)(A) When a category of service is added, the agency shall notify the division of the intent.

(B) The division shall then request from the agency the appropriate information needed to determine if the agency meets the regulatory requirements for the category of service being requested.

(C) Once this determination is made, the division shall make the appropriate changes to the license.

(7)(A) If a category of service is being discontinued, the agency shall notify the division.

(B) Notification must include information on how the agency will ensure appropriate transfer of patients.

(8)(A) Each agency that is licensed Class A or Class B shall meet the general requirements section of this part.

(B) According to services provided, agencies shall also be required to meet other sections as follows:

- (i) Skilled care — general requirements, 20 CAR § 46-110, and standards for skilled care services, 20 CAR § 46-111;
- (ii) Extended care — general requirements, 20 CAR § 46-110, standards for skilled care services, 20 CAR § 46-111, and standards for extended care services, 20 CAR § 46-112; and
- (iii) Personal care — general requirements, 20 CAR § 46-110 and standards for personal care services, 20 CAR § 46-113.

(e) The agency shall notify the division of any of the following:

- (1) Change of name;
- (2) Change of location;
- (3) Addition or deletion of services provided;
- (4) Request to change license classification;

- (5) If a Class A agency, notification of changes in certified status;
 - (6) Change in contact information including:
 - (A) Correspondence address;
 - (B) Telephone number;
 - (C) Email; and
 - (D) Fax number; and
 - (7) Change of ownership.
- (f) **Agency closure.** If a licensed agency closes it shall:
- (1) Notify the division in writing of:
 - (A) The effective date;
 - (B) Plans for transfer of current patients; and
 - (C) Plans for storage and retrieval of medical records; and
 - (2) Return original license to the division.

20 CAR § 46-107. Inspections.

- (a) A review and/or inspection shall be conducted before the license is issued.
- (b) The addition of a service category to an existing license requires approval by the Division of Health Facilities Services.
- (c)(1) Agencies applying for licensure will receive an initial inspection.
- (2) Subsequent inspections will be conducted periodically at least every three (3) years.
- (d)(1) If the inspection is conducted in order to determine compliance with standards, the agency shall come into compliance within sixty (60) days.
- (2) An onsite follow-up visit or a follow-up by mail shall be conducted to determine if deficiencies have been corrected.

20 CAR § 46-108. Denial, suspension, revocation of license.

- (a) A home health agency license may be denied, suspended, or revoked for one (1) or more of the following reasons:
 - (1) Violation of:

- (A) The provisions of the statute; or
 - (B) Any of the standards in this part;
 - (2) Misstatement of a material fact on any documents required to be submitted to the Division of Health Facilities Services or requirements to be maintained by the agency pursuant to this part;
 - (3) Commission by the agency or its personnel of a false, misleading, or deceptive act or practice;
 - (4) Materially altering any license issued by the division; or
 - (5) An intentional or negligent act by the agency or its employees that materially affects the health and safety of a patient.
- (b)(1) If the division proposes to deny, suspend, or revoke a license, the director shall:
- (A) Notify the agency of the reasons for the proposed action; and
 - (B) Offer the agency an opportunity for a hearing.
 - (2) The agency may request a hearing within thirty (30) days after the date the agency receives notice.
 - (3) The request shall be in writing and submitted to the Division of Health Facilities Services, Department of Health, 5800 West Tenth, Suite 400, Little Rock, Arkansas 72204.
 - (4) A hearing shall be conducted pursuant to the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.
 - (5) If the agency does not request a hearing in writing after receiving notice of the proposed action, the:
 - (A) Agency is deemed to have waived the opportunity for a hearing; and
 - (B) Proposed action shall be taken.
- (c)(1) The division may suspend or revoke a license to be effective immediately when the health and safety of patients are threatened.
- (2) The division shall notify the agency of the:
 - (A) Emergency action; and

(B) Date of a hearing, which shall be within seven (7) days of the effective date of the suspension or revocation.

(3) The hearing shall be conducted pursuant to the Arkansas Administrative Procedure Act.

20 CAR § 46-109. Training.

(a) Home health aide training.

(1)(A) Duration of home health aide classroom and supervised practical training shall include classroom and supervised practical training under the direct supervision of a registered nurse.

(B) Classroom and supervised practical training must:

(i) Total at least seventy-five (75) hours; and

(ii) Include a minimum of sixteen (16) hours of classroom training prior to the minimum sixteen (16) hours of supervised practical training.

(2) Content of home health aide training must address the subject areas listed in attached Table 2.

(b) Personal care aide training. Training provided by the agency shall:

(1) Include all the topics listed in the attached Table 1;

(2) Be supervised by a registered nurse;

(3) Be a minimum of forty (40) hours to include classroom and clinical instruction related to the home setting; and

(4) Have written:

(i) Course objectives;

(ii) Expected outcomes; and

(iii) Method or methods of evaluation.

(c) All home health aide and personal care aide training must be approved by the Division of Health Facilities Services.

(d) ~~Unless the agency has been properly authorized by the division to operate a school, training shall be limited to agency employees.~~ A home caregiver who previously

completed training as described in 20 CAR §46-108 and provides documentation of the completed training shall not be required to repeat the training.

20 CAR § 46-110. General requirements.

(a) **Policies and procedures.** The agency shall have annually reviewed, written policies including:

(1) **Organizational.**

(A) A description of the structure showing:

(i) Ownership; and

(ii) Lines of authority down to the patient service level;

(B) The services offered;

(C) Hours of operation;

(D) Criteria for patient:

(i) Acceptance;

(ii) Referral;

(iii) Transfer; and

(iv) Termination; and

(E) An annual operating budget approved by the governing body and/or administrator;

(2) Orientation of all personnel to the policies and objectives of the agency;

(3) Personnel policies;

(4) Procedures for all tasks and patient care;

(5) Reporting changes in patient condition;

(6) Agency-wide infection control program that:

(A) Has as its goal the prevention and control of the spread of infection and communicable disease;

(B) Has work restrictions according to Centers for Disease Control and Prevention recommendations; and

(C)(i) Has measures for prevention of communicable disease outbreaks, especially *Mycobacterium tuberculosis* (TB).

(ii) All plans for the prevention of transmission of TB shall conform to the most current Centers for Disease Control and Prevention Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Healthcare Settings;

(7)(A) A personnel record shall be maintained for each employee.

(B) A personnel record shall include but not be limited to the following:

(i) A job description signed by the employee;

(ii) Qualifications, education, and/or training;

(iii) An application for employment;

(iv) Criminal history checks as required by Arkansas Code § 20-38-101 et seq.;

(v) Verification of licensure, permits, references, job experience, and educational requirements as appropriate;

(vi) Performance evaluations and disciplinary actions; and

(vii) Verification of work history;

(8)(A) An agency-wide quality assurance and improvement program that includes all services for the purpose of monitoring the safety and effectiveness of services and quality of care.

(B) The program must include:

(i) Client satisfaction surveys;

(ii) Supervision of services;

(iii) Results of inspections, surveys, and audits from outside entities;

and

(iv) Performance improvement projects as applicable; and

(9) Complaints and incidents.

(A) Each agency shall keep a record of complaints and incidents.

(B) Documentation shall include the:

(i) Names of involved individuals;

(ii) Relationship to the patient;

(iii) Nature of the complaint incident;

(iv) Date of complaint incident; and

(v) Action taken to resolve the complaint incident including referrals to other entities.

(b) **Governing board.** A home health agency shall have an organized governing board consisting of at least one (1) member, who may be the owner, who shall:

- (1) Be legally responsible for maintaining quality client services and establishing policies for the agency;
- (2) Be legally responsible for the conduct of the agency; and
- (3) Establish a mechanism to:
 - (A) Approve a quality assurance plan whereby problems are:
 - (i) Identified;
 - (ii) Monitored; and
 - (iii) Corrected;
 - (B) Adopt and periodically review:
 - (i) Written bylaws; or
 - (ii) An acceptable equivalent;
 - (C) Approve written policies and procedures related to safe, qualified, and adequate:
 - (i) Provision of clinical services; and
 - (ii) Operation of the agency;
 - (D) Appoint an administrator who is an employee of the agency or related institution;
 - (E) Approve a plan for an alternate in the absence of the administrator; and
 - (F) Oversee the management and fiscal affairs of the agency.

(c) **Administrator responsibilities.** The administrator shall:

- (1) Manage the agency's daily ongoing functions;
- (2) Employ qualified personnel and ensure appropriate ongoing education and supervision of personnel and volunteers;
- (3) Ensure the accuracy of public information materials and activities;
- (4) Implement and monitor the budgeting and accounting system; and

(5) Ensure the presence of an alternate administrator to act in the administrator's absence.

(d) **Services provided by contractors.**

(1) An Arkansas-licensed home health agency may contract to provide services in the licensed agency's service area provided that administration, patient management, and supervision down to the patient care level are ultimately the responsibility of the licensed agency.

(2) A contracted entity or contracted individual conforms to all applicable agency policies including those described in 20 CAR § 46-110(a).

(e) **Patient rights.**

(1) The agency shall provide each patient and family with a copy of the bill of rights affirming the patient's right to:

(A) Be informed of the services:

(i) Offered by the agency; and

(ii) Being provided to the patient;

(B) Participate in the development of the plan of care and to be informed of the dates and approximate time of service;

(C) Receive an explanation of any responsibilities the participant may have in the care process;

(D) Be informed of:

(i) The name of agency; and

(ii) How to contact that agency during all hours of operation;

(E) Be informed of the process for submitting and addressing complaints to the agency and be notified of the State Home Health Hotline number;

(F) Be informed orally and in writing of any charges:

(i) That insurance might not cover; and

(ii) For which the patient would be responsible;

(G) Courteous and respectful treatment, privacy, and freedom from abuse and discrimination;

(H) Confidential management of patient records and information;

(I) Access information in the patient's own record upon request;

(J) Receive prior notice and an explanation for the reasons of:

(i) Termination;

(ii) Referral;

(iii) Transfer;

(iv) Discontinuance of service; or

(v) Change in the plan of care;

(K) Be informed of the right to voice grievances regarding treatment of care that is, or fails to be, furnished, and the lack of respect for property by anyone who is furnishing services on behalf of the agency, and the right not to be subjected to discrimination or reprisal for doing so;

(L) Control access to the patient's home; and

(M) Be free from verbal, mental, sexual, and physical abuse including:

(i) Injuries from unknown source;

(ii) Neglect; and

(iii) Misappropriation of property.

(2) The agency shall provide each patient and family with a written list of responsibilities affirming the patient's responsibility to:

(A) Assist in developing and maintaining a safe environment;

(B) Treat all agency staff with courtesy and respect;

(C) Participate in the development and update of the plan of care; and

(D) Adhere to the plan of care or services as developed by the agency and to assist in the care as necessary.

(f) **Advance directives.**

(1) The agency shall have written policies and procedures regarding advance directives.

(2)(A) The agency shall inform and distribute written information to each patient on the initial evaluation visit concerning its policies on advance directives.

(B) Written information shall include notifying patients of their right to:

(i) Make decisions about their medical care;

- (ii) Accept or refuse medical or surgical treatment; and
- (iii) Formulate, at the individual's option, an advance directive.

(g) Records and documentation.

(1) The home health agency shall maintain records of all services provided, to patients, that are:

- (A) Orderly, intact, legibly written, and available;
- (B) Retrievable either in the agency or by electronic means; and
- (C) Suitable for photocopying or printing.

(2) Records shall be stored in a manner that:

- (A) Prevents loss or manipulation of information;
- (B) Protects the record from damage; and
- (C) Prevents access by unauthorized persons.

(3) Records shall be retained according to state and federal laws.

(4) Each record shall include:

- (A) Assessments and evaluations;
- (B) Plans and assignments;
- (C) Acknowledgment of receiving information regarding advance

directives;

(D) Date and time employees or contracted individuals are in the home;

and

(E) Tasks completed.

(5) The following shall be included, if applicable:

- (A) Physician, podiatrist, and/or licensed practitioner orders;
- (B) Records of supervisory visits;
- (C) Medication administration records;
- (D) Any clinical notes;
- (E) Records of case conferences; and
- (F) Discharge summary.

(6) Clinical notes are to be:

(A) Written the day the service is rendered; and

(B) Incorporated into the record no less often than every fourteen (14) days.

(7) Provisions shall be made for the protection of records in the event an agency ceases operation.

(h) A written notice of the felony status under Arkansas Code § 5-13-202 of attacking a healthcare worker shall be posted in all public entrances and patient waiting area of the healthcare facility utilizing the digital poster available on the Department of Health website.

(i) A healthcare provider shall not mislead any patient regarding the healthcare provider's licensure status.

20 CAR § 46-111. Standards for skilled care services.

In addition to meeting the general requirements, agencies providing skilled care shall meet the following:

(1)(A) Acceptance of patients.

(B) Agencies shall only accept patients for treatment on the basis of a reasonable expectation that the patient's needs can be met adequately by the agency in the patient's place of residence.

(C)(i) If an agency receives a referral on a patient who requires home health services that are not available at the time of referral, the agency shall contact the referral source and/or the patient's physician or licensed practitioner to let them know of the situation.

(ii) The agency shall only admit the patient if no other agency licensed in the area has the service or services available;

(2)(A) Care and services.

(B)(i) All services shall be rendered and supervised by skilled professionals.

(ii) Skilled services such as nursing, physical therapy, occupational therapy, speech-language pathology, and medical social work shall provide services and

supervision according to the scope of practice determined by their applicable licensing board.

(C) Assessments.

(i)(a) An initial assessment shall be completed within forty-eight (48) hours of the referral/discharge.

(b) The initial assessment shall be completed by a registered nurse, if nursing services are provided, or other skilled professional, as appropriate.

(ii) For patients receiving skilled services, the assessment shall be updated:

(a) Every sixty (60) days; or

(b) When a significant change in patient status occurs.

(D) Plan of care.

(i) At the time of the admission, the plan of care shall be developed in conjunction with the:

(a) Patient and/or family; and

(b) Skilled healthcare professional.

(ii) Discharge planning shall be:

(a) The responsibility of the skilled healthcare professional rendering the service; and

(b) Documented in the record.

(iii) The plan of care shall include:

(a) Potential services to be rendered;

(b) The frequency of visits and/or hours of service;

(c) Assignment of healthcare providers; and

(d) The estimated length of services.

(iv) The plan of care shall be revised at least every sixty (60) days.

(v) The plan of care shall be individualized according to each of the individual patient's needs.

(vi) The plan of care and each verbal order obtained shall be signed by the physician, podiatrist, or licensed practitioner within thirty (30) days of the order.

(E)(i) Case conferences shall be held at least every two (2) months on each patient.

(ii) The clinical record or minutes of these case conferences shall reflect input by the disciplines providing care to the patient.

(F)(i) For patients receiving extended care nursing services, a current medication administration record shall be:

(a) Maintained; and

(b) Incorporated into the clinical record.

(ii) Notation shall be made in the clinical notes of:

(a) Medications not given; and

(b) Reason.

(iii) Any untoward action shall be:

(a) Reported to the supervisor; and

(b) Documented.

(G)(i) The clinical record shall include documentation of medication:

(a) Allergies or sensitivities; and

(b) Interactions.

(ii) There must be a medication profile including the dose, frequency, and route of administration for each prescription medication the patient is receiving;

(3)(A) Twenty-four-hour availability.

(B)(i) If an agency provides twenty-four-hour availability, the agency shall have a registered nurse available after hours.

(ii) When an agency provides extended care, the agency shall provide twenty-four-hour coverage and availability.

(iii) A licensed practical nurse may:

(a) Take the initial call; and

(b) Perform services as ordered on the plan of care.

(iv) Any services outside the plan of care must be approved by a registered nurse prior to the services being rendered.

(C) If twenty-four-hour availability is provided, the agency shall have a policy describing at least the following:

(i) How patients will contact the agency after hours; and

(ii) How the agency will ensure the registered nurse on call has access to all current patient information.

(D) If twenty-four-hour availability is not offered by the agency, the agency shall be responsible for ensuring each patient is aware of the steps to take in an emergency or unusual situation;

(4)(A) Controlled drugs.

(B) Agencies shall have a written policy stating how controlled drugs will be monitored if agency staff transports the drugs from the pharmacy to the patient.

(C) If controlled drugs are being administered by the agency, there shall be a policy regarding how the drugs will be administered and monitored; and

(5) Home health aide services.

(A) A home health aide shall have completed a seventy-five-hour aide training course that meets the requirements set forth in 20 CAR § 46-109.

(B)(i) The agency is responsible for ensuring the home health aide has successfully completed competency testing.

(ii) The competency evaluation must address each of the topics in Table 2.

(iii) The following skills must be evaluated by the registered nurse by observing the aide's performance while carrying out the following tasks with a patient:

(a) Communication skills including the ability to read, write, and verbally report clinical information;

(b) Reading and recording:

(1) Temperature;

(2) Pulse; and

(3) Respiration;

(c) Appropriate and safe techniques in performing personal hygiene and grooming tasks that include:

- (1) Bed bath;
- (2) Sponge, tub, and shower bath;
- (3) Hair shampooing in:
 - (A) Sink;
 - (B) Tub; and
 - (C) Bed;
- (4) Nail and skin care;
- (5) Oral hygiene; and
- (6) Toileting and elimination;
- (d) Safe transfer techniques and ambulation; and
- (e) Normal range of motion and positioning.

(C) A registered nurse shall complete an aide assignment sheet to delegate services according to the Arkansas State Board of Nursing for each patient receiving home health aide services.

(D) Each aide caring for the patient shall receive a copy of the assignment sheet.

(E) Provide services as assigned.

(F) A copy of the assignment sheet shall be left in the patient's home.

(G) Each aide assignment sheet shall be individualized and specific according to the patient's needs.

(H)(i) The qualified healthcare professional shall:

(a) Conduct a visit to the patient's place of residence; and

(b) Update the aide assignment sheet:

(1) Every fourteen (14) days for the home health aide; and

(2) Every sixty (60) days for the personal care aide.

(ii) Aides shall receive a minimum of twelve (12) hours of in-service training per twelve (12) months.

(iii) The in-services provided shall address areas that directly relate to the patient care aspects of the aide's job.

20 CAR § 46-112. Standards for extended care services.

(a)(1) Extended care is defined as six (6) or more hours of continuous home health services provided in a twenty-four-hour period by a licensed agency that provides both:

- (A) Skilled nursing; and
- (B) Other home health services.

(2) The Medicaid Personal Care Program is not included in the above definition.

(b) In addition to meeting the applicable standards for a Class B license, all agencies providing extended care must meet the following:

(1)(A) Shall:

- (i) Make available in writing the hours of service; and
- (ii) Provide a registered nurse supervisor or a registered nurse and supervisor for consultation and triage at least during those hours.

(B) The agency shall be responsible for ensuring that each patient, or guardian if the patient is mentally incompetent, is aware of the steps to take in an emergency or unusual situation.

(C) The agency must have a contingency plan regarding how the case is managed if a scheduled employee is unable to staff the case;

(2) The patient's permanent medical record shall be available at the licensed agency location that has been approved by the Division of Health Facilities Services to provide the services;

(3)(A) A medical record must also be maintained in the home if a patient is receiving skilled extended care.

(B) The record must contain:

- (i) Current plan of treatment (physician's or licensed practitioner orders);
- (ii) Medication profile;
- (iii) Clinical notes;
- (iv) Documentation of any medication administered by agency staff

including the:

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(a) Date, time, and dosage; and

(b) Manner of administration; and

(v) Any other information deemed necessary by the licensed agency.

(C) The information included in the home record must be filed in the permanent medical record at least every two (2) weeks if it is not already included in the permanent record.

(D)(i) If extended care aide service is the only service being provided, a home record is not required.

(ii) Written instructions for the aide service must be maintained in the home and in the permanent record;

(4)(A) For patients receiving skilled extended care, a visit must be made to the patient's home by a registered nurse who is an employee of the licensed agency no less frequently than every two (2) weeks to supervise the services being provided.

(B) Patients requiring extended care services beyond three (3) months and classified by the licensed agency as chronic/stabilized will require supervision once every month.

(C) For patients receiving extended care aide services only:

(i) The aide must be continually supervised; and

(ii) A visit must be made to the patient's home by a registered nurse at least every thirty (30) days;

(5)(A) The agency must have an orientation plan for the staff providing the care to the patients.

(B) Since extended care cases may involve highly technical services, this plan must reflect how the agency ensures that the individuals providing the extended care are qualified to provide these types of services; and

(6) Prior to withdrawing skilled nursing services for an extended-care patient, the home health agency shall:

(A) Provide evidence that ongoing efforts were made to:

(i) Recruit staff; or

(ii) Place with another agency; and

(B) Give the patient/family at least sixty (60) days' notice in writing of the intent to discharge the patient.

20 CAR § 46-113. Standards for personal care services.

(a) All services.

(1) The agency shall:

(A) Perform an initial evaluation visit and determine the:

- (i) Needs and condition of the client;
- (ii) Services to be provided; and
- (iii) Personnel to provide the services; and

(B) Develop the aide service plan that shall:

- (i) Outline the services;
- (ii) Determine the scope and frequency of visits;
- (iii) Assign appropriate delegation of services consistent with the

Arkansas State Board of Nursing; and

(iv)(a) Determine supervision scope and frequency.

(b) Frequency shall be at least annually.

(2) The aide shall report changes in the needs and condition of the client.

(b) Personal care services.

(1) Delegated through the use of an aide service plan.

(2) Each aide shall receive a copy of the aide service plan.

(3) A copy of the aide service plan shall be left in the home.

(4) The aide service plan shall be individualized and specific.

(5)(A) Aides shall receive a minimum of twelve (12) hours of in-service training per twelve (12) months.

(B) The in-services provided shall address areas that directly relate to the client care aspect of the aide's job.

20 CAR § 46-114. Conditional emergency service.

(a)(1) Notwithstanding the provisions of this part, the Division of Health Facilities Services shall be empowered to permit the provision of skilled care.

(2) Certifies that the patient requires conditional emergency services that shall be defined as a medically indicated skilled-care case in which the patient requires specialized care of a registered nurse or a licensed practical nurse under the supervision of a registered nurse, not available through licensed agencies in the area, that if not provided would result in the patient being institutionalized.

(3) Furnishes such information on forms prescribed by the division regarding the patients receiving conditional emergency services that would include but not be limited to:

(A) Name of patient;

(B) Address of the patient;

(C) Diagnosis; and

(D) The type of specialized skilled extended care the patient requires and why the patient would require institutionalization if the care was not provided.

(4)(A) Furnishes information to the division ensuring that all agencies whose extended care licensed area encompasses the location of the patient were contacted to determine if the required services could be provided.

(B) Such information should include the:

(i) Name of the agency contacted;

(ii) Name of the person contacted;

(iii) Date and time of the contact; and

(iv) Reason given for not being able to provide the care.

(C) If the agency contacted does not respond with an answer within twenty-four (24) hours of the initial contact, the agency seeking to provide the services may proceed as required.

(D) The lack of response should be noted in the information furnished to the division.

(b) In each case, the division shall maintain a file or register concerning the conditional emergency service.

(c)(1) The approval will be for a period of one hundred eighty (180) days.

(2) For each consecutive one-hundred-eighty-day period thereafter, the agency will be required to submit documentation as required in subdivisions (a)(2) and (3) of this section.

(d) If at the end of each one-hundred-eighty-day period services are available through an agency licensed for the area, the agency providing the service must:

(1) Notify the patient/caregiver of the availability of services through a licensed agency in the area; and

(2) Offer the opportunity to transfer.

(e) The choice of transfer shall be the patient's/caregiver's decision.

(f)(1) An agency operating outside its licensed service area must provide documentation to the division at the beginning of each one-hundred-eighty-day period that the patient was:

(A) Informed of any new agencies providing extended care services in the area; and

(B) Given the choice of transferring.

(2) The information shall be submitted on forms prescribed by the division.

(g)(1) An agency operating outside its licensed geographic area to provide extended care may provide all services required by the patient until such time as the:

(A) Skilled extended care is discontinued; or

(B) Patient is transferred to an agency licensed to provide extended care services in the area.

(2) The discharging agency will be responsible for referring the patient to an agency licensed to serve the area in which the patient resides if the patient requires further service.

Appendix A. Table 1 - Personal Care Aide Training Topics

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/263/20CARpt.46Table1.pdf>

Appendix B. Table 2 - Home Health Aide Training Topics

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/264/20CARpt.46Table2.pdf>