

Proposed Rulemaking

Rules for Private Care 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 49. Rules for Private Care Agencies in Arkansas

Subpart 1. Generally

20 CAR § 49-101. Preface.

(a)(1) This part has been prepared for the purpose of establishing a criterion for minimum standards for the licensure of private care agencies providing Medicaid personal care in Arkansas.

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

(b) These standards are:

- (1) Not static; and
- (2) Subject to periodic revisions in the future as new knowledge and changes in home care become apparent.

(c) However, it is expected that agencies will:

- (1) Exceed these minimum requirements; and
- (2) Not be dependent upon future revisions in these standards as a necessary prerequisite for improved services.

(d) Each private care agency has a strong moral responsibility for providing optimum home care and services for the clients it serves.

DRAFT

08/14/2025 03:21:38 PM

20 CAR § 49-102. Purpose.

This part is established to ensure high quality care and services for clients in their homes.

20 CAR § 49-103. 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 an agency employee and is a physician, registered nurse, or an individual with at least one (1) year of supervisory or administrative experience in:

- (A) Home health care; or
- (B) Related health provider programs;

(2) "Aide Service Plan" means written assignments developed and supervised by a qualified supervisor for the tasks to be completed by the aide;

(3) "Client" means eligible recipient of Medicaid services;

(4) "Client note" means a dated, written, or electronic and signed notation by agency personnel of a contact with a client, including:

- (A) A description of services provided; and
- (B) Any changes in circumstances that impact the client's services or welfare;

(5) "Client record" means an accurate account of services:

- (A) Provided for each client; and
- (B) Maintained by the agency;

(6) "Contractor" means an entity or individual providing services for the agency who does not ~~meet the definition of employee~~receive a Form W-2 from the agency;

~~—(7) "Department" means the Division of Health Facility Services of the Department of Health;~~

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

(9) "Health" means the condition of being sound in body, mind, and spirit, especially freedom from:

(A) Physical disease; or

(B) Pain;

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

(11) "Personal care services" means assistance in activities of:

(A) Daily living;

(B) Hygiene; or

(C) Grooming;

(12) "Personal care aide" means a person who provides personal care/personal services for a client in their place of residence;

(13) "Place of business" means any office of a private care agency that:

(A) Maintains client records; or

(B) Directs services;

(14) "Private care agency" means a provider that:

(A) Is ~~certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as a provider of home-based and community-based health services~~licensed by the Division of Health Facility Services of the Department of Health as a private care agency;

(B) Furnishes in-home staffing services for personal and attendant care services for which the provider seeks reimbursement through the Arkansas Medicaid Program; and

(C) Retains liability insurance of not less than one million dollars (\$1,000,000) to cover its employees and ~~independent~~ contractors while its employees and ~~independent~~ contractors are engaged in providing personal and attendant care services;

(15) "Quality of services" means competent care that is supported and directed in a planned pattern to achieve:

- (A) Well-being;
- (B) Dignity;
- (C) Comfort; and
- (D) Self-management;

(16) "Residence" means a place where a person resides, including a home, nursing home, residential care facility, or convalescent home for the disabled or aged;

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

(18)(A) "Supervisor" means:

- (i) A licensed nurse; 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;

(19) "Telenursing" means the use of distance technology to:

- (A) Deliver nursing care; and
- (B) Conduct nursing practice; and

(20) "Visit" means a face-to-face meeting:

- (A) In the client's residence; or
- (B) By the use of information technology.

20 CAR § 49-104. Agency location.

A private care agency shall maintain a:

~~(1) Licensed, fully operational primary office physically located within the state of Arkansas~~ to adequately service the administrative needs of the private care agency and its clients. ~~and~~

~~(2) Sufficient number of licensed regional offices to adequately service the administrative needs of the agency and the clients.~~

20 CAR § 49-105. Application for license.

(a) Annual license applications shall be:

(1) On forms prescribed by the Division of Health Facility Services of the Department of Health; and

(2) Effective on a calendar-year basis with an expiration date of December 31.

(b) Each agency shall receive a license for Medicaid personal care.

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

(1) Change of name;

(2) Change of location;

(3) Agency closing;

(4) Change in contact information, including:

(A) Correspondence address;

(B) Telephone number;

(C) Email; and

(D) Fax; and

(5) Change of ownership.

(d) **Agency closure.** If a licensed agency closes, it shall:

(1) Notify the division in writing of:

(A) The effective date; and

(B) Plans for transfer of current clients and records; and

(2) Return original license to the division.

20 CAR § 49-106. Inspections.

(a) A review, ~~and/or~~ inspection, or both shall be conducted before the license is issued.

(b) Once the initial inspection is conducted and the agency becomes licensed, periodic inspections shall be conducted no less than every three (3) years.

(c)(1) If the inspection is conducted in order to determine compliance with standards, the agency shall come into compliance within sixty (60) days.

(2) If the agency fails to comply, the Director of Health Facility Services of the Department of Health may propose actions to suspend or revoke the license in accordance with the section relating to license denial, suspension, or revocation.

20 CAR § 49-107. Denial, suspension, revocation of license.

(a) A private care agency license may be denied, suspended, or revoked for one or more of the following reasons:

(1) Violation of the provisions of the statute or 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 Facility Services of the Department of Health 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; and

(5) An intentional or negligent act by the agency, ~~or its employees,~~ or contracted individuals that materially affects the health and safety of a client.

(b) If the Director of Health Facility Services of the Department of Health proposes to deny, suspend, or revoke a license, the director shall:

(1) Notify the agency of the reasons for the proposed action; and

(2)(A) Offer the agency an opportunity for a hearing.

(B) The agency may request a hearing within thirty (30) days after the date the agency receives notice.

(C) The request shall be in writing and submitted to:

Director

Division of Health Facility Services

Department of Health

5800 West Tenth, Suite 400
Little Rock, Arkansas 72204

(D) A hearing shall be conducted pursuant to the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(E) If the agency does not request a hearing in writing after receiving notice of the proposed action, the:

(i) Agency is deemed to have waived the opportunity for a hearing;
and

(ii) 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 clients are threatened.

(2)(A) The division shall notify the agency of the emergency action and shall notify the agency of the date of a hearing that shall be within seven (7) days of the effective date of the suspension or revocation.

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

20 CAR § 49-108. Training.

(a) Training provided to agency employees and contracted individuals shall:

(1) Be approved by the Division of Health Facility Services of the Department of Health;

(2) Include all items listed in the attached Table 1;

(3) Be supervised by a registered nurse;

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

(5) Have written:

(A) Course objectives;

(B) Expected outcomes; and

(C) Method or methods of evaluation.

(b) ~~Unless the agency has been properly authorized by the Division of Higher Education to operate a school, training shall be limited to agency employees. A home caregiver who previously completed the training as described in this section and provides documentation of the completed training shall not be required to repeat the training.~~

20 CAR § 49-109. General requirements.

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

(1) **Organizational.**

(A) A description of the structure showing ownership and line of authority down to the client service level;

(B) The services offered;

(C) Hours of operation; and

(D) Criteria for client acceptance and termination;

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

(3) Procedures for all tasks;

(4) **Infection control program.**

(A) That has as its goal the prevention and control of infections and communicable diseases.

(B) Work restrictions for employees and contracted individuals shall be according to Centers for Disease Control and Prevention recommendations.

(C)(i) 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 facilities;

(5)(A) Personnel records shall be maintained for each employee and ~~for~~ contracted individual.

(B) A current personnel record shall include the:

(i) Job description, signed by employee or contracted individual;

- (ii) Qualifications, education, and/or training;
- (iii) Application for employment;
- (iv) Verification of:
 - (a) Licenses;
 - (b) Certifications; and
 - (c) Work history;
- (v) Evidence of orientation and competency for the topics listed in

Table 1; **and**

(vi) Criminal history determination of eligibility for employment; **and**
(vii) Registry check results for the population type served by the agency, pursuant to Arkansas Code §20-38-103.

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

- (i) Services; and
- (ii) Quality of care.

(B) The program will 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

(7) Complaints and incidents.

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

(B) Documentation shall include the:

- (i) Names of involved individuals;
- (ii) Relationship to the client;
- (iii) Nature of the complaint;
- (iv) Date of incident; and

(v) Action taken to resolve the complaint, including referrals to other

entities.

(b) **Governing board.** A private care agency shall have an organized governing board, consisting of at least one (1) member, which 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) Adopt and periodically review:
 - (i) Written bylaws; or
 - (ii) An acceptable equivalent;
 - (B) Approve written policies and procedures related to:
 - (i) Safe, adequate services; and
 - (ii) Operation of the agency;
 - (C) Appoint an administrator and approve a plan for an alternate in the absence of the administrator; and
 - (D) Oversee the management and fiscal affairs of the agency, including approving the agency's annual budget.

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

- (1) Manage the agency's daily ongoing functions;
- (2) Ensure all persons providing services on behalf of the agency:
 - (A) Are qualified; and
 - (B) Receive ongoing education;
- (3) Ensure the accuracy of public information materials and activities;
- (4) Implement and monitor budgeting and accounting systems;
- (5) Implement quality assurance and infection control programs; and
- (6) Conduct an annual review of the changes to the policies and procedures.

(d) **Client rights.**

- (1) The agency shall provide each client or representative with a copy of the bill of rights affirming the client's right to:
 - (A) Be informed of the services:
 - (i) Offered by the agency; and

- (ii) Being provided to the client;
 - (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 client 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:
 - (i) Informed of the process for submitting and addressing complaints to the agency; and
 - (ii) 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 client would be responsible;
 - (G) Courteous and respectful treatment, privacy, and freedom from:
 - (i) Abuse; and
 - (ii) Discrimination;
 - (H) Confidential management of client records and information;
 - (I) Access information in the client record upon request;
 - (J) Receive prior notice and an explanation for the reasons of termination, referral, transfer, discontinuance, or change of service; and
 - (K) Control access to the client's home.
- (2) The agency shall provide each client and family with a written list of responsibilities affirming the client'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 services; and
 - (D) Adhere to the plan of care or services as developed by the agency and to assist in the care as necessary.

(e) Records and documentation.

(1) The private care agency shall maintain records of all services provided to clients that are:

- (A) Orderly, intact, legibly written;
- (B) Available and retrievable either:
 - (i) In the agency; or
 - (ii) By electronic means; and
- (C) Suitable for:
 - (i) Photocopying; or
 - (ii) 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 for a minimum of:

- (A) Five (5) years after discharge of the client; or
- (B) Two (2) years after the age of majority.

(4) Each record shall include:

- (A) Initial assessment performed by a qualified supervisor;
- (B) Plan of care that shall detail the services;
- (C) Aide Service Plan;
- (D) Physician or licensed practitioner orders, if any;
- (E) Records of supervisory visits;
- (F) Date and time service providers are in the home; and
- (G) Tasks completed.

(5) Client notes are to be:

- (A) Written the day the service is rendered; and
- (B) Incorporated into the record no less than every fourteen (14) days.

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

(f) 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.

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

20 CAR § 49-110. Services.

(a) **All services.** The agency shall:

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

(A) Needs and condition of the client;

(B) Services to be provided; and

(C) Personnel to provide the services; and

(2) Develop the Aide Service Plan that shall:

(A) Outline the services;

(B) Determine scope and frequency of visits;

(C) Assign appropriate delegation of services consistent with the Arkansas State Board of Nursing; and

(D)(i) Determine supervision scope and frequency.

(ii) Frequency shall be at least annually.

(b) Personal care services shall be rendered by a person who has completed an approved forty-hour aide training course that meets the requirements set forth in 20 CAR § 49-108, and:

(1) Delegate 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 will be accessible 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; and

(6)(A) The agency is responsible for evaluating the competency of any personal care aide.

(B) At a minimum, the aide shall be observed by a registered nurse performing the skills required to care for a client according to Table 1.

(C) There shall be documentation by the agency to show evidence of this evaluation.

(c) **Services provided by contractors.** A contracted entity or contracted individual conforms to all applicable agency policies, including those described in 20 CAR § 49-109(a).

Appendix A. Table 1 - Rules for Private Care Agencies in Arkansas

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/329/20CARpt.49Table1.pdf>