

AUTHORITY

The following rules for the licensure of residential long term care facilities are duly adopted and promulgated by the Arkansas Department of Human Services, Division of Medical Services, Office of Long Term Care, pursuant to the authority expressly conferred by the laws of the State of Arkansas in Arkansas Code Annotated § 20-76-201(b)(3), § 20-10-203 and § 20-10-224.

If any provisions of these rules, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions hereof are declared severable.

"The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and operated, managed and delivers services without regard to age, religion, disability, political affiliation, veteran status, sex, race, color or national origin."

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100 DEFINITIONS

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

Note: Please refer to Appendix C of these rules for a listing of Arkansas Statutes as referenced in the following definitions.

Absence - Circumstances where the resident cannot be located or has left a facility and there is sufficient question as to the whereabouts of the resident. Facilities must comply with all reporting requirements of any special programs in which they participate.

Abuse - Shall have the same meaning as prescribed by Arkansas Code Annotated § 5-28-101.

Administrator - The person designated as being in charge of the daily operation of the facility. "Certified administrator" shall mean an administrator who has completed the certification course offered by the Arkansas Association of Residential Care Facilities.

Basic Charge - The lowest rate charged by a facility to a client for specific services for a set period of time.

Boarding Home - Any place, building or structure, other than a hotel, inn or transient lodging place, which is offered, used, maintained or advertised to the public as a place of residence which, incidental to occupancy, may also offer meals and housekeeping services to the residents, but may not offer or furnish to residents, either directly or in concert with any entities as defined in Arkansas Code Annotated § 20-10-213 - § 20-10-228, oversight, supervision or care.

Caregiver - Shall have the same meaning prescribed by Arkansas Code Annotated § 5-28-101.

Department - The Department of Human Services or its successor as created by Arkansas Code Annotated § 25-10-101.

Direct Care Staff - A caregiver acting on behalf of, employed by or under the control or supervision of a licensed facility.

Direct Threat - A significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation. This term as used in these rules is designed to assure conformity with the Americans with Disabilities Act (ADA) in determining whether an individual with a disability poses a "direct (health or safety) threat". This determination must be made on a case-by-case basis, through consideration of the following factors:

1. The duration of the risk;
2. The nature and severity of the potential harm;
3. The likelihood that the potential harm will occur; and

4. The imminence of the potential harm. 29 CFR 1630.2(r)

This individualized inquiry must be based on the behavior of the particular disabled person, not merely on generalizations about the disability.

Division - The Division of Medical Services within the Department of Human Services and prescribed by Arkansas Code Annotated § 20-10-101.

Emergency Measures - Those measures necessary to respond to a serious situation which may result in death or trauma.

Endangered Adult - Shall have the same meaning as prescribed by Arkansas Code Annotated § 5-28-101.

Exploitation - Shall have the same meaning as prescribed by Arkansas Code Annotated § 5-28-101.

First Aid Measures - Temporary procedures necessary to relieve trauma or injury by applying dressing and/or band-aids.

Imminent Danger to Health and Safety - Shall have the same meaning as prescribed by Arkansas Code Annotated § 5-28-101.

Impaired Adult - Shall have the same meaning as prescribed by Arkansas Code Annotated § 5-28-101.

Independently Mobile - An individual who is physically and mentally capable of vacating the residential care facility in case of emergency, including the capability to ascend or descend stairs that are present in the exit path. Residents who can use canes, wheelchairs or walkers are considered independently mobile as long as they do not require more than verbal or minimum assistance from another person to vacate and can do so in three (3) minutes or as required by local fire code.

Initial Licensure - License that applies to newly constructed residential care facilities and to all facilities not already licensed as residential care facilities.

Long Term Care Facility - Shall have the same meaning as prescribed by Arkansas Code Annotated § 20-10-213.

Long Term Care Facility License - A time-limited non-transferrable permit required by Arkansas Code Annotated § 20-10-224 issued for a maximum period of twelve (12) months to a licensee who complies with Office of Long Term Care rules. This documentation must list the maximum number of beds for the facility and any limitations thereto.

Mental Illness - A primary impairment of brain function such as psychosis, neurosis or behavior reaction resulting in difficulty in adapting to the environment.

Mental Retardation - Subnormal intellectual functioning often present since birth or apparent in early life, the degree of which may be indicated by the IQ of 70 (+ or - 5) or below.

Neglect - Shall have the same meaning as prescribed by Arkansas Code Annotated § 5-28-101.

Office of Long Term Care - The Office in the Division of Medical Services of the Department of Human Services that has responsibility for the licensure, certification and regulation of long term care facilities, herein referred to as the Office.

Personnel - Any person who, under the direction, control or supervision of facility administration, provides services for compensation or who provides services voluntarily, and includes the owner, operator, professional, management and individuals, firms or entities providing goods or services pursuant to a contract or agreement.

Proprietor/Licensee - Any person, firm, corporation, governmental agency or other legal entity issued a residential care facility license and who is responsible for maintaining approved standards. Facilities owned and operated by entities exempted from state licensure by state or federal law shall be excluded from these rules.

Protective Services - Shall have the same meaning as prescribed by Arkansas Code Annotated § 5-28-101.

Provisional Licensure is a temporary grant of authority to the purchaser to operate an existing long-term care facility upon application for licensure to the Office of Long Term Care.

Residential and Adult Day Care Section - The unit within the Office of Long Term Care charged with survey, licensure and complaint investigations for residential care facilities and adult day care facilities.

Residential Care Facility (RCF) - Shall have the same meaning as prescribed by Arkansas Code Annotated § 20-10-101(14).

Residential Care Facility Services - Services provided, in accordance with these rules, to independently mobile adult residents whose functional capabilities may have been impaired but who do not require hospital or nursing home care on a daily basis but could require other assistance in activities of daily living. A residential care facility does not provide nursing or medical services and shall not offer, attempt to provide or provide services to an individual in need of hospitalization, substance abuse treatment, or nursing services. Residential care facility personnel may not administer or attempt to administer medications.

Supportive Services - Occasional or intermittent direction or monitoring of an individual resident as he/she carries out activities of daily living and social activities. Supportive services do not include continuous monitoring or delivery of actual hands-on or physical assistance to a resident in the performance of the activities of daily living.

Transfer - The movement of a resident from one facility to another facility. Transfer does not include room changes within the same facility.

Undue Burden - This term as used in these rules is designed to assure conformity with the Americans with Disabilities Act (ADA) in a determination that an individual's service needs are greater than what the facility is licensed to provide and to that end shall be liberally construed to effectuate the intent of the ADA. Before a facility may deny admission or discontinue care based on a disability, meeting the individual's needs must be shown to place an undue burden on the facility or to fundamentally alter the program to the point where residential services are no longer being provided.

In order to determine if an alteration would be an undue burden, the following factors are to be considered:

1. The nature and cost of the action needed;
2. The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation;
3. The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
4. The overall financial resources of any parent corporation or entity; the overall size of the parent corporation with respect to the number of its employees; the number, type, and location of its facilities; and
5. The type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity. 28 CFR 36.104

200 LICENSURE

- 200.1 No residential long term care facility may be established, conducted or maintained in Arkansas without first obtaining a long term care facility license as required by Arkansas Code Annotated § 20-10-201, et. seq. and these licensing standards. All licenses issued hereunder are non-transferable from one owner/proprietor to another and from one site or location to another.
- 200.2 These licensing requirements shall apply to all residential long term care facilities existing in the State of Arkansas on or after the effective date of these rules except as follows:
- a. Any facility which was initially licensed prior to the effective date of these rules shall be deemed to satisfy the criteria set forth herein for purposes of licensure renewal.
 - b. If a facility changes ownership and the buyer and seller comply with the notice provisions set forth in Section 204.7 of these rules, a license shall be issued to the buyer upon the same terms and conditions as would have been imposed upon the seller as though the license is being renewed.
 - c. If a facility initially licensed prior to the effective date of these rules is modified, altered or amended, such modification, alteration or amendment must comply with the rules in effect at the time the modification, alteration or amendment is completed and placed into service.

- d. If a facility closes or if a license is revoked, no new license shall be issued until the facility satisfies criteria in effect at the time of application for a new license.

201 LICENSING INFORMATION

- 201.1 Licenses to operate a residential long term care facility are issued on the state fiscal year basis beginning July 1st and expiring the following June 30th.
- 201.2 Licenses shall be issued only for the premises and persons specified in the application and shall not be transferable.
- 201.3 Licenses shall be posted in a conspicuous place on the licensed premises.
- 201.4 Separate licenses are required for residential care facilities maintained on separate premises, even though they are operated under the same management.
- 201.5 Every residential care facility owner or operator shall designate a distinctive name for the facility, which shall be included on the application for a license. The name of the facility shall not be changed without first notifying the Office of Long Term Care in writing. The change will be made when renewal of license is due.

202 LICENSURE EXCLUSIONS

- 202.1 Facilities owned and operated by the Veteran's Administration are excluded from licensure under these rules.
- 202.2 Facilities regulated or licensed by the Department of Human Services' Division of Developmental Disabilities Services or Division of Mental Health Services shall be excluded from licensure under these requirements.
- 202.3 Facilities regulated by the Bureau of Alcohol and Drug Abuse Prevention of the Arkansas Department of Health shall be excluded from licensure under these rules.

203 INITIAL LICENSURE

- 203.1 Initial licensure shall apply to:
 - a. Newly constructed facilities designed to operate as residential long term care facilities;
 - b. Existing structures not already licensed as a residential long term care facility on the effective date of these rules; and
 - c. Facilities that change ownership as specified in Sections 204 and 205.
- 203.2 An initial license will be effective on the date that the Office of Long Term Care determines the facility to be in compliance with these licensing standards and will expire on the first June 30th following the issuance of the license.

204 APPLICATION, EXPIRATION AND RENEWAL OF LICENSE

- 204.1 The Department shall furnish the applicant or the licensee with the necessary forms to obtain initial or renewed licensure or to request relicensure of the facility after a change of ownership (see Section 204.7 below and Section 205). The issuance of an application form is in no way a guarantee that the completed application will be acceptable or that a license will be issued by the Department. A determination of licensure will be made by the Department within 30 days of receipt of the completed application.
- 204.2 The facility shall not admit any residents until the license to operate a residential long term care facility has been issued.
- 204.3 Applicants for initial license, renewal or relicensure after a change in ownership, shall pay in advance, a license fee of \$5.00 per bed, which shall be paid to the Department. Such fee shall be refunded to the applicant if a license is denied.
- 204.4 Annual renewal is required for all residential long term care facility licenses. Licenses are effective on the state fiscal year (July 1 through June 30) basis and expire on June 30th of each year.
- 204.5 Applications for annual license renewal shall be delivered, or if mailed, postmarked to the Office of Long Term Care no later than June 1st before the June 30th expiration of the license. Any license fee not paid when due is subject to a ten percent (10%) penalty.
- 204.6 Applications shall be signed by the administrator or owner of the facility.
- 204.7 When a change in ownership of controlling interest in the facility is sold by person or persons named in the license to any other person or persons the existing license and the new owner shall, at least 30 days prior to completion of the sale, submit a new application and license fee, be inspected and meet the applicable standards and rules. Such change in ownership shall be reported by the seller in writing to the Office of Long Term Care at least thirty (30) days before the change is to be implemented. The buyer shall be subject to any plan of correction submitted by the licensee and approved by the Department. The seller shall remain liable for all penalties assessed against the facility which are imposed for violations or deficiencies occurring prior to the sale of ownership or operational control. The Department shall consider and may deny a license based upon any criteria provided for at Arkansas Code Annotated § 20-10-224(f)(1).
- 204.8 The applicant/licensee must furnish the following information:
- a. The identity of each person having (directly or indirectly) an ownership interest of five percent (5%) or more in the facility;
 - b. The full name and address of the residential long term care facility for which license is requested, and such additional information as the Department may require, including affirmative evidence of ability to comply with such reasonable standards, rules as are lawfully prescribed hereunder;

- c. In case such facility is organized as a corporation, the identity of each officer and director of the corporation;
- d. In case such facility is organized as a partnership, the identity of each partner;
- e. A statement from the facility that they are responsible for any funds that they handle for the residents, including personal allowance funds. (If funds are stolen or lost, the facility is responsible for replacing the funds);
- f. A copy of any required service agreement/contract meeting specifications in Section 303 of these rules.

205 CHANGE IN OWNERSHIP

205.1 Transactions constituting a change in ownership include, but are not limited to, the following:

- a. Sale or donation of the facility's legal title;
- b. Lease of the entire facility's real and personal property;
- c. A sole proprietor becomes a member of a partnership or corporation, succeeding him as the new operator;
- d. A partnership dissolves;
- e. One partnership is replaced by another through the removal, addition or substitution of a partner;
- f. Two or more corporations merge and the originally-licensed corporation does not survive;
- g. Corporations consolidate; and
- h. A non-profit corporation becomes a general corporation, or a for-profit corporation becomes non-profit.

205.2 Transactions which do not constitute a change of ownership include, but are not limited to, the following:

- a. Changes in the membership of a corporate board of directors or board of trustees;
- b. Two (2) or more corporations merge and the originally licensed corporation survives;
- c. Changes in the membership of a non-profit corporation.

206 REVOCATION OF LICENSE

The Department is empowered to deny, suspend or revoke a license on any of the following grounds:

- a. Violations of any of the provisions of Arkansas Code Annotated § 20-10-201, et. seq., pursuant to licensing authority.
- b. Permitting, aiding or abetting the commission of any unlawful act in connection with the operation of a residential long term care facility.
- c. Non-compliance with inspections conducted pursuant to applicable federal, state, county or municipal laws, rules, regulations or ordinances.
- d. Failure to make available all records necessary to satisfy licensure requirements or denial of admission or access to representatives or agents of the Department for purposes of licensure inspection or investigation.
- e. Accepting and retaining residents for whom the facility cannot provide services as defined in Section 309.1.1 of these rules.

207 NOTICE AND PROCEDURE ON HEARING PRIOR TO DENIAL, SUSPENSION OR REVOCATION OF A LICENSE

Procedures for appeal to the Long Term Care Facility Advisory Board are incorporated in these rules as Appendix A.

208 APPEALS TO COURT

Any applicant or licensee who considers himself/herself injured in his/her person, business or property by final Department administrative adjudication shall be entitled to judicial review thereof as provided for by law. Proceedings for review shall be initiated by filing a petition in the Circuit Court of any county in which the petitioner does business or in the Circuit Court of Pulaski County within 30 days after service upon the petitioner of the Department's final decision. All petitions for judicial review shall be in accordance with the Arkansas Administrative Procedure Act as codified at Arkansas Code Annotated § 25-15-201 et seq.

209 COMPLIANCE

An initial license will not be issued until an owner has demonstrated to the satisfaction of the Department that the facility is in compliance with the licensing standards set forth in these rules.

210 NON-COMPLIANCE

When non-compliance with licensing standards is detected during survey inspection or investigation, the licensee will be notified of the violations. A plan of correction will be requested. The plan of correction must be submitted to the Department within 10 days of receipt of the notice and must establish the means by which the violation will be corrected and a timetable for implementation of the corrections. If an item of non-compliance that affects the

health and safety of residents is not promptly corrected, the Office of Long Term Care shall have the option to sanction or initiate action to suspend or revoke the facility's license.

211 CLOSURE

Any residential care facility that notifies the Office of Long Term Care that it has or will close or cease operation, or surrenders or fails to timely renew its license must meet the rules then in effect for new construction and licensure to be eligible for licensure.

212 INJUNCTIONS

The Office of Long Term Care, working with assistance from the Department of Human Services, Office of Chief Counsel, may bring action for a temporary restraining order, preliminary injunction, or permanent injunction against the owner/administrator/licensee of a residential long term care facility to enjoin one or more of the following:

1. Operation of:
 - a. An unlicensed facility;
 - b. A previously licensed facility which has had its license suspended or revoked;
 - c. A licensed facility for which procedures for non-renewal or revocation of the facility's license has been initiated and an emergency exists.
2. Acts or omissions which constitute a violation of laws or promulgated rules. If the violation does not pose an immediate or imminent threat to the health, safety or welfare of the residents of the facility, the facility shall be afforded a reasonable opportunity to correct the violation prior to the Department seeking judicial relief.
3. Admission of new residents into a home:
 - a. Which is operating without a license;
 - b. Which has had its license suspended or revoked;
 - c. Which is presently involved in proceedings for non-renewal revocation of the license and there is reason to believe an emergency exists;
 - d. In which continued admissions into the facility will place the lives, health, safety and welfare of the present and future residents in imminent danger.

213 RELOCATION OF RESIDENTS

The Office of Long Term Care may relocate residents from a residential long term care facility if any of the following conditions exists:

1. One or more violations remain uncorrected after efforts seeking compliance have failed and the violation significantly impairs the licensee's ability to provide an

adequate level of service and assistance to the number of residents indicated on the license.

2. An emergency exists in the facility.
3. The licensee voluntarily closes the facility.
4. The facility requests the aid of the Office of Long Term Care in the removal of residents and the removal is made:
 - a. With consent of residents;
 - b. For valid medical reasons;
 - c. For the welfare of the resident or other residents.

214 SUSPENSION OF NEW ADMISSIONS

214.1 The Office of Long Term Care may suspend the admission of residents to a residential long term care facility on the following grounds:

- a. One or more deficiencies remain uncorrected after efforts to attain compliance have failed, and the deficiencies affect the health and safety of residents or impair the licensee's ability to provide adequate services or assistance to the total number of residents indicated on the license;
- b. An emergency exists in the facility and the health and safety of the residents are threatened.

214.2 Before new admissions are suspended, the licensee shall receive prompt notice of the Department's decision. The suspension shall terminate upon the Department's determination that the facility is in substantial compliance or upon successful appeal of the suspension by the licensee.

215 PROVISIONAL LICENSURE

Subject to the requirements below, a provisional license shall be issued to the Applicant and new operator of the long-term care facility when the Office of Long Term Care has received the Application for Licensure to Conduct a Long Term Care Facility. A provisional license shall be effective from the date the Office of Long-Term Care provides notice to the Applicant and new operator, until the date the long-term care license is issued. With the exception of Medicaid or Medicare provider status, a provisional license confers upon the holder all the rights and duties of licensure.

Prior to the issuance of a provisional license:

1. The purchaser and the seller of the long-term care facility shall provide the Office of Long Term Care with written notice of the change of ownership at least thirty (30) days prior to the effective date of the sale.

2. The Applicant and new operator of the long-term care facility shall provide the Office of Long Term Care with the application for licensure, including all applicable fees.
3. The Applicant and new operator of the long-term care facility shall provide the Office of Long Term Care with evidence of transfer of operational control signed by all applicable parties.

A provisional license holder may operate the facility under a new name, whether fictitious or otherwise. For purposes of this section, the term *new name* means a name that is different than the name under which the facility was operated by the prior owner, and the term “operate” means that the provisional license holder may hold the facility out to the public using the new name. Examples include, but are not limited to, signage, letterhead, brochures or advertising (regardless of media) that bears the new name.

In the event that the provisional license holder operates the facility under a new name, the facility shall utilize the prior name in all communications with the Office of Long Term Care until such time as the license is issued. Such communications include, but are not limited to, incident reports, notices, Plans of Correction, and MDS submissions. Upon the issuance of the license, the facility shall utilize the new name in all communications with the Office of Long Term Care.

300 ADMINISTRATION

301 GOVERNING BODY

Each residential long term care facility must have a governing body that has ultimate authority for:

1. The overall operation of the facility;
2. The adequacy and quality of care;
3. The financial solvency of the facility and the appropriate use of its funds;
4. The implementation of the standards set forth in these rules; and
5. The adoption, implementation and maintenance, in accordance with the requirements of state and federal laws and regulations and these licensing standards, of resident care policies and administrative policies governing the operation of the facility.

302 GENERAL PROGRAM REQUIREMENTS

Each person or legal entity issued a license to operate a residential long term care facility shall provide an organized, continuous 24-hour-per-day program of supervision, care and services which:

1. Conforms with Office of Long Term Care rules;
2. Meets the needs of the residents of the facility;

3. Assures the full protection of residents' rights; and
4. Promotes the social, physical and mental well-being of residents.

303 REQUIRED SERVICE AGREEMENT/CONTRACTS

- 303.1 If a service required under these rules is not provided directly by the facility, the facility must have a written agreement/contract with an outside program, resource or service to furnish the necessary service.
- 303.2 A residential long term care facility that admits or retains persons with a diagnosis of mental illness/disorder in need of active treatment must make arrangements with a mental health service provider for the provision of an active treatment plan. This provision shall apply regardless of the size of the residential long term care facility.

304 INSPECTIONS BY DEPARTMENT

- 304.1 All areas of the licensed facility and all records related to the care and protection of residents, including resident and employee records, must be open for inspection by the Department for the purpose of enforcing these rules. The Department or its agents shall be afforded reasonable access to books and papers relating to the facility.
- 304.2 The facility must provide for the maintenance and submission of such statistical, financial or other information, records or reports, in such form and at such time and in such manner as the Department may require.
- 304.3 Facilities must provide a written acceptable plan of correction within 10 days of receipt of written notification for deficiencies found during routine inspections, special visits and complaint investigations;
- 304.4 The facility must post the Statement of Deficiencies from the latest survey in a prominent location within the facility.
- 304.5 The Director of the Office of Long Term Care may assess fines and sanctions against residential long term care facilities as specified in Appendix B of these rules.

305 FACILITY ADMINISTRATOR REQUIREMENTS

- 305.1 Each facility must have a full-time (minimum 40 hours per week) administrator on the premises during normal business hours. The administrator must have responsibility for daily operation of the facility. Correspondence between the Office of Long Term Care and the facility must be through the administrator.
- 305.2 The administrator must not leave the residential care facility premises during the day tour of duty without first delegating authority to a qualified individual who will manage the facility temporarily during the administrator's absence.

- 305.3 The facility administrator must notify the Office of Long Term Care in writing if the administrator's absence from the facility will exceed seven (7) consecutive days. The name of the individual who will be in charge of the facility must be listed in the letter.
- 305.4 Each administrator will provide to the Office of Long Term Care on an annual basis a copy of his/her current administrator certification certificate. All certifications must be current within the limits of the certification agency. This submission shall be made at the same time the facility seeks licensure, renewal of licensure or upon a change of administrators.
- 305.5 The administrator must have the following minimum qualifications:
- a.
 - (1) Must be currently certified as a Residential Care Facility Administrator through a certification program approved by the Office, or must be in an approved certification program with an expected completion date of no more than eighteen (18) months from the effective date of these rules; or
 - (2) Must have satisfactorily completed a course of instruction and training prescribed by the Office. The course shall be designed as to content and administered so as to present sufficient knowledge of the needs properly to be served by long term care facilities, laws governing the operation of long term care facilities and the protection of the interests of residents therein, and the elements of good long term care facility administration; or
 - (3) Must present evidence of satisfactorily completing an approved training program to administer, supervise and manage a long term care facility; or
 - (4) Must have participated for one (1) year in an administrator-in-training program approved by the Office;
 - b. Must be at least 21 years of age, of good moral character and of sound physical and mental health. "Character" and "health" may be determined by an investigation conducted by the Office that may include such information as criminal records, doctor statements, and any other information as requested by the Office.
 - c. Must be a high school graduate or have a GED (Individuals serving as an administrator on the effective date of these rules shall be deemed to have satisfied this criterion);
 - d. Must have the ability to comply with these rules;
 - e. Must have no prior conviction pursuant to Arkansas Code Annotated § 20-10-401 or relating to the operation of a long term care facility (check references);

- f. Must not have been convicted of abusing, neglecting or mistreating individuals (check adult abuse register maintained by the Department of Human Services, Division of Aging and Adult Services).
- g.

306 REQUIRED POLICIES AND PROCEDURES GOVERNING GENERAL ADMINISTRATION OF THE FACILITY

The facility must develop, maintain and make available for public inspection the following policies and procedures:

1. Resident policies and procedures as specified in Section 307;
2. Admission policies as specified in Section 309;
3. Discharge and transfer policies as specified in Sections 309.3 and 311.4;
4. Incident reporting policies and procedures as specified in Section 310, including procedures for reporting suspected abuse/neglect as specified in Section 310.7;
5. Policies and procedures for the management of resident personal allowance accounts as specified in Section 311;
6. Residents' Rights policies and procedures as specified in Section 312;
7. Fire safety standards as specified in Section 308.1(f);
8. Smoking policies for residents and facility personnel as specified in Section 308.1(g)
9. Policy and procedures regarding visitors, mail and associates as specified in Section 312.15;
10. Policy and procedures regarding emergency treatment plans as specified in Section 403.3;
11. Policy and procedures for the relocation of residents in cases of emergencies (e.g. natural disasters, utility outages, etc.).

307 GENERAL REQUIREMENTS CONCERNING RESIDENTS

The facility must have written resident policies and procedures that shall include, as a minimum, the following:

1. Established visiting hours must be posted in plain view of visitors. Unrestricted visiting hours are recommended.
2. Keys must be readily available to facility personnel in charge of all locked doors within the facility.

3. Pets may be permitted in residential long term care facilities if sanitary conditions are maintained. Current records of inoculations and license, as required by local ordinance, must be maintained on file in the facility. Pets must not be allowed in food preparation, storage or serving areas.
4. A quiet atmosphere shall be maintained. Disturbances created within the facility will not be permitted.
5. Adult male and female residents must not have adjoining rooms which do not have full floor to ceiling partitions and closable solid core doors. Adult male and female residents must not be housed in the same room (except husband and wife of the same marriage, or consenting adults who request, and agree in writing executed by the resident, guardian or responsible party as appropriate and maintained by the facility, to share a room).
6. Residents may not perform duties in lieu of direct care staff, but may be employed by the facility in other capacities.
7. Residents shall not be left in charge of the facility.
8. The facility will keep a written record of life insurance policies purchased for the residents when the facility is named as a beneficiary.
9. There must be at least one telephone which is accessible at all times in case of emergency and must be able to access either "911" or "0" without use of coins. Residents must have access to a public telephone at a convenient location within the facility.

308 PERSONNEL ADMINISTRATION

- 308.1 Each facility must have written employment and personnel policies and procedures which will include, as a minimum, the following:
 - a. All employees caring for residents must be at least 18 years of age;
 - b. No person with a communicable disease or infected skin lesion that poses a direct threat to the health or safety of other individuals in the workplace shall be permitted to work in the facility;
 - c. No person who has been convicted of abusing, neglecting or mistreating individuals may be employed in the facility;
 - d. All employees must have a skin test for tuberculosis within the first two (2) weeks of employment and annually thereafter. Skin tests for tuberculosis are to be administered and read by the local Health Department or personal physician. The results of the test will be listed in the employee's personnel record;
 - e. A copy of all personnel policies and procedures must be available to all facility personnel and to OLTC personnel and any other Departmental entities having legal access authority;

- f. Policies and procedures must be developed for personnel about fire safety standards;
- g. Policies and procedures must be developed for smoking in the facility.

308.2 Sufficient staff must be present at all times to meet the needs of the residents, including preparation of nutritional meals, cleaning of the facility and provision of supportive services. Staffing requirements will be based on current census rather than licensed capacity. Required staff/resident ratios based on current resident census are for large and small facilities:

# Residents	Direct Care Staff Required Per Shift		
	Day	Evening	Night
1-16	1	1	1
17-32	2	1	1
33-49	2	2	2
50-66	3	2	2
67-83	4	2	2
84-above	5	3	2

- a. Other staff requirements that affect small facilities (16 or fewer beds) are as follows:
 - a. Each staff person on duty may be counted as direct care staff even if they are currently involved in administrative, housekeeping or dietary activities;
 - b. The night person may be asleep in the facility.

308.2.2 Other staff requirements that affect large facilities (over 16 beds) are as follows:

- a. For large facilities, the staffing table shown above shall apply to direct care staff only and does not include administrative, housekeeping or dietary staff.
- b. The facility administrator shall not be scheduled as direct care staff for purposes of meeting minimum staffing requirements during normal business hours as referenced in Section 305.1.
- c. In large facilities with 17 or more residents, staff involved in food and dietary services shall not be permitted to perform non-food or non-dietary services during the same shift.
- d. In a multi-building facility, at least one direct care staff person must be on duty and awake during all hours. A relief direct care

staff person must be available in the facility to relieve direct care staff for meals, breaks, etc. and to cover if a direct care staff person must leave the facility in an emergency.

- e. The staffing schedule must be posted in the facility.
- f. The Office may grant waivers to staffing standards in situations where the facility demonstrates an ability to adequately meet service requirements with fewer staff.

308.3 Orientation records will be maintained for each employee to include but not limited to:

- a. Job duties;
- b. Orientation to resident rights;
- c. Abuse/neglect reporting requirements; and
- d. Fire and tornado drills.

308.4 Four (4) hours of in-service training or continuing education pertinent to the operation of a residential long term care facility must be provided on a quarterly basis for all employees who have direct contact with residents. Training must include (but not limited to):

- a. Resident Rights;
- b. Evacuation of building;
- c. Safe operation of fire extinguishers;
- d. Incident reporting;
- e. Medication supervision.

308.5 The facility must establish and maintain a personnel file for each employee. At a minimum, each employee's personnel file must contain:

- a. Application for employment, including resume if available;
- b. Reference checks, including name and position of person contacted and a statement that references were checked;
- c. License or certificate, as appropriate (copy on file);
- d. Current health card or copy;
- e. Job description of the position the employee occupies;
- f. Facility orientation documentation;

- g. The employee's signed acknowledgement that he/she has received and read a copy of the Resident Rights;
- h. Job orientation documentation as required;
- i. in-service training documentation.

308.6 Employment applications for each employee must contain sufficient information to support placement in the position to which each employee is assigned.

308.7 Written job descriptions must be developed for each employee classification (e.g., administrator, housekeepers, etc.), and shall include, as a minimum:

- a. The responsibilities and/or actual work to be performed in each classification;
- b. The educational qualifications;
- c. The physical requirements necessary to perform the essential functions of the job; and
- d. The licenses or certificates required for each job classification.

309 ADMISSION, DISCHARGE AND TRANSFER

The facility must not admit or continue to care for residents whose needs are greater than the facility is licensed to provide. If necessary services cannot be obtained in or by the facility, the resident and/or responsible party will be notified to seek alternate placement immediately. The facility administrator should assist in helping to locate a facility that can provide the appropriate level of care.

309.1 The facility must develop and implement written admission policies and criteria that include, as a minimum, requirements that the applicant/resident:

- a. Be eighteen (18) years of age or older;
- b. Be independently mobile as defined in Section 100;
- c. Be able to self-administer medications as outlined in Section 601;
- d. Be capable of understanding and responding to reminders and guidance from staff;
- e. Is not totally incontinent of bowel and bladder;
- f. Does not have a feeding or intravenous tube;
- g. Does not have a communicable disease that poses a direct threat to the health or safety of other residents or staff;

- h. Does not need nursing services which exceed those that can be provided by a certified home health agency on a temporary or infrequent basis;
- i. Does not have a level of mental illness, mental disorder, mental retardation, dementia, Alzheimer's disease, or addiction to alcohol/drugs that requires a higher level of medical, nursing, psychiatric care or active treatment than can be safely and effectively provided in the residential care facility setting;
- j. Does not require religious, cultural, or dietary regimens that cannot be met by the facility without undue burden;
- k. Does not require physical restraints, lock up, confinement, or have current violent behavior, nor is the resident being admitted against his/her will by court order, or being released from a correctional facility.

The facility will interview and document all prospective residents and/or sponsors prior to admission in order to determine the needs of the prospective resident and whether the facility can meet these needs.

309.2 Each facility must provide to the resident and/or his/her responsible party at or prior to admission and periodically thereafter as required, a written admission agreement or contract duly executed, dated and signed by the facility administrator and the resident and/or responsible party. A copy of the signed agreement must be maintained in the resident's permanent record. The agreement shall be printed and must contain, at a minimum, the following:

- a. A statement describing all services, materials, equipment and food to be included within the basic charge. The agreement/contract must also state additional services delivered to the resident and the additional charges to be paid by the resident;
- b. A written acknowledgement that the resident and/or responsible party has been notified of the charges for services;
- c. The conditions and rules governing residency;
- d. The conditions and rules governing termination of a resident's placement in the facility;
- e. If the resident receives state or federal funding, other than Medicaid, the amount must be included in the agreement. If the resident is private pay there may be a disclaimer signed by the responsible party that they have received a copy of the charges;
- f. A provision that no additional charges shall be levied against the resident by the facility for basic residential care facility services identified in the admissions agreement or contract;
- g. The conditions under which the facility may adjust the basic monthly or daily rate and charges for supplemental services and supplies, including

the provision of a written notification to the resident or responsible party, by providing prompt notice of all changes in price prior to implementation.

- h. A written refund policy that addresses refund of advance payment(s) in the event of transfer, death, voluntary or involuntary discharge. The policy shall include, as a minimum, the following:
 - 1. For a fourteen-day period beginning on the date of entry into a facility, the resident shall have the right to rescind any contractual obligation into which he/she has entered and receive a full refund of any moneys transferred to the facility. If the resident entered the facility and received some benefit therefrom, the charges of the services provided shall be prorated and payment made only for the benefits conferred prior to the refund;
 - 2. Residents with income of SSA/SSI benefits shall receive refunds on a pro-rata basis from that income source, without regard for the reason of transfer;
 - 3. In the event of transfer for medical reasons, the refund policy must address the resident's need to maintain on-going medical care and services, and for that reason refunds shall be on a pro-rata basis, regardless of income source.
 - 4. If, after the expiration of the 14 day period referenced in 309.2 (h)(1) above, the resident provides a ten (10) day notice, any applicable refund shall be available the day the resident leaves the facility. If the resident does not provide a ten (10) day notice, any applicable refund will be available within ten (10) days of the resident's departure.
- i. A statement that the resident or his/her legal representative shall have the right to discharge the resident from the facility.

309.3 The facility must develop and implement written discharge and transfer policies and procedures that include, at a minimum, the following:

- a. A resident may be transferred or discharged only when:
 - 1. The resident's medical needs cannot be met by the facility, or a certified home health agency, on a temporary or infrequent basis;
 - 2. The resident presents a danger to the health, safety or welfare of himself or others;
 - 3. Non-payment for his/her stay; or
 - 4. The facility ceases operation.

- b. The reasons for transfer or discharge of a resident must be documented in the resident's permanent record and the transfer or discharge must be discussed with the resident his guardian or personal representative, who must be given a copy of the documentation setting forth the alternatives available. This notice must be given 30 days prior to the date of transfer or discharge. Transfer for the welfare of the resident or other residents may be effected immediately if the need for such action is documented in the record;
- c. The term "transfer" applies to the movement of a resident from one facility to another facility and does not apply to a change in room assignment or services within the same facility;
- d. "Medical reasons" for transfer or discharge must be based on the resident's needs and are to be determined and documented by a physician. The resident's permanent record shall contain documentation of medical reasons for transfer or discharge.
- e. A written appeals process for residents objecting to transfer or discharge must be developed by the facility in conformity with Arkansas Code Annotated § 20-10-1005, as amended, as well as all applicable rules. That process shall include:
 - 1. The written notice of transfer or discharge must state the reason for the proposed transfer or discharge as documented in 309.3(b). The notice must inform the resident that he/she has the right to appeal the decision to the Director within seven (7) calendar days. The resident must be assisted by the facility in filing the written objection to transfer or discharge;
 - 2. Within fourteen (14) days of filing of the written objections, a hearing will be scheduled;
 - 3. A final determination in the matter will be rendered within seven (7) days of the hearing.
- f. The facility must provide assistance to residents to ensure a safe and orderly transfer or discharge;
- g. The facility, in conjunction with the responsible party, must make arrangements to transfer residents who require a higher level of medical, nursing or psychiatric care than can be safely and effectively provided in a residential long term care facility setting. (Refer to Section 309.1.1);
- h. If the Office of Long Term Care determines that a resident is inappropriate for continued placement in the facility, the provider must arrange for transfer of the resident within ten (10) days of such notification. Less time may be given by the Office of Long Term Care when a resident's life or health requires immediate medical attention. The responsibility for the resident's care or lack of care shall rest with the provider. If the Office of Long Term Care determines that the transfer of a resident is necessary for

reasons other than appropriateness of placement, the Office may afford the facility up to 30 days to effectuate the transfer;

- i. Upon transfer of a resident to a health, mental health or other residential long term care facility, a copy of all pertinent resident records, as required by this section of the rules, must accompany the resident, except when emergency situations prohibit such transmittal. In such cases, pertinent information shall be telephoned to the receiving facility immediately and written transfer documents sent within 72 hours;
- j. The facility must assist all residents proposed to be discharged or transferred to assure the resident's placement in a care setting which is adequate and appropriate to the resident's condition and, where possible, consistent with the wishes of the resident.

310 The facility must develop and implement written policies and procedures to ensure that incidents, including:

- alleged or suspected abuse or neglect of residents;
- accidents, including accidents resulting in death;
- unusual deaths or deaths from violence;
- unusual occurrences; and,
- exploitation of residents or any misappropriation of resident property,

are prohibited, reported, investigated and documented as required by these rules.

A facility is not required under this rule to report death by natural causes. However, nothing in this rule negates, waives or alters the reporting requirements of a facility under other regulations or statutes.

Facility policies and procedures regarding reporting, as addressed in these rules, must be included in orientation training for all new employees, and must be addressed at least annually during in-service training for all facility staff.

310.1 NEXT-BUSINESS-DAY REPORTING OF INCIDENTS

The following events shall be reported to the Office of Long Term Care by facsimile transmission to telephone number 501-682-8551 of the completed Incident & Accident Intake Form (Form DMS-7734) no later than 11:00 a.m. on the next business day following discovery by the facility.

- a. Any alleged, suspected or witnessed occurrences of abuse or neglect to residents.
- b. Any alleged, suspected or witnessed occurrence of misappropriation of resident property, or exploitation of a resident.

- c. Any alleged, suspected or witnessed occurrences of verbal abuse. For purposes of this rule, "verbal abuse" means the use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to residents, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that he or she will never be able to see his or her family again.
- d. Any alleged, suspected or witnessed occurrences of sexual abuse to residents by any individual.

In addition to the requirement of a facsimile report by the next business day on Form DMS-7734, the facility shall complete a Form DMS-762 in accordance with Section 310.2.

310.2 INCIDENTS OR OCCURRENCES THAT REQUIRE INTERNAL REPORTING ONLY - FACSIMILE REPORT OR FORM DMS-762 NOT REQUIRED.

The following incidents or occurrences shall require the facility to prepare an internal report only and does not require a facsimile report, or form DMS-762 to be made to the Office of Long Term Care. The internal report shall include all content specified in Section 310.3, as applicable. Facilities must maintain these incident record files in a manner that allows verification of compliance with this provision.

- a. Incidents where a resident attempts to cause physical injury to another resident without resultant injury. The facility shall maintain written reports on these types of incidents to document "patterns" of behavior for subsequent actions.
- b. All cases of reportable disease, as required by the Arkansas Department of Health.
- c. Loss of heating, air conditioning or fire alarm system of greater than two (2) hours duration.

310.3 INTERNAL-ONLY REPORTING PROCEDURE

Written reports of all incidents and accidents included in section 310.2 shall be completed within five (5) days after discovery. The written incident and accident reports shall be comprised of all information specified in forms DMS-7734 and 762 as applicable.

All written reports will be reviewed, initialed and dated by the facility administrator or designee within five (5) days after discovery.

Reports of incidents specified in Section 310.2 will be maintained in the facility only and are not required to be submitted to the Office of Long Term Care.

All written incident and accident reports shall be maintained on file in the facility for a period of three (3) years.

310.4 OTHER REPORTING REQUIREMENTS

The facility's administrator is also required to make any other reports of incidents, accidents, suspected abuse or neglect, actual or suspected criminal conduct, etc. as required by state and federal laws and regulations.

310.5 ABUSE INVESTIGATION REPORT

The facility must ensure that all alleged or suspected incidents involving resident abuse, exploitation, neglect or misappropriations of resident property are thoroughly investigated. The facility's investigation must be in conformance with the process and documentation requirements specified on the form designated by the Office of Long Term Care, Form DMS-762, and must prevent further potential incidents while the investigation is in progress.

The results of all investigations must be reported to the facility's administrator, or designated representative, and to other officials in accordance with state law, including the Office of Long Term Care. Reports to the Office of Long Term Care shall be made via facsimile transmission by 11:00 a.m. the next business day following discovery by the facility, on form DMS-7734. The follow-up investigation report, made on form DMS-762, shall be submitted to the Office of Long Term Care within 5 working days of the date of the submission of the DMS-7734 to the Office of Long Term Care. If the alleged violation is verified, appropriate corrective action must be taken.

The DMS-762 may be amended and re-submitted at any time circumstances require.

310.6 REPORTING SUSPECTED ABUSE OR NEGLECT

The facility's written policies and procedures shall include, at a minimum, requirements specified in this section.

310.6.1 The requirement that the facility's administrator or his or her designated agent immediately reports all cases of suspected abuse or neglect of residents of a long-term care facility as specified below:

- a. Suspected abuse or neglect of an adult (18 years old or older) shall be reported to the local law enforcement agency in which the facility is located, as required by Arkansas Code Annotated 5-28-203(b).
- b. Suspected abuse or neglect of a child (under 18 years of age) shall be reported to the local law enforcement agency and to the central intake unit of the Department of Human Services, as required by Act 1208 of 1991. Central intake may be notified by telephone at 1-800-482-5964.

- 310.6.2 The requirement that the facility's administrator or his or her designated agent report suspected abuse or neglect to the Office of Long Term Care as specified in this rule .
- 310.6.3 The requirement that facility personnel, including but not limited to, licensed nurses, nursing assistants, physicians, social workers, mental health professionals and other employees in the facility who have reasonable cause to suspect that a resident has been subjected to conditions or circumstances which have or could have resulted in abuse or neglect are required to immediately notify the facility administrator or his or her designated agent.
- 310.6.4 The requirement that, upon hiring, each facility employee be given a copy of the abuse or neglect reporting and prevention policies and procedures and sign a statement that the policies and procedures have been received and read. The statement shall be filed in the employee's personnel file.
- 310.6.5 The requirement that all facility personnel receive annual, in-service training in identifying, reporting and preventing suspected abuse/neglect, and that the facility develops and maintains policies and procedures for the prevention of abuse and neglect, and accidents.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL SERVICES
OFFICE OF LONG TERM CARE
DMS-7734

Incident & Accident Next Day Reporting Form

Purpose/Process

This form is designed to standardize and facilitate the process for the reporting allegations of resident abuse, neglect, misappropriation of property or injuries of an unknown source by individuals providing services to residents in Arkansas long term care facilities for next day reporting pursuant to LTC 310.2.

The purpose of this process is for the facility to compile the information required in the form DMS-7734, so that next day reporting of the incident or accident can be made to the Office of Long Term Care.

Completion/Routing

This form, with the exception of hand written witness statements, **MUST BE TYPED!**

The following sections are not to be completed by the facility; the Office of Long Term Care completes them:

1. The top section entitled COPIES FOR:
2. The FOR OLTC USE ONLY section found at the bottom of the form.

All remaining spaces must be completed. If the information can not be obtained, please provide an explanation, such as “moved/address unknown”, “unlisted phone”, etc.

If a requested attachment can not be provided please provide an explanation why it can not be furnished or when it will be forwarded to OLTC.

The original of this form must be faxed to the Office of Long Term Care the next business day following discover by the facility. Any material submitted as copies or attachments must be legible and of such quality to allow recopying.

OLTC INCIDENT AND ACCIDENT REPORT (I&A)

Date & Time Submitted (if known): _____ Date & Time of Discovery: _____

Facility Name: _____

Facility Area Code and telephone # (_____) _____

Facility Address: _____

Staff reporting I & A: _____ Title: _____

Date of I & A _____ Time: _____ AM or PM _____

Name of Injured Resident: _____ Age: _____ Sex: _____ Race: _____

Status of Alleged Perpetrator: ___ Facility Employee ___ Family ___ Visitor ___ Other ___ Unknown

Type of Incident: Neglect _____	Misappropriation of Property: Drugs _____
Abuse: Verbal _____	Personal Property _____
Sexual _____	Resident Trust Fund _____
Physical _____	
Emotional/Mental _____	

NOTIFICATIONS: FAMILY: Yes _____ No _____ DOCTOR: Yes _____ No _____

LAW ENFORCEMENT: Yes _____ No _____ ADMINISTRATOR: Yes _____ No _____

Summary of Incident: _____

(cont. on page 2)

Steps taken to prevent continued abuse or neglect during the investigation: _____

(cont. on page 3)

ARKANSAS DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL SERVICES
OFFICE OF LONG TERM CARE
DMS-762

Facility Investigation Report for Resident Abuse, Neglect, Misappropriation of Property,
& Exploitation of Residents in Long Term Care Facilities

Purpose/Process

This form is designed to standardize and facilitate the process for the reporting allegations of resident abuse, neglect, or misappropriation of property or exploitation of residents by individuals providing services to residents in Arkansas long term care facilities. This investigative format complies with the current rules requiring an internal investigation of such incidents and submittal of the written findings to the Office of Long Term Care (OLTC) within five (5) working days.

The purpose of this process is for the facility to compile a substantial body of credible information to enable the Office of Long Term Care to determine if additional information is required by the facility, or if an allegation against an individual(s) can be validated based on the contents of the report.

Completion/Routing

This form, with the exception of hand written witness statements, **MUST BE TYPED!**

Complete all spaces! If the information can not be obtained, please provide an explanation, such as “moved/address unknown”, “unlisted phone”, etc. Required information includes the actions taken to prevent continued abuse or neglect during the investigation.

If a requested attachment can not be provided please provide an explanation why it can not be furnished or when it will be forwarded to OLTC.

This form, and all witness and accused party statements, must be originals. Other material submitted as copies must be legible and of such quality to allow re-copying.

The facility’s investigation and this form must be completed and submitted to OLTC within five (5) working days from when the incident became known to the facility.

Upon completion, send the form by certified mail to:
Office of Long Term Care, P.O. Box 8059, Slot S408, Little Rock, AR 72203-8059.

Any other routing or disclosure of the contents of this report, except as provided for in LTC 310.3 and 310.4, may violate state and federal law.

Facility Investigation Report for Resident Abuse, Neglect, Misappropriation of Property,
& Exploitation of Residents in Long Term Care Facilities

Section I-Reporting Information

Name of Facility: _____

Phone #: (_____) _____

Address: _____

City _____ State _____ Zip Code _____

Facility Staff Member Completing DMS 762: _____

Title: _____

Date Incident Reported/Faxed to OLTC: _____ Time: _____ AM/PM

Date & Time of Incident (if known): _____

Time & Time of Discovery: _____

Type of Incident: Neglect _____	Misappropriation of Property: Drugs _____
Abuse: Verbal _____	Personal Property _____
Sexual _____	Resident's Trust Fund _____
Physical _____	
Emotional/Mental _____	

Name of Involved Resident: _____ Room #: _____

Social Security #: _____ DOB: _____

Height _____ Weight _____ Physician _____

Is Resident still Living: _____ If not, Date of Death: _____

Ambulatory? YES _____ NO _____ Oriented Time, Place, Person, Events (Circle one or all) _____

Physical Functional Level/Impairment _____

Mental Functional Level _____

Primary Diagnosis _____

Section III- Findings and Actions Taken

Please include Resident's current medical condition

Facility Administrator's Signature

Date

Section IV- Notification/ Status

Administrator/Written Designee Must Be Notified!

Name of Administrator _____

Date: _____ Time: _____ AM / PM

Family Notified: YES _____ NO _____ NONE _____ Date: _____ Time: _____ AM/PM

Name of Family Member: _____

Relationship: _____ Phone #: _____

Doctor Notified: YES _____ NO _____ Date: _____ Time: _____ AM/PM

Doctor's Name: _____ Phone #: _____

Resident Sent to Hospital: YES _____ NO _____ Date: _____ Time: _____ AM/PM

Admitted to Hospital: YES _____ NO _____

Name/ Address/ Phone of Hospital: _____

Law Enforcement Must Be Notified for abuse and neglect

Date: _____ Time: _____ AM/PM

Name of Law Enforcement Agency: _____

Phone #:

Address: _____

City/Zip: _____

Was an Investigation Made by the Law Enforcement Agency?: YES _____ NO _____

Date of Investigation: _____ Time: _____

Name of Officer: _____

Section VI-Accused Party Information

Name of Accused Party: _____

Job Title (if any): _____ Phone #: _____

Home Address: _____

City/State/Zip: _____

Social Security #: _____ DOB: _____

Dates of Current Employment: From _____ To _____

Certified Nursing Assistant: YES _____ NO _____

Registration # : _____ Date Issued: _____

Date Criminal Background Check Completed: _____

Licensed by State Board of Nursing: YES _____ NO _____

Type of License: RN # _____ LPN # _____

Date Issued: _____

Section VII- Attachments

Attach the following information to the back of this form. If you do not have one of the specified attachments, please provide an explanation why it can not be obtained or if it will be forwarded in the future.

1. Statement from the accused party.
2. All witness statements. Use the attached OLTC Witness Statement Form for all witness statements submitted. If the statement is a typed copy of a handwritten statement, the handwritten statement must accompany the typed statement.
3. Law enforcement incident report. This can be mailed at a later date if necessary.
4. Other pertinent reports/information, such as Ombudsmen, autopsy, reports, etc. These can be mailed at a later date if necessary.

Facility Investigation Report for Resident Abuse, Neglect, Misappropriation of Property,
& Exploitation of Residents in Long Term Care Facilities

OLTC Witness Statement Form

Date: _____ Time: _____ AM/ PM

Witness Full Name: _____

Job Title: _____ Shift: _____

Home Address: _____ City/Zip _____

Home Phone #: _____ Work Phone #: _____

Relation to Resident (If Any?) _____

State in your own words what you witnessed (be very descriptive) and sign below.

(Continue on Back as Necessary)

The information provided above is true to the best of my knowledge:

Signature of Witness: _____ Date: _____

311 FINANCIAL MANAGEMENT OF RESIDENT PERSONAL ALLOWANCE

- 311.1 Each facility must provide for the safekeeping and accountability of resident personal allowance funds in accordance with this Section (see Section 204.8.e).
- 311.2 Individuals receiving Supplemental Security Income (SSI) will be entitled to a monthly personal allowance consistent with federal requirements for SSI recipients.
- 311.3 The facility must have written policies and procedures for the management of personal allowance accounts with an employee designated to be responsible for these accounts. The facility responsibilities are as follows:
- a Each individual receiving SSI shall have the opportunity to place personal allowance funds in an account. No fee shall be charged by the facility for maintaining these accounts;
 - b Individuals who receive SSI are entitled to retain an amount from their income for personal needs consistent with federal requirements;
 - c The facility shall hold personal allowance funds in trust for the sole use of the residents, and such funds must not be commingled with the funds of the facility or use for any purpose other than for the benefit of the resident;
 - d The resident may terminate the facility-maintained account and receive a check for the current balance;
 - e The facility must maintain individual records for each resident who has an account showing all deposits, withdrawals and the current balance;
 - f The facility must document all personal transactions and maintain all paid bills, vouchers and other appropriate payment and receipt documentation in the manner prescribed by the Department;
 - g The facility may deposit personal allowance funds in individual or collective interest bearing, federally insured bank accounts. If these accounts are established, the facility must develop a procedure to insure the equitable distribution of interest to each resident's account;
 - h Quarterly, the facility must supply each resident or responsible party who has a personal account with a statement showing all deposits, withdrawals and current balance of the resident's personal allowance account;
 - i The facility must provide the Department access to required resident records upon request.
- 311.4 The use of a resident's personal allowance funds must meet the following conditions:

- a Any waiver of the right to a personal allowance by a resident entitled to the allowance shall be void;
- b At a minimum the resident shall have access to his/her personal allowance account during the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, according to facility policies and procedures;
- c The personal allowance shall, at the discretion of the resident, be used in obtaining clothing, personal hygiene items, and other supplies, services, entertainment or transportation for personal use not otherwise provided by the facility pursuant to the admission agreement or required by rule;
- d The facility shall not demand, require or contract for payment of all or any part of the resident's personal allowance in satisfaction of the facility rate for supplies and services;
- e The facility shall not charge the resident additional amounts for supplies and/or services that the facility is by law, rule or agreement required to provide under the basic charge;
- f Services or supplies provided by the facility beyond those that are required to be included in the basic charge may be charged to the individual only with the specific written consent of the individual or guardian;
- g The individual will be furnished in advance of the provision of the supplies or services with an itemized statement setting forth the charges for services or supplies provided by the facility;
- h Whenever a resident authorizes a facility to exercise control over his/her personal allowance, such authorization must be in writing and subscribed by the parties to be charged. Any such money shall not be commingled with the funds or become an asset of the facility or the person receiving the same, but shall be segregated and recorded on the facility's financial records as independent accounts.

311.5 Transfer of resident funds must meet the following requirements:

- 311.5.a.1 At the time of discharge from the facility, the resident, legal guardian or other appropriate individual or agency shall be provided a final accounting of the resident's personal account and issued a check for the outstanding balance. If the resident is being transferred to another residential or health care facility, the resident or his/her representative shall be given an opportunity to authorize transfer of the balance to a resident account at the receiving facility;
- 311.5.a.2 Upon the death of a resident, a final statement of the account must be made and all remaining funds shall be transferred to the resident's estate, subject to applicable state laws;
- 311.5.a.3 Upon change of ownership, the existing owner must provide the new owner with a written statement of all resident personal funds. This statement shall

verify that the balance being transferred in each resident fund account is true and accurate as of the date of transfer;

311.5.a.4 At change of ownership, the new owner must assume responsibility for account balances turned over at the change of ownership together with responsibility for all requirements of this Section, including holding of resident's funds in trust.

311.6 The facility must provide for inventory records and security of all monies, property or things of value which the resident has voluntarily authorized, in writing, the facility to hold in custody or exercise control over at the time of admission or any time thereafter.

311.7 If a legal guardian or payee fails to pay a residential care facility's charges or provide for the resident's personal needs, the facility shall notify the Department of Human Services, Division of Aging and Adult Services, Adult Protective Services.

312 RESIDENT RIGHTS

312.1 Policies and procedures required by the facility to assure resident's rights are as follows:

- a The facility must have written policies and procedures defining the rights and responsibilities of residents. The policies shall present a clear statement defining treatment of residents by all who provide care or services to residents;
- b Any policies of resident conduct which the facility has finalized and by which it expects residents to abide must be included in the statement of rights and responsibilities which the resident signs (refer to Section 309.2.c). These facility policies must be approved by the Office of Long Term Care;
- c A copy of the synopsis of the Resident's Bill of Rights must be prominently displayed within the facility;
- d Each resident admitted to the facility is to be fully informed of these rights and of all rules governing resident conduct and responsibilities. The facility is to communicate these expectations/rights both orally and in writing during the period of not more than two weeks before or five working days after admission. The facility must obtain a signed Resident Rights Statement from the resident and this statement must be maintained in the resident's record. A legal guardian or other person responsible for the resident may also sign. For purposes of this provision, the Resident Rights Statement shall be deemed appropriately signed by the resident if:
 1. Resident capable of understanding: Signed by the resident before one witness and the witness also signs.
 2. Resident incapable because of illness: The attending physician documents the specific impairment that prevents the resident from understanding or signing. The resident's responsible party and two witnesses sign.

3. Resident mentally incapacitated: The resident's legal guardian is read and explained the Rights. The legal guardian then signs the Resident Rights Statement before one witness, who also signs the statement.
 4. Resident capable of understanding but acknowledge with other mark (X): Mark is made by the resident in front of two witnesses who know the resident and also sign.
- e. Effective means shall be utilized to inform non-English speaking persons or persons with hearing or visual impairments of the Resident Rights;
 - f. Staff members will be provided a copy of the Resident Rights and must fully understand all rights. Staff must complete a written acknowledgement stating they have received, read and understand the Resident Rights. A copy of the signed acknowledgement shall be placed in the employee's personnel file;
 - g. The facility's procedures regarding resident's rights and responsibilities will be formally included in ongoing staff development programs for all personnel, including new employees.

312.2 The resident's right to know of services available shall meet the following conditions:

- a. Each resident admitted to the facility will be fully informed, by the time of admission and as need arises during residency, of services available in the facility, including any charges for services;
- b. Residents have the right to choose, at their own expense, a personal physician and pharmacist.

312.3 The resident's right concerning transfers and discharges:

- a. The facility must develop and implement transfer and discharge policies and procedures as specified in Section 309.3;
- b. The facility must give the resident reasonable written notice of changes in room or roommate when the change is not requested by the resident.

312.4 The resident's right to constitutional and legal rights are as follows:

- a. Each resident admitted to the facility will be encouraged and assisted to exercise all constitutional and legal rights as a resident and a citizen including the right to vote. The facility shall make reasonable accommodations to ensure free exercise of these rights;
- b. Residents may voice grievances or recommend changes in policies or services to facility staff or to outside representatives of their choice, free from restraint, coercion, discrimination, or reprisal;
- c. Residents shall have the right to free exercise of religion including the right to rely on spiritual means for treatment.

- 312.5 Resident complaints or suggestions made to the facility's staff must be responded to within ten (10) days. Documentation of such response will be maintained by the facility administrator or his/her designee.
- 312.6 A representative resident council shall be established in each facility. The resident council's duties shall include:
- a. Review of policies and procedures required for implementation of resident's rights;
 - b. Recommendation of changes or additions in the facility's policies and procedures;
 - c. Representation of residents in their complaints to the Office of Long Term Care or any other person or agency;
 - d. Identification of problems and orderly resolution of same.
- a. The facility administrator must designate a staff coordinator and provide suitable accommodations within the facility for the resident council. The staff coordinator shall assist the council in scheduling regular meetings and preparing written reports of meetings for dissemination to residents of the facility. The staff coordinator may be excluded from any meeting of the council.
- 312.7 The facility shall inform resident's families of the right to establish a family council within the facility. The establishment of such council shall be encouraged by the facility. This family council shall have the same duties and responsibilities as the resident council and shall be assisted by the staff coordinator designated to assist the resident council.
- 312.8 The resident has the right to be free from abuse and neglect. Residents shall be free from mental and physical abuse, and from chemical and physical restraints. Restraints must not be used on any resident by staff of a residential care facility except during an emergency and only until appropriate action can be taken by persons outside the facility. The facility must seek assistance immediately. Additional clarifications of this provision are as follows:
- a. Mental abuse includes humiliation, harassment and threats of punishment or deprivation;
 - b. Physical abuse refers to corporal punishment or the use of restraints as a punishment;
 - c. Drugs must not be used to limit, control or alter resident behavior for the convenience of staff;
 - d. Physical restraints include the use of devices designed or intended to limit the resident's total mobility. Full length bed rails are considered restraints and may not be used. The gates of facilities enclosed by a fence may not be locked to restrict the movement of residents.
- a. Any abuse, neglect or exploitation must be reported as specified in Section 310.7.

- 312.9 Each resident is assured confidential treatment of all information contained in his/her records. The resident's written consent or legal appointee's written consent is required for the release of information to persons not otherwise entitled to receive it. The records shall be available to the Department as needed.
- 312.10 Each resident will be treated with consideration, respect and full recognition of dignity and individuality. Staff shall display respect and courtesy to residents when speaking with, caring for, or talking about residents, and shall seek to engage in the constant affirmation of resident individuality and dignity as a human being.
- 312.10.1 Each resident has the right to receive a response from a facility operator to any request of the resident within a reasonable period of time.
- 312.11 Each resident shall have the right to humane care and an environment which shall include but is not limited to:
- a. The right to nutritional diets that follow the recommended dietary allowance set by the Food and Nutrition Board, including the right to have a diet which is consistent with any religious or health-related restrictions;
 - b. The right to a safe and sanitary living environment.
- 312.12 The resident's right to have control and receipt of health-related services shall include the following:
- a. Each resident shall have the right to retain the services of his/her own personal physician;
 - b. Each resident shall have the right to select the pharmacy or pharmacist of his/her choice;
 - c. Each resident shall have the right to confidentiality and privacy concerning his/her medical conditions and treatment;
 - d. Each resident shall have the right to select the personal care or home health provider of his/her choice and the facility shall assure that all such providers selected by the resident have access for the purpose of delivering necessary services.
- 312.13 The resident shall have freedom of religion that includes the right to practice the religion of his/her choice or abstain from religious practices. Residents shall also be free from the imposition of the religious practice of others.
- 312.14 Each resident shall have the right to accept or refuse employment or to perform services for the facility. The resident has the right to accept employment and perform services for the facility if the following conditions are met:
- a. The facility has documented its need for and the resident's desire to perform the work;
 - b. Compensation for services is at or above prevailing rates;
 - c. The resident agrees to the work arrangement;

- d. The employment is in keeping with the resident's care plan; and
- e. The Office of Long Term Care is notified, in advance, of the work arrangement.

312.15 Each resident shall have the right to interact freely with others both within the facility and in the community including the following:

- a. The right to receive and send unopened correspondence and to be provided with pen, envelopes and stamps at the expense of the resident if the resident is unable to obtain these for himself;
- b. The right to privately access a telephone for outgoing and incoming calls;
- c. The right to unrestricted communication including personal visitation with any person of the resident's choice;
- d. The right to make contacts and interact with the community.

312.15.1 Policies and procedures shall permit residents to receive visits from anyone they wish. Restrictions may be imposed for the following reasons:

- a. The resident refuses to see the visitor;
- b. The resident's physician specifically documents that such a visit would be harmful to the resident's health;
- c. The visitor's behavior is unreasonably disruptive to the facility. This does not include those individuals who, because they advocate administrative change to protect resident rights, are considered a disruptive influence by the facility administrator;
- d. The facility has been ordered by the court or resident's guardian not to allow specified individuals access to the resident.

312.16 The resident's right to personal possessions shall include:

- a. The right to wear his/her own clothing;
- b. The right to determine his/her preference of dress, hair style or personal effects;
- c. The right to retain and use his/her own personal property in the resident's own living area so as to maintain individuality and personal dignity as agreed upon at the time of admission;
- d. The right to have a separate storage area in his/her own living area.

312.17 Each resident's privacy shall be respected in every aspect of daily living, including:

- a. During any medical examination or health related consultations the resident may have at the facility;
- b. During visitations with other persons;
- c. In written, verbal and telephone communications;
- d. In the resident's room or the resident's portion of the room. Staff of a facility shall not enter a resident's room without making their presence known, except in an emergency;
- e. In the conduct of the resident's personal affairs;
- f. In visual privacy in tub, shower and toilet rooms;
- g. In permitting, but not requiring, spouses or other consenting adults to share a room where both are residents and space is available;
- h. In taking all reasonable steps to comply with a resident's expressed wish for privacy in particular activities of daily living;
- i. In permitting representatives of protection and advocacy groups and community legal services programs to have full and free access to the facility during normal business hours.

312.18 Each resident admitted to the facility may manage their personal financial affairs, or, if the resident requests, such affairs may be managed by the facility. If the facility manages residents' funds, then an accounting shall be maintained in accordance with Section 311.2 of these rules.

312.18.1 In addition to any other requirements, the facility's management of resident financial affairs shall meet the following conditions:

- a. Should the facility manage the resident's personal financial affairs, written authorization must be made and signed as provided in Section 312.1(d) of these rules.
- b. The financial record must be available to the resident and his/her guardian, and responsible party;
- c. If the facility makes financial transactions on behalf of a resident, the resident, guardian or responsible party shall receive an itemized accounting of disbursements and current balances at least quarterly;
- d. A copy of the resident's quarterly statements shall be maintained in the facility;
- e. The facility shall establish and maintain a system that assures full and complete accounting of resident personal funds using generally accepted accounting principles;
- f. The facility shall not commingle resident funds with any other funds;

- g. The facility system of accounting includes written receipts for funds received by or deposited with the facility, and disbursements made to or for the resident;
- h. When appropriate, individual savings accounts shall be opened for residents in accordance with Social Security rules governing savings accounts;
- i. A cash fund specifically for petty cash shall be maintained in the facility to accommodate the small cash requirements of the residents;
- j. The facility will notify the resident when the resident's account reaches \$200 less than the SSI resources limit for one person.

313 RESIDENT RECORDS

313.1 The facility must maintain a separate and distinct record for each resident. The record must contain:

- a. Resident's name;
- b. Resident's last address;
- c. Date the resident began residing at the facility;
- d. Name, office telephone number and emergency telephone number of each physician who treats the resident;
- e. Name, address and telephone number of family members and the person identified by the resident who should be contacted in the event of an emergency or death of the resident;
- f. All identification numbers, such as Medicaid, Medicare/Medipak, Social Security, Veterans Administration and date of birth;
- g. Any other information which the resident requests the home to keep on record;
- h. A copy of the resident's signed Resident Rights Statement;
- i. A copy of the Admission, Transfer and Discharge Agreements;
- j. A written acknowledgement that the resident and/or responsible party have been notified of the charges for the services provided;
- k. Information about any specific health problem of the resident which might be necessary in a medical emergency. Such records should specify any medication allergies. If none, state "no known allergies";
- l. A brief medical history;
- m. A list of all current medications kept by the facility for the resident;

- n. An entry shall be made at any time the resident's status changes or in the event of an unusual occurrence. This documentation shall include:
 - a. Falls;
 - b. Illness;
 - c. Physician visits;
 - d. Any problem with staff members or others;
 - e. Any hospitalization;
 - f. Any physical injury sustained, whatever the circumstances;
 - g. Changes in the resident's condition;
- o. A copy of the completed assessment form done by a mental health service provider as appropriate.
- p. A copy of court orders or letters of guardianship, if applicable.
- q. Discharge date.

313.2 The facility must maintain the resident's records in the following manner:

- a. Each resident shall have the right to inspect his/her records during normal business hours unless contraindicated by the attending physician;
- b. The facility must not disclose any resident records maintained by the facility to any person or agency other than the facility personnel or the Office of Long Term Care except upon expressed written consent of the resident, unless the disclosure is required by state or federal law or regulation;
- c. Each facility must provide a locked file cabinet or locked room for keeping resident's medical, social, personal and financial records;
- d. The facility must maintain (on paper, microfilm, etc.) these records in an accessible manner for a period of five (5) years following the death or discharge of a resident.

400 SERVICES

Nothing in these rules, in this part or any other, shall be construed to require a residential care facility to provide services at no charge that are not included in the basic daily rate or monthly charge listed in the admission agreement/ contract.

401 SUPPORTIVE SERVICES

The facility must provide, as part of services included in the basic daily rate or monthly charge, supportive services appropriate to maintain and promote the well-being of each resident. The facility must encourage and permit the resident to maintain and develop skills that enable the resident to function self-sufficiently and independently.

Supportive services shall be defined as giving occasional or intermittent guidance, direction or monitoring of an individual resident as he/she carries out activities of daily living and social activities. Supportive services do not include monitoring or delivery of physical assistance to a resident delivered in accordance with a physician's order.

- 400.1 The facility must provide supportive services within the basic charge that assure the following;
- a. Residents keep appointments for mental and medical services;
 - b. Staff are aware of the resident's general whereabouts even though he/she may travel independently about the community;
 - c. The appropriate agencies and/or health professional are notified when:
 1. The resident has had a major change in status;
 2. The resident is absent from the facility and his/her whereabouts are not known; and
 3. An emergency situation arises concerning the facility.
 - d. Residents are treated with kindness and consideration at all times and are not abused, neglected or exploited in any manner;
 - e. Residents are dressed appropriately for the activities in which residents are engaged and for the weather.
 - f. Residents are encouraged to participate in social, recreational, vocational and religious activities within the community and facility;
 - g. Residents are encouraged and permitted, if capable, to perform personal hygiene activities including, at a minimum:
 1. A tub bath or shower as desired or required;
 2. Daily oral hygiene and shaving if desired or requested by the resident;
 3. Trimming and shaping of fingernails and toenails unless prohibited by the resident's attending physician.

- h. Residents are not routinely confined to their room or bed except as necessary for the treatment of a routine short term illness;
- i. Residents are not restrained nor locked in their rooms.

402 ACTIVITIES AND SOCIALIZATION

403.1 Each facility must provide, as part of services and accommodation included in the basic rate, an organized program of individual and group activities appropriate to individual resident needs, interests and wishes.

403.2 At a minimum, the facility must provide:

- a. Accommodations, equipment and supplies for recreation and socialization services;
- b. Group recreation and socialization services.

403 PROFESSIONAL SERVICES

403.1 The resident shall be assisted in making arrangements to secure all community based health or other professional services, examinations and reports needed to maintain and/or document the maintenance of the resident's health, safety and welfare.

403.2 The facility must document that each resident has a physician of his/her choice who is responsible for the overall management of the individual's health.

403.3 The facility must have written emergency medical policy and procedures that shall include, at a minimum, the requirement that in the event of a resident's illness or accident, the facility shall:

- a. Notify the resident's responsible party, next of kin and personal physician, or in the event such physician is not available, a qualified alternate;
- b. Take immediate and appropriate steps to see that the resident receives necessary medical attention including transfer to an appropriate medical facility, if necessary, though an additional charge may be levied for transportation;
- c. Make a notation of the illness or accident in the resident's personal record.

403.4 Each resident shall be assisted as part of the basic charge in arranging regular and emergency dental services.

403.5 Each resident shall be assisted as part of the basic charge in arranging for necessary foot care.

403.6 Residents shall be assisted as part of the basic charge in arranging other routine or special services, as their needs may require, for eye examinations, eye glasses, auditory testing and hearing aids.

404 HOME HEALTH SERVICES

404.1 If home health services are provided in a facility by a certified home health agency, the facility shall, as part of the resident's record, maintain a copy of all home health care plans, notes and other documentation furnished by the home health agency. The facility shall request a copy of the foregoing from the home health agency.

404.2 Residents who require frequent skilled nursing services on a continuing basis will be assessed by the Office of Long Term Care to determine whether the resident requires nursing home placement. The resident's personal physician may offer a statement to the Office for consideration regarding the resident's need for placement in a nursing facility.

405 PERSONAL CARE SERVICES

405.1 Facilities enrolled in the personal care program shall maintain written documentation certifying that residents eligible to receive such services have been advised that they have a freedom of choice of personal care providers and have chosen their personal care providers.

405.2 If a personal care provider other than the facility is chosen, the facility will ask the personal care provider for a copy of the resident's care plan and place it in the resident's file.

500 DIETARY SERVICES

501 REQUIRED FACILITY DIETARY SERVICES

As part of the basic charge each facility must provide food for three (3) balanced meals (as specified in Section 502) and make between meal snacks available. Fluids shall be available at all times. Meals shall be served at approximately the same time each day. There shall be no more than five (5) hours between breakfast and lunch and between lunch and the evening meal. There shall be no more than 14 hours between the evening meal and breakfast.

As part of the basic charge the facility must provide supportive services to residents in consumption of meals served. If the resident requires more than supportive services in consumption of meals, an additional charge may be levied.

In the event that a resident is unable or willing to consume regular meals served to him/her for more than two (2) consecutive days, the facility shall immediately notify the resident's personal physician and take appropriate action to assure the physician's instructions are implemented.

A supply of food must be maintained on the premises at all times. This shall include at least a 24 hour supply of perishable food and a three (3) days supply of non-perishable food. The food supply must come from a source approved by the State Department of Health. Residential care facilities attached to other licensed long term care facilities may utilize the kitchen facilities of the attached long term care facility; however, the residential care facility must assure that the kitchen facilities so utilized are adequate to meet the needs of the residents of the residential care facility, and that such kitchen facilities meet the requirements imposed by these rules.

Dietary employees must wear clean clothing and hair coverings as appropriate.

Each facility must comply with rules relating to food service for sanitation, safety and health as set forth by state, county and local health departments.

Food service employees must insure that all food is prepared, cooked, served and stored in such a manner that protects against contamination and spoilage.

The kitchen and dining area must be cleaned after each meal.

An adequate supply of eating utensils (i.e., cups, saucers, plates, glasses and flatware) shall be provided each resident. An adequate number of pots and pans shall be provided for preparing meals. Eating utensils shall be free of chips and cracks.

Each residential long term care facility must have adequate refrigeration and storage space. The refrigerator temperature shall not exceed 45 degrees Fahrenheit. Left over foods placed in the refrigerator must be sealed, dated and used within 48 hours. Thermometers will be placed in each refrigerator and freezer. Freezer temperatures should be zero degree Fahrenheit or below.

An all purpose five (5) lbs. ABC fire extinguisher must be provided in the kitchen.

Food scraps shall be placed in garbage cans with tight fitting lids and bag liners and emptied as necessary or no less than daily.

502 DAILY NUTRITIONAL ALLOWANCE

Each residential long term care facility must meet the following recommended daily dietary allowance:

1. Milk, yogurt and cheese: Two (2) to three (3) servings as beverage or used in cooking. Fortified whole, skim, low fat milk, flavored whole or fortified milk, buttermilk, yogurt or cheese may be used. Cheese may be used as a milk substitute or as a meat substitute but not both.
2. Meat, poultry, fish, dry beans, eggs and nuts: Two (2) to three (3) servings with at least four (4) or five (5) ounces edible portions per day with at least two (2) ounces available at the evening meal.
3. Vegetables: Three (3) to five (5) servings. This shall include a dark green or yellow vegetable for Vitamin A at least every other day. Fresh vegetables shall be included as often as possible.
4. Fruits: Two (2) to four (4) servings per day including a citrus fruit important for Vitamin C. Fresh fruits shall be included as often as possible.
5. Bread, cereal, rice and pasta: Six (6) to eleven (11) servings of whole grain and/or enriched bread, cereal, baked goods, pasta, or rice per day.
6. Fats, oils, sweets: These are not a food group and should be used sparingly.
7. Optional beverages - coffee, tea, decaffeinated beverages.

8. Other foods may be added to the meal to provide personal satisfaction, additional nutrition and calories.
9. Meals shall provide variety in foods, seasonably adapted, and be prepared in a manner which conserves nutrient value.
10. Home canned food shall not be used.

600 MEDICATIONS

601 ADMINISTRATION

Each residential long term care facility must have written policies and procedures to assure residents receive medications as appropriate. In-service training on facility medications policies and procedures (see Section 308.4) shall be provided at least annually for all facility employees supervising medications.

Facilities must comply with applicable state laws and rules governing the dispensing of medications and restrictions applicable to non-licensed personnel. The facility owner(s), employees or others acting on behalf of the facility are prohibited from administering, repackaging or relabeling any resident medication.

The facility shall document in the resident's record whether the resident or the facility is responsible for storing the resident's medication.

Residents must be familiar with their medications and comprehend administration instructions. Facility staff shall provide assistance to enable residents to self-administer medications. For clarification, examples of acceptable practices are listed below:

- a. The resident may be reminded of the time to take the medication;
- b. The medication regimen on the container label may be read to the resident;
- c. In the presence of the resident, facility staff may remove the container cap or loosen the packaging, but the resident must actually remove the medication from the container;
- d. A larger sterile container may be provided to the resident if needed to prevent spillage. Such containers must not be shared by residents and must be sterilized daily.

Changes in dosage or schedule of the medication shall be made only upon the written authorization of the resident's attending physician.

Facility personnel may perform emergency or first-aid procedures as specified below:

- a. Emergencies are defined as those measures necessary to prevent death or trauma until such time that the resident can be transported to the appropriate medical facility;
- b. First-aid measures will be defined as temporary procedures necessary to relieve trauma or injury by applying dressing and/or band aids;

- c. First-aid supplies shall be available in the facility.

602 STORAGE

Medication stored for residents by the facility must be stored in a locked area in individual compartments or bins labeled with the resident's name.

Medications may be kept in the resident's room. Residents who keep medications in their rooms must demonstrate to facility staff that they are capable of understanding and following instructions on the prescription and/or label.

Medications must be stored in an environment that is clean, dry and not exposed to extreme temperature ranges.

Prescriptive medications must be properly labeled in accordance with current applicable laws and rules pertaining to the practice of pharmacy.

Expiration dates must be checked monthly on all medications (prescriptive and over-the-counter).

Medications must be individually labeled with the resident's name and kept in the original container unless the resident or responsible party transfers the medication into individual dosage containers. Under no circumstances may an owner or employee of the facility repackage medication.

Stock supplies of any medication are prohibited.

Any medication which has been prescribed for but is no longer in use by a resident must be destroyed or disposed of in accordance with state law if stored by the facility, or may be given to the resident's family.

Under no circumstances will one resident's medication that is under the facility's control be shared with another resident.

603 RECORDING

If a facility stores a resident's medications, the facility shall maintain a list of medications which must be maintained on file.

If the facility stores and supervises a resident's medication, a notation must be made on the individual record for each resident who refuses or is unable to self-administer his/her medications. The notation shall include the date, time and dosage of medication that was not taken, including a notation that the resident's attending physician was notified, as required by physician's orders.

If medications are prescribed to be taken as needed (PRN) by the resident, documentation in the resident's file should list the medication and the date and time received by the resident.

700 PHYSICAL ENVIRONMENT

701 LAUNDRY SERVICES

701.1 Each residential long term care facility must provide laundry facilities or services to its residents.

701.2 Each residential long term care facility must meet the following laundry service requirements:

- a. In-house laundries must be located in areas separate from kitchen, bathroom and bedroom areas. Facilities licensed prior to the effective date of these rules shall not be required to satisfy this rule except to the extent that the facility may be altered, modified or amended subsequent to the effective date of these rules.
- b. Facilities with in-house laundries must have a washer and dryer of adequate size to serve the needs of the facility;
- c. Laundry dryers must be properly vented to the outside;
- d. The laundry room must be cleaned on a daily basis to prevent lint accumulation and to remove clutter;
- e. Portable electric heaters and/or stoves must not be used in the laundry area;
- f. The laundry room must be well-lighted and vented to the outside by either power vents, gravity vents or by outside windows;
- g. Resident's clothing, kitchen linens and bed linens shall be washed separately. If linens, including washable blankets, are not washed at a minimum temperature of 150 degrees Fahrenheit, a disinfecting agent must be used.
- h. The facility shall be responsible for providing laundry services on all linens and supplies owned by the facility as part of the services required under the basic charge. Residents shall be responsible for laundering personal items with supportive services as needed. The facility must provide reasonable access to the laundry room for this purpose. If a resident is incapable of performing this task independently, the facility may levy an additional charge.

702 HOUSEKEEPING/MAINTENANCE

702.1 Each residential long term care facility must establish and conduct a housekeeping and maintenance program to ensure the continued maintenance of the facility, to promote good housekeeping procedures and ensure sanitary practices throughout the facility.

702.2 The facility shall have full responsibility to clean and maintain all common areas and shall make no additional charge to the resident or third parties, including Medicaid, for such services. Residents shall be responsible for routine housekeeping chores within their own rooms and the facility must make necessary supplies available for this purpose. For purposes of this rule, routine housekeeping does not include waxing or polishing of floors, painting or maintenance of floors, walls, ceilings, windows or doors, nor does it include shampooing, steam-cleaning or scrubbing of carpets, draperies, curtains or blinds. If a resident requires more than supportive services to perform routine housekeeping, an additional charge may be levied.

702.3 Each residential long term care facility must meet the following housekeeping/maintenance requirements:

- a. All areas of the facility must be kept clean and free of lingering odors, insects, rodents and trash;
- b. Each residential unit must be cleaned before use by another resident;
- c. Corridors must not be used for storage;
- d. Attics, cellars, basements, below stairways and similar areas must be kept clean of accumulation of refuse, old newspapers and discarded furniture;
- e. Polish used on floors shall provide a non-slip finish;
- f. There must be an adequate and available supply of soap and toilet tissues for each resident;
- g. The building(s) and grounds must be maintained in a clean, orderly condition and in good repair;
- h. The interior walls, ceilings and floors must be clean. Cracked plaster, peeling wallpaper or paint, missing or damaged tiles, and torn or split floor coverings shall be promptly and adequately repaired or replaced;
- i. Electric systems, including appliances, cords and switches, shall be maintained in compliance with state and local codes;
- j. Plumbing and plumbing fixtures shall be maintained in compliance with state plumbing and gas codes;
- k. Ventilation, heating, air conditioning, and air changing systems shall be properly maintained. Gas systems shall be inspected at least every 12 months to assure safe operation. Inspection certificates, where applicable, shall be maintained for review;
- l. The building, grounds and support structures shall be free of breeding areas for flies, other insects and rodents;
- m. Entrances, exits, steps and outside walkways must be free from ice, snow and other hazards;

- n. Repairs or additions must meet existing codes.

703 FURNISHINGS AND EQUIPMENT

The following are general provisions concerning furnishings and equipment that each residential long term care facility must meet:

1. All rooms, including bedrooms, must have working light switches at the entrance to the room.
2. Windows must be kept clean and in good repair and supplied with curtains, shades or drapes. Each operable window shall have a screen which is clean and in good repair.
3. Light fixtures in resident use areas must be equipped with covers to prevent glare and hazards to the residents.
4. All fans located within seven (7) feet of the floor must be protected by screen guards.
5. Dining room space and furnishings in good repair must be provided for each resident in the facility. Dining room space and furnishings must be sufficient to serve the residents in no more than two (2) shifts.
6. All facilities must have at least one (1) telephone available for outside calls for every forty (40) residents.
7. All furnishings and equipment must be durable, clean and appropriate to its functions.
8. All areas of a facility must be well lighted to ensure resident's safety.
9. The facility must provide and maintain draperies, equipment and furniture in good condition.
10. Residents may provide their own linens, but may not be required by the facility to do so. The following minimum amounts of linen must be available in the facility at all times:
 - b. Sheets - two (2) times the facility's census;
 - c. Pillow cases - two (2) times the facility's census;
 - d. Bath towels - two (2) times the facility's census;
 - e. Hand towels - two (2) times the facility's census;
 - f. Washcloths - two (2) times the facility's census;
 - g. Blankets - one (1) for each resident;
 - h. Pillows - one (1) per resident.

- 11 Bed linens must be changed at least weekly or more often as needed. Beds shall be straightened as necessary by the resident or facility staff.
- 12 Wastepaper baskets and trash containers used in the facility must be metal or Underwriter's Laboratory approved plastic baskets. Outside trash containers must be equipped with covers but this requirement may be waived if trash and garbage is placed in bags and sealed.

704 GENERAL REQUIREMENTS FOR RESIDENT AREAS

704.1 Each residential long term care facility must meet the following requirements for resident general use areas:

- a. Each facility must have dining room and living room space easily accessible to all residents;
- b. Dining rooms and living rooms must not be used as bedrooms;
- c. Dining rooms and living rooms must be available for use by residents at appropriate times to provide periods of social diversion and individual or group activities;
- d. All resident areas must be decorated, painted and appropriately furnished;
- e. Dining rooms must be furnished with dining table and chairs appropriate to the size/function of the facility.

704.2 Square footage requirements for living room, dining room and activities room are as follows:

- a. Facilities with 16 beds or less:
 1. The facility must have a combined total of at least 20 square feet of living room and activities space per licensed bed;
 2. The facility must have at least 20 square feet of designated dining space per licensed bed;
 3. In facilities licensed prior to the effective date of these rules, the space provided for living and dining room purposes shall total a combined square footage of at least 20 square feet per licensed bed.
- b. Facilities with more than 16 beds:
 1. In facilities with 17 to 46 beds, the living and activities space must be a separate room with a square footage of at least 20 square feet per licensed beds;
 2. In facilities with 47 to 100 beds, there must be one (1) living room and two (2) activities rooms with a combined square footage of at least 20 square feet per licensed bed;

3. In facilities with 101 or more beds, there must be one (1) living room and three (3) activities rooms with a combined square footage of at least 20 square feet per licensed bed;
 4. In facilities that house residents in more than one building, there shall be a living room and activities room located in each building with at least 20 square feet per licensed bed;
 5. In facilities with more than 16 beds, the dining room will be a separate room with at least 20 square feet per licensed bed;
 6. In facilities housing residents in more than one building, a single dining room may be used for the complex. The dining room must have at least 20 square feet of space per licensed bed in the facility;
 7. In facilities licensed prior to the effective date of these rules, the space provided for living and dining room purposes shall total a combined square footage of at least 20 square feet per licensed bed.
- c. Any modification, alteration or addition must satisfy all physical environment requirements in effect at the time the modification, alteration or addition is placed into service.

705 BATH AND TOILET FACILITIES

Each residential long term care facility must meet the following requirements concerning bath and toilet facilities:

1. In facilities licensed after February 1985, there must be a minimum of one (1) toilet and one (1) lavatory for each six (6) residents. A minimum of one (1) tub or shower shall be provided for each 10 residents. Dormitory or communal type bathroom facilities are not permitted in facilities licensed after the effective date of these rules.
2. Each bathroom must have a door in working order.
3. Bath and toilet facilities must be accessible to residents confined to wheelchairs if such residents are admitted to the facility.
4. Bathrooms must provide privacy for each resident.
5. Toilet and bathing facilities must be vented to the outside.

706. RESIDENT BEDROOMS

Each residential long term care facility must meet the following requirements concerning resident bedrooms:

1. No facility bedrooms shall be below ground level. Each bedroom area must have an outside window with openings of at least 1/16 of the floor space for natural ventilation. All resident rooms must have a hinged door in working order.

2. A single bedroom must contain at least 100 square feet, exclusive of entrance way and closet space. Single bedrooms licensed prior to the effective date of these rules may continue to use 80 square feet per resident.
3. A bedroom occupied by more than one resident must provide at least 80 square feet for each resident.
4. No more than two (2) residents shall share a bedroom, in any facility licensed after the effective date of these rules; however, any addition, modification or alteration made after the effective date of these rules must satisfy the requirements in effect at the time the addition, modification or alteration is placed into service.
5. Each facility must furnish every bedroom with the following equipment:
 - b. A standard or single bed in good repair. Rollaway beds, cots and folding beds must not be used;
 - c. Each bed must be equipped with clean springs, well-constructed mattresses in good repair, and a clean comfortable pillow;
 - d. Table and storage facilities for personal articles for each resident. A comfortable chair for each resident must be made available. The chair may be in the resident's room or in the day room of the facility;
 - e. Separate closet or locker space must be provided for each resident. Residents may share closet space if the areas are divided by partitions.

707 SAFETY STANDARDS

Each residential long term care facility must meet the following requirements concerning safety standards:

1. Life Safety Code 1985, Chapter 21, will apply to all facilities built after these rules become effective.
2. Life Safety Code 1981, Chapter 20, will apply to residential care facilities with 15 beds or less and Chapter 19 will apply to facilities over 15 beds licensed prior to the effective date of these rules.
3. All facilities must comply with all local life safety code requirements.
4. Each resident bedroom, living room, dining room and corridor must have a smoke detector listed by Underwriters Laboratory. Attics and basements must have one smoke detector for each 1000 square feet of floor space. Smoke detectors and/or alarm systems must be checked on a monthly basis to insure that the unit is functioning properly. A written record documenting the checks must be maintained by each facility.
5. In multi-story facilities licensed after September 1989, smoke barriers of at least one (1) hour rating must be provided between floors, including all solid core doors with closures at either top

or bottom of the stairway. Existing facilities will be required to have solid core doors with closures to keep smoke from spreading between floors.

6. Properly charged ABC type fire extinguishers at five (5) pounds in weight must be placed no more than five (5) feet above the floor. Fire extinguishers must be checked annually.
7. Properly charged fire extinguishers must be placed at easily accessible locations on each floor or wing.
8. Drills must be held quarterly in which residents and employees participate. Employees shall be trained in the means of rapidly evacuating the building through use of fire drills. A written record of the drill must be maintained by each facility.
9. Tornado drills must be conducted annually and documented.
10. Residents and staff must be notified that smoking is permitted only in designated areas and such restrictions shall be enforced.
11. No resident shall occupy any portion of the third or higher floors of any combustible building. This does not apply to facilities licensed before the effective date of these rules, except that any modification, alteration or additions made after the effective date of these rules must satisfy the criteria in effect at the time the modification, alteration or addition is placed into service.
12. Emergency lights and exit signs:
 - b. Battery operated emergency light units must be provided for hallways and stairwells. Facilities licensed for five (5) beds or less are excluded from this requirement;
 - c. Illuminated exit signs must be provided at the location of each exit door. Facilities licensed for five (5) beds or less are excluded from this requirement.
13. Interior and exterior stairways must have handrails.
14. Steam or heating pipes with which residents or staff come in contact must be covered to prevent injury or burns.
15. Grab bars must be provided in resident bathrooms for toilets, tubs and showers. Bathtubs must be equipped with non-slip surfaces.
16. In facilities licensed after September 1985, bedrooms must have direct access to an exit corridor. Access to toilet and bathing areas shall not be through another resident's room.
17. In all facilities, access to bedroom areas must not be through toilet or bathing areas.
18. Any practices or equipment which creates a fire hazard are prohibited, including:

- a. Portable electric space heaters or self-contained fuel burning space heaters unless specifically authorized by the Office of Long Term Care in writing. (This authorization will be given only in cases of an emergency.);
 - b. Use of electrical cooking appliance or mini-kitchens in resident rooms;
 - c. Combustible containers for smoking material and/or ashes;
 - d. The accumulation of combustible material, such as rags, paper items and general trash, in any part of the building is prohibited;
 - e. Flammable material such as gasoline, kerosene, paint, paint thinners, etc., shall not be stored inside the facility;
 - f. Use of extension cords or multi-plug adapters.
19. Doors in resident rooms may be secured by the resident provided such doors can be unlocked from the outside and keys are available to attendants at all times.
 20. Chain locks, clasps, bars, padlocks and similar devices must not be used in any area of a facility subject to use by residents.
 21. Exit doors must open out with the flow of traffic in facilities licensed for 16 or more beds. Exit doors shall not lock with a key. Panic hardware or turn knob shall be used.
 22. A diagram of the building must be posted in each sleeping area in a conspicuous place showing the location of exits and fire extinguishers.
 23. Emergency telephone numbers must be posted in large print in each facility. The list must include fire department, police department, physician, ambulance service, poison control center, emergency services, Advocacy Services, Inc. and the Office of Long Term Care, etc. If 911 is used, this one number should be used for police, fire and ambulance service.
 24. If residents are housed above the ground floor, each floor must have two (2) accessible outside fire exits remote from each other. The exits shall be through a common area and not through a resident's bedroom. The outside stairways should be protected against snow and sleet. Windows are not acceptable exits.
 25. Throw or scatter rugs without non-skid backing are not permitted.

708 NEW CONSTRUCTION, REMODELING OR ADDITIONS

- 708.1 In new construction, prior to construction, a copy of the facility floor plan must be submitted to the Office of Long Term Care for approval. The building must be built in accordance with Chapter 21 of the Life Safety Code 1985 and be readily accessible and useable by individuals with disabilities including individuals who use wheelchairs.

708.2 When additions or remodeling is to be done to a facility, prior to construction, a copy of the facility floor plan for the existing and new construction will be submitted to the Office of Long Term Care for approval. The plan must assure the entire facility (existing structure as well as the addition) meets Chapter 21 of the Life Safety Code 1985 and must be readily accessible and useable by individuals with disabilities including individuals who use wheelchairs.

708.3 If an existing facility that does not comply with Chapter 21 of the 1985 Life Safety Code must be relicensed under the requirements of Section 205, the new licensee must comply fully with the appropriate Life Safety Code and the facility must be readily accessible and useable by individuals with disabilities including individuals who use wheelchairs.

708.4 Periodic inspections will be made by personnel with the Office of Long Term Care during construction. Once construction has been completed, the facility will be required to submit documentation that the electrical, plumbing and gas has been installed in accordance with local and state codes, along with the license number of the person conducting the inspection.

709 WATER SUPPLY

An adequate supply of water, under pressure, must be provided at all times. When a public water system is available, a connection must be made thereto. If water from a source other than a public water supply is used, the supply must meet the requirements set forth under rules of the State Board of Health.

710 SEWAGE

All sewage must be disposed of by means of either:

1. A public system where one is accessible within 300 feet; or
2. An approved sewage disposal system which is constructed and operated in conformance with the standards established for such systems by the State Board of Health.

711 PLUMBING

Facilities must comply with all provisions of the state plumbing and gas code and amendments thereto prescribing minimum requirements for design, materials, appliances, workmanship and methods of installation.

712 ELECTRICAL

Electrical wiring, fixtures, appliances, motors and other electrical equipment must be installed in accordance with the national electrical code National Fire Prevention Association's Pamphlet #70 and comply with local regulations and/or codes where they exist.

713 HEATING/COOLING

713.3 All liquefied petroleum gas systems must be installed and maintained in accordance with the State Code for Liquefied Petroleum Gas Containers and Equipment, State of Arkansas.

- 713.3 All gas heating units must bear the stamp of approval of the American Gas Association Testing Laboratories, Inc., or other nationally recognized testing agency for enclosed, vented heaters for the type of fuel used.
- 713.3 All gas heating units and water heaters must be vented adequately to carry the products of combustion to the outside atmosphere. Vents must be constructed and maintained to provide a continuous draft to the outside atmosphere in accordance with the American Gas Association Recommended Procedures.
- 713.4 All heating units must be provided with a sufficient supply of outside air so as to support combustion without depletion of the air in the occupied room.
- 713.5 All heating and cooling units must be installed and maintained in a manner which will provide for the safety and comfort of the occupants.
- 713.6 Wood heaters may be used if U.L. approved and installed per U.L. instructions.
- 713.7 In new facilities licensed after the effective date of these rules, the facility must be equipped with a heating and cooling system that will be maintained at a minimum temperature of 72 degrees Fahrenheit during winter and 80 degrees Fahrenheit during the summer in all resident areas when the temperature exceeds 95 degrees Fahrenheit. If temperature outside exceeds 100 degrees Fahrenheit there must be a 15 degree difference in exterior to interior temperatures.

714 ZONING CODES

Each residential long term care facility must be operated in areas permitted by local codes. Each owner must provide the Office of Long Term Care with documentation that the facility is in compliance with zoning requirements.

715 LOT REQUIREMENTS

Conditions of soil, ground water level, drainage and topography must not create hazards to the property as to the health and safety of the occupants. The site shall not be subject to unpredictable and/or sudden flooding and shall be large enough to provide an exercise area for residents.

APPENDIX A RULES OF ORDER FOR ALL APPEALS BEFORE THE LONG TERM CARE FACILITY ADVISORY BOARD

1. Pursuant to Arkansas Code Annotated § 20-10-303 the Long Term Care Facility Advisory Board shall hear all appeals by licensed long term care facilities, long term care administrators, or other parties regulated by the Office of Long Term Care with regard to licensure and certification.
2. All appeals shall be made in writing to the Chairman of the Board within 30 days of receipt of notice of intended action. The notice shall include the nature of intended action, rule allegedly violated, and the nature of the evidence supporting allegation and set forth with particularity asserted violations, discrepancies and dollar amounts which the appellant contends are in compliance with all rules.
3. Appeals must be heard by the Board within sixty (60) days following date of the Chairman's receipt of written appeal unless otherwise agreed by both parties. The chairman shall notify the party or parties of the date, time, and place of the hearing at least seven (7) working days prior to the hearing date.
4. Preliminary motions must be made in writing and submitted to the Chairman and/or hearing officer with service to opposing party at least three (3) days prior to hearing date unless otherwise directed by the Chairman or hearing officer.
5. All papers filed in any proceeding shall be typewritten on white paper using one side of the paper only and will be double spaced. They shall bear a caption clearly showing the title of the proceeding in connection with which they are filed together with the docket number, if any. All papers shall be signed by the party or his authorized representative or attorney and shall contain his address and telephone number. All papers shall be served either on the Office of Chief Counsel of the Department of Human Services, the attorney for the party, or if no attorney for the party, service shall be made on the party.
6. The Chairman of the Board shall act as Chairman in all appeals hearings. In absence of the Chairman, the Board may elect one of their members to serve as Chairman. The Chairman shall vote in case of a tie. The Chairman and/or Board may request legal counsel and staff assistance in the conduct of the hearing and in the formal preparation of their decision.
7. A majority of the members of the Board shall constitute a quorum for all appeals.
8. If the appellant fails to appear at a hearing, the Board may dismiss the hearing and render a decision based on the evidence available.
9. Any dismissal may be rescinded by the Board if the appellant makes application to the Chairman in writing within ten (10) calendar days after the mailing of the decision, showing good cause for his failure to appear at the hearing. All parties shall be notified in writing of an order granting or denying any application to vacate a decision.
10. Any party may appear at the hearing and be heard through an attorney at law or through a designated representative. All persons appearing before the Board shall conform to the standards of conduct practiced by attorneys before the courts of the State.
11. Each party shall have the right to call and examine parties and witnesses; to introduce exhibits; to question opposing witnesses and parties on any matter relevant to the issue; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.

12. Testimony shall be taken only on oath, or affirmation under penalty of perjury.

13. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited, and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

14. The Chairman or hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. The Office of Long Term Care shall present its case first.

15. A party shall arrange for the presence of his witnesses at the hearing.

16. Any member of the Board may question any party or witness.

17. A complete record of the proceedings shall be made. A copy of the record may be transcribed and reproduced at the request of a party to the hearing provided he bears the cost thereof.

18. Written notice of the time and place of a continued or further hearing shall be given, except that when a continuance or further hearing is ordered during a hearing, oral notice of the time and place of the hearing may be given to each party present at the hearing.

19. In addition to these rules the hearing provisions of the Arkansas Administrative Procedure Act (Arkansas Code Annotated § 25-15-201 et. seq.) shall apply.

20. At the conclusion of testimony and deliberations by the Board, the Board shall vote on motions for disposition of the appeal. After reaching a decision by majority vote, the Board may direct that findings of fact and conclusions of law be prepared to reflect the Board's recommendations to the Director of the Division of Medical Services. At his discretion and for good cause the Director of the Division of Medical Services shall have the right to accept, reject or modify a recommendation, or to return the recommendation to the Board for further consideration for a more conclusive recommendation. All decisions shall be based on findings of fact and law and are subject to and must be in accordance with applicable state and federal laws and regulations. The final decision by the Director of the Division of Medical Services shall be rendered in writing to the appellant.

21. All decisions of the Director of the Division of Medical Services may be reviewed by a court of competent jurisdiction as provided under the Arkansas Administrative Procedure Act.

APPENDIX B FINES AND SANCTIONS

111 CIVIL PENALTIES

The following civil penalties pertaining to classified violations may be assessed by the Director of the Office of Long Term Care against long term care facilities.

In the case of Class A violations, the following civil penalties shall be assessed at the amount outlined in these rules.

In the case of Class B, C or D violations, the Director, in his/her discretion, may elect to assess the civil penalties as outlined in these rules or may allow a specified period of time for correction of said violation(s).

1. Class A violations are subject to a civil penalty not to exceed two thousand five hundred dollars (\$2500) for the first violation. A second Class A violation occurring within a six-month period from the first violation shall result in a civil penalty of five thousand dollars (\$5000). The third Class A violation occurring within a six-month period from the first violation shall result in proceedings being commenced for termination of the facility's Medicaid agreement and may result in proceedings being commenced for revocation of licensure of the facility. (See Section 112 for a list of Class A violations.)

2. Class B violations are subject to a civil penalty not to exceed one thousand dollars (\$1000). A second Class B violation occurring within a six-month period shall be subject to a civil penalty of two thousand dollars (\$2000). A third Class B violation occurring within a six-month period from the first violation shall result in proceedings being commenced for termination of the facility's Medicaid agreement and may result in proceedings being commenced for revocation of the licensure of the facility. All Class B violations shall be based on a point system as contained in these rules. (See Section 113 for a list of Class B violations.)

3. Class C violations are subject to a civil penalty not to exceed five hundred dollars (\$500) for each violation. 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 (\$1000) per violation is reached. All Class C violations shall be based on a point system as contained in these rules. (See Section 114 for a list of Class C violations.)

4. Class D violations are subject to a civil penalty not to exceed two hundred fifty dollars (\$250) for each violation. Each subsequent Class D violation occurring 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 five hundred dollars (\$500) is reached. All Class D violations shall be based on a point system as contained in these rules. (See Section 115 for a discussion of Class D violations.)

5. In no event may the aggregate civil penalties assessed for violations in any one (1) month exceed five thousand dollars (\$5000).

111.1 In determining whether a civil penalty is to be assessed and in affixing the amount of the penalty to be imposed, the Director shall consider:

a. The gravity of the violation including the probability that death or serious physical harm to a resident will result or has resulted;

- b. The severity and scope of the actual or potential harm;
- c. The extent to which the provisions of the applicable statutes or rules were violated;
- d. The "good faith" exercised by the licensee. Indications of good faith include, but are not limited to:
 - 1. Awareness of the applicable statutes and rules and reasonable diligence in securing compliance;
 - 2. Prior accomplishments manifesting the licensee's desire to comply with the requirements;
 - 3. Efforts to correct; and
 - 4. Any other mitigating factors in favor of the licensee;
- e. Any relevant previous violations committed by the licensee;
- f. The financial benefit to the licensee of committing or continuing the violation.

111.2 The Director shall assign value points to conditions or occurrences and said value points shall represent a base to which the considerations specified in Section 111.1 shall be applied by the Director prior to assessment of monetary civil penalty. Each value point shall represent a base assessment of one dollar (\$1.00).

111.3 Assessment of a civil penalty provided by this section shall not affect the right of the Office of Long Term Care to take such other action as may be authorized by law or rule.

112 CLASS "A" VIOLATIONS

Class A violations are:

- 1. Violations which create a condition or occurrence relating to the operation and maintenance of a long term care facility which results in death or serious harm to a resident; or
- 2. Violations which create a condition or occurrence relating to the operation and maintenance of a long term care facility which creates a substantial probability that death or serious physical harm to a resident will result from the violation.

Class A violations and the points assigned to each are listed below in Sections 112.1 through 112.3.9 and are subject to the conditions set out in Section 111.

112.1 Any condition or occurrence relating to the operation of a long term care facility in which the conduct, act or omission of a person or actor purposely, knowingly, recklessly or negligently results in the death of a resident shall be a Class A violation. In this instance two thousand five hundred (2500) points shall be assigned.

112.2 Any condition or occurrence relating to the operation of a long term care facility in which the conduct, act or omission of a person or actor purposely, knowingly, recklessly or negligently results in serious physical harm to a resident shall be a Class A violation. In this instance two thousand five hundred (2500) points shall be assigned.

112.3 The conduct, acts or omissions specified in Sections 112.3.1 through 112.3.9, when not resulting in death or serious physical harm, but which create a substantial probability that death or serious physical harm to a resident will result therefrom are conditions or occurrences relating to the operation of a long term care facility which are Class A violations.

112.3.1 One thousand five hundred (1500) points shall be assigned when a facility fails to maintain required direct care staffing, or a safe environment and this failure directly causes a fall by a resident. (e.g., equipment not properly maintained, or a fall due to personnel not responding to resident request for assistance.)

112.3.2 Two thousand five hundred (2500) points shall be assigned when a facility fails to maintain required direct care staffing or measures are not taken when it is known that a resident is combative and assaultive with other residents, and this failure causes an assault upon a resident of the facility by another resident. A Class A violation shall also exist when a facility fails to perform adequate screening of personnel and this failure causes an assault upon a resident by an employee of the facility.

112.3.3 Two thousand two hundred fifty (2250) shall be assigned when a facility personnel improperly apply physical restraints contrary to published rules.

112.3.4 Two thousand five hundred (2500) points shall be assigned when a facility fails to secure proper medical assistance.

112.3.5 Two thousand five hundred (2500) points shall be assigned when facility personnel knowingly withhold medication from a resident as ordered by a physician and such withholding of medication(s) results in death or serious injury to a resident; or facility personnel fail to order and/or stock medication(s) prescribed by the physician and the failure to order and/or stock medication(s).

112.3.6 Two thousand five hundred (2500) points shall be assigned when facility personnel knowingly administer medications to a resident and the administration of that medication(s) results in death or serious injury to a resident.

112.3.7 Two thousand five hundred (2500) points shall be assigned when a facility fails to reasonably maintain its heating and air conditioning system as required by rule. Isolated incidents of breakdown or power failure shall not be considered a Class A violation under this section.

112.3.8 Two thousand (2000) points shall be assigned when a facility does not train staff in fire/disaster procedures as required by rules or when staffing requirements are not met.

112.3.9 Two thousand five hundred (2500) points shall be assigned when a facility fails to maintain the required life safety code systems. Isolated incidents of breakdown shall not be considered a Class A violation under this section if the facility has immediately notified the Office of Long Term Care upon discovery of the problem and has taken all necessary measures to correct the problem.

113 CLASS "B" VIOLATIONS

Class B violations involve conduct, acts or omissions which, while not resulting in death or serious physical harm or the substantial probability thereof to a resident, create a condition or occurrence relating to the operation and maintenance of a long term care facility which directly threatens the health, safety or welfare of a resident.

Class B violations and the points assigned to each are listed below in Sections 113.1 through 113.13 and are subject to the conditions set out in Section 111.

113.1 Seven hundred fifty (750) points shall be assigned when a facility admits or retains residents who need a higher level of care than the facility is licensed to provide.

113.2 Seven hundred fifty (750) points shall be assigned when a facility fails to maintain required direct care staffing, or a safe environment and this failure directly threatens the health, safety or welfare of a resident.

113.3 One thousand (1000) points shall be assigned when a facility fails to maintain required direct care staffing or measures are not taken when it is known that a resident is combative and assaultive with other residents and these measures threaten the health, safety, or welfare of a resident.

113.4 One thousand (1000) points shall be assigned when facility personnel apply physical restraints contrary to published rules.

113.5 One thousand (1000) points shall be assigned when a facility fails to secure proper medical assistance, and this failure threatens the health, safety, or welfare of a resident.

113.6 One thousand (1000) points shall be assigned when facility personnel knowingly administer medications to a resident contrary to published rules. One thousand (1000) points shall be assigned when facility personnel withhold physician ordered medication(s) from a resident and such withholding threatens the health, safety, or welfare of a resident; or facility personnel fail to order or stock medication(s) prescribed by the physician and this failure threatens the health, safety, or welfare of a resident.

113.7 One thousand (1000) points shall be assigned when there is an insufficient amount of food on hand in the facility to meet the menus for the next twenty-four (24) hour period and this failure threatens the health, safety, or welfare of a resident.

113.8 Seven hundred fifty (750) points shall be assigned when it is determined that falls occurred in a facility as a result of the facility's failure to maintain required direct care staffing or a safe environment as set forth in rule and this failure threatens the health, safety, or welfare of a resident.

113.9 One thousand (1000) points shall be assigned when a facility fails to maintain its heating and air conditioning systems as required by rule and such failure threatens the health, safety, or welfare of a resident. Isolated incidents of breakdown or power failure shall not be considered a Class B violation under this section.

113.10 Seven hundred fifty (750) points shall be assigned when it is determined that the minimum dietary needs of residents are not being met.

113.11 Seven hundred fifty (750) points shall be assigned when facility personnel fail to inform a resident of his/her Resident Rights as outlined in rule; or facility personnel fail to allow a resident to honor or exercise any of his/her rights as outlined in rule or statute.

113.12 Seven hundred fifty (750) points shall be assigned when it is determined that rules relating to sanitation are not met.

113.13 Seven hundred fifty (750) points shall be assigned when it is determined that a facility does not have a certified administrator as required by rule.

114 CLASS "C" VIOLATIONS

Class C violations are related to administrative and reporting requirements that do not directly threaten the health, safety, or welfare of a resident.

Examples of Class C violations and the points assigned to each are listed below in Sections 114.1 through 114.7 for illustrative purposes and are subject to the conditions set out in Section 111.

114.1 Five hundred (500) points shall be assigned when a facility is found to exceed their licensed bed capacity (overbedding).

114.2 Five hundred (500) points shall be assigned when it has been determined that any report, resident assessment or other documents or records which the facility is required to maintain has been intentionally falsified (false reporting).

114.3 Five hundred (500) points shall be assigned when it is determined that the facility's records reflect that resident trust funds have been misappropriated by facility personnel or if the resident has been charged for items which the facility must provide at no cost to the resident.

114.4 Five hundred (500) points shall be assigned when it is determined that personnel from the Arkansas Department of Human Services, the United States Department of Health and Human Services, or any other agency personnel authorized to have access to any long term care facility have been denied access to the facility, or any facility document or record.

114.5 Five hundred (500) points shall be assigned when it has been determined that any facility did not report any unusual occurrences or accidents in a timely manner as mandated by rule.

114.6 Five hundred (500) points shall be assigned when it has been determined that a facility failed to post, in the appropriate manner, the results of any survey, sanction, or survey/sanction cover letter issued by the Department.

114.7 Five hundred (500) points shall be assigned when a facility fails to comply with the establishment and operation of a Resident's Council as defined by rule or statute.

115 CLASS "D" VIOLATIONS

Class D violations involve the failure of any long term care facility to submit in a timely manner a statistical or financial report as required by rule.

The failure to submit the required reports shall be considered a separate Class D violation during any month or part of a month of noncompliance.

In addition to any civil penalty which may be imposed, the Director is authorized, after the first month of a Class D violation, to withhold any further reimbursement to the long term care facility until the statistical or financial report is received by the Office of Long Term Care.

All Class D violations shall be assigned two hundred fifty (250) points and are subject to the conditions set out in Section 111.

116 NOTIFICATION OF VIOLATIONS

116.1 If, upon inspection or investigation, the Office of Long Term Care determines that a licensed long term care facility is in violation of any sanction rule herein described, any federal or state law or regulation, then within 10 working days of the discovery of the violation the Office of Long Term Care shall serve, by certified mail or other means that gives actual notice, a notice of violation upon the licensee when the violation is a classified violation as described in Arkansas Code Annotated 720-10-205. The administrator shall post copies of the notice of Class A or Class B violations.

116.2 Each notice of violation shall be prepared in writing and shall specify:

- a. The exact nature of the classified violation;
- b. The statutory provision or specific rule alleged to have been violated;
- c. The facts and ground constituting the elements of the classification;
- d. The amount of the civil penalty assessed by the Director, if any; and
- e. The licensee's right to a hearing under Arkansas Code Annotated § 20-10-208. (See Section 116.5)

116.3 The notice of violation issued to a long term care facility by the Director of the Office of Long Term Care shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:

- a. Class A violations create a condition or occurrence relating to the operation and maintenance of a long term care facility resulting in death or serious physical harm to a resident or creating a substantial probability that death or serious physical harm to a resident will result therefrom;
- b. Class B violations create a condition or occurrence relating to the operation and maintenance of a long term care facility which directly threatens the health, safety, or welfare of a resident;
- c. Class C violations shall relate to administrative and reporting requirements that do not directly threaten the health, safety, or welfare of a resident;
- d. Class D violations shall relate to the timely submittal of statistical and financial reports to the Office of Long Term Care. The failure to timely submit a statistical or financial report shall be considered a separate Class D classified violation during any month or part thereof of noncompliance. In addition to any civil penalty which may be imposed, the Director is authorized after the first month of a Class D violation to withhold any further reimbursement to the long term care facility until the statistical and financial report is received by the Office of Long Term Care.

116.4 Assessments (fines) shall be delivered to the Office of Long Term Care by the licensee within ten (10) working days of the receipt of the Notice of Violation.

116.5 If the licensee decides to appeal the assessment of civil penalty, the request for hearing must be received by the Executive Director of the Department of Human Services within ten (10) working days after receipt by the facility of the Notice of Violation. (Refer to Section 117, Hearings.)

117 HEARINGS

1. A licensee may contest the imposition of a civil penalty by sending a written request for hearing to the Director of the Arkansas Department of Human Services.
2. The request for hearing must be received by the Director of the Arkansas Department of Human Services within ten (10) working days after receipt by the facility of the Notice of Violation.
3. The Director of the Arkansas Department of Human Services shall designate a fair and impartial Hearing Officer to preside over the case and make findings of fact and conclusions of law in the form of a recommendation to the Director.
4. The Hearing Officer shall commence the hearing within forty-five (45) calendar days of the Department's receipt of the request for hearing.
5. The Hearing Officer shall prepare and present a written report with a recommendation to the Director of the Arkansas Department of Human Services.
6. The Director of the Arkansas Department of Human Services shall review the case and make the final determination or remand the case to the Hearing Officer for further findings of law or facts.
7. The Director of the Arkansas Department of Human Services shall issue final decision within thirty (30) working days after the close of the hearing. All decisions of the Director may be reviewed by a court of competent jurisdiction as provided under the Arkansas Administrative Procedure Act.
8. Assessment payments (fines) shall be delivered to the Office of Long Term Care within ten (10) working days of the receipt of the Notice of Violation (see Section 116.5) or within ten (10) working days of receipt of the final adjudication. Checks should be made payable to the State of Arkansas.
9. Facilities failing to pay duly assessed civil penalties shall be subject to a corresponding reduction in succeeding Medicaid vendor payment or initiation of proceedings to revoke the facility's license or both.
10. All monies collected by the licensing agency pursuant to these rules shall be deposited in the Long Term Care Trust Fund as specified in Arkansas Code Annotated § 20-10-205.

APPENDIX C ARKANSAS STATUTES AS REFERENCED IN SECTION 100 -
DEFINITIONS

This Appendix is provided as a convenience to users of these rules. Any omission is unintentional and, in the event this entry conflicts with the statutes as codified in the Arkansas Code Annotated-Official Edition and this Appendix, the Official Edition shall govern. The user hereof should refer to the Official Edition prior to taking any action. The user's failure to refer to the Official Edition shall be at the user's peril.

Note: This Appendix does not contain page numbers.