



Division of Provider Services & Quality Assurance
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MEMORANDUM

TO: Interested Persons and Providers

FROM: Martina Smith, Director, Division of Provider Services & Quality Assurance

DATE: March 10, 2022

SUBJ: LTC Facility Licensure & Change of Ownership, and Medication Assistant (Rule-186)

As a part of the Arkansas Administrative Procedure Act process, attached for your review and comment are proposed rule revisions.

Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you have any comments, please submit those comments in writing, no later than April 10, 2022.

NOTICE OF RULE MAKING

The Director of the Division of Provider Services and Quality Assurance of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§20-10-203, 20-10-705, 20-76-201, 20-77-107, and 25-10-129.


Effective June 1, 2022:

The Director of the Division of Provider Services and Quality Assurance amends the Rules for Assisted Living Facilities Level 1, Rules for Assisted Living Facilities Level 2, and Rules for Nursing Homes. Act 721 amends provisions for Long Term Care facility licensure, liability for penalties and fees, information to be included in the application, and the approval processes for changes to ownership and management of facilities. The Act also repeals the annual renewal requirement and updates annual licensure fee processes. Act 759 allows education programs for licensed practical nurses (LPNs) in certain facilities. The rule is updated to provide that preparation of LPNs may be provided by a post-secondary educational institution, a hospital, or a consortium of five or more skilled nursing facilities.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than April 10, 2022. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-396-6428.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. 4502035775


Martina Smith, Director
Division of Provider Services and Quality Assurance

Rules for Nursing Homes Office of Long

Term Care

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100 **DEFINITIONS**

For the purpose of these standards the following definitions shall apply:

Administrator means a person licensed as a nursing home administrator by the Department who administers, manages, supervises, or is in general administrative charge of a nursing home.

Alteration means any work other than maintenance in an existing building and which does not increase the floor or roof area or the volume of enclosed space.

Consultant shall mean a qualified person who gives professional advice or service within his/her specialty, with or without re-numeration.

Consultant Dietitian a person who is eligible for registration by the Dietetic Association, has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management; has one year of supervisory experience in the dietetic service of a health care institution and participates annually in continuing dietetic education.

Consultant Pharmacist means a qualified licensed, registered pharmacist, who under arrangement with an institution, renders assistance in developing, implementing, evaluating, and revising where indicated, policies and procedures for providing the administrative and technical guidance of the pharmaceutical services relative to labeling, storing, handling, dispensing, and all other matters pertaining to the administration and control of drugs and medication. He/she provides such services and monitors activities within the institution with the express purpose of creating and maintaining the highest standards in medication distribution, control, and service.

Controlled Substances means a drug, substance or immediate precursor in Schedules I through V of Article 11 of the Controlled Substances Act.

Department shall mean the Arkansas Department of Human Services (DHS).

Director shall mean the Director of the Division of Provider Services and Quality Assurance ~~Chief Administrative Officer in the Office of Long Term Care~~

Disinfection shall mean the process employed to destroy harmful microorganisms, but ordinarily not viruses and bacterial spores.

Distinct Part shall mean an identifiable unit accommodating beds and related facilities including, but not limited to, a wing, floor, or building that is approved by the Division for a specific purpose.

Division shall mean the DHS/Division of ~~Medical Services~~ Provider Services and Quality Assurance

Drug means (a) articles recognized in the Official United States Pharmacopeia, Official ~~Homeopathic~~ Homeopathic Pharmacopeia of the United States, or Official National Formulary, or any supplement to any of them; and (b) articles intended for use in the diagnosis, cure mitigation, treatment, or prevention of disease in man or other animal; and (c) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) articles specified in clause (a), (b) or (c); but does not include devices or their components, parts or accessories.

Drug Administration is an act restricted to nursing personnel as defined in Nurses Practice Act 432 or 1971, in which a single dose of a prescribed drug or biological is given to a patient. This activity includes the removal of the dose from a previously dispensed, properly labeled container, verifying it with the prescriber's orders, giving the individual dose to the proper patient, and recording the time and dose given.

Drug Dispensing is an act restricted to a pharmacist which involves the issuance of one or more doses of a medication in a container other than the original, with such new containers being properly labeled by the dispenser as to content and/or directions for use as directed by the prescriber. This activity also includes the compounding, counting, and transferring of medication from one labeled container to another.

Existing Facilities are those facilities which were in operation, or those proposed facilities which began construction or renovation of a building under final plans approved by the Division prior to adoption of these rules.

Fire Resistance Rating shall mean the time in hours or fractions thereof that materials or their assemblies will resist fire exposure as determined by fire test conducted in accordance with recognized standards.

Governing Body shall mean the individuals or group in whom the ultimate authority and legal responsibility is vested for conduct of the nursing home.

Institution is any facility requiring licensure under these rules.

Intermediate Care Facility (ICF) is a nursing home licensed by Arkansas Social Services as meeting the Intermediate Care Facility rules. It is a health ~~facility~~ facility, or a distinct part of a hospital or Skilled Nursing Facility that is staffed, organized, operated, and maintained to provide 24-hour long term inpatient care and other restorative services under nursing supervision.

Legend Drugs are drugs, which because of their toxicity or other potentiality for harmful effect, or the method of their use, or the collateral measures necessary to their use, are not safe for use except under the supervision of a practitioner licensed by law to administer such drugs, or shall be dispensed only on prescription by the pharmacist. Such drugs bear the label "Caution: Federal Law Prohibits Dispensing Without Prescription."

License shall mean the basic document issued by the Division permitting the operation of nursing homes. This document constitutes the authority to receive patients and to perform the services included within the scope of these rules.

Licensed Bed Capacity shall mean the exact number of beds for which license application has been made and granted.

Licensee shall mean any state, municipality, political subdivision, institution, public, or private corporation, association, individual, partnership or any other entity to whom a license is issued for the purpose of operating the nursing home, who shall assume primary responsibility for complying with approved standards for the institution.

Medication Assistant- Any medication assistive person who is qualified and certified under Ark. Code Ann. §17-87-701 et. seq.

New Construction means those facilities which are constructed or renovated for the purpose of operating an institution according to architectural plans approved by the Division ~~subsequent to~~subsequent ~~to~~after adoption of these rules.

Nursing Home shall mean and be construed to include any buildings, structure, agency, institution, or other place for the reception, accommodation, board, care, or treatment of two (2) or more unrelated individuals, who, because of physical or mental infirmity are unable to sufficiently or properly care for themselves, and for which reception, accommodation, board, care, and treatment, a charge is made, provided the term "Nursing Home" shall not include the offices of private physicians and surgeons, boarding homes, ~~or~~ hospitals, or institutions operated by the Federal Government. (Section 2, Act 141 of 1961 as amended)

Nursing Home Classification shall mean the level of care the nursing home is capable of rendering such as Skilled Nursing Facility, Intermediate Care Facility, and Intermediate Care Facility for the Mentally Retarded.

~~Long Term Care Facility Advisory Board shall mean the Long Term Care Facility Advisory Board as established under Act 28 of 1979.~~

O.T.C. Drugs are commonly referred to as "over-the-counter," or patient medication that may be provided without prescription.

Patient (interchangeable with resident) shall mean any individual who is being treated by a physician or whose health is being supervised by a physician while residing within the respective facility.

Patient Unit is an area designated to accommodate an individual patient bed, bedside cabinet, chair, reading light, and other necessary equipment placed at the bedside for the proper care and comfort of a patient.

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~~Department.

Restorative Nursing or Rehabilitative Nursing shall mean measures directed toward prevention of deterioration in normal body alignment, and muscle tone, restoration of the resident to full activity insofar as ~~his or her~~their health problems permit and maintaining a state in which ~~his or her~~their total need for care is minimal.

Restraint is any device or instrument used to limit, restrict, or hold patients under control, not including safety vests or other instruments such as bed rails used for the safety and positioning of patients. Personal safety devices and postural support devices that restrict movement are considered restraints.

Sanitation is the process of promoting hygiene and preventing disease by maintaining sanitary conditions.

Skilled Nursing Facility (SNF) is a nursing home, or a distinct part of another facility, licensed by the ~~Office of Long Term Care~~Department as meeting the skilled nursing facility licensure rules. A health facility which provides skilled nursing care and supportive care on a 24-hour basis to residents whose primary need is for availability of skilled nursing care on an extended basis.

Qualified Social Worker is a person who is registered by the State Board of Social Work and is a graduate of a school of social work accredited or approved by the council on Social Work Education.

State Health Officer shall mean the Director of the Arkansas Department of Health, Secretary of the State Board of Health.

Sterile the state of being free from all forms of micro-organisms.

Unit Dose Medication System shall mean a system in which single doses of drugs are prepackaged and pre-labeled in accordance with all applicable laws and rules governing these practices and made available separated by resident and by dosage time. The system includes all equipment and records deemed necessary and used in making the doses available to the resident in an accurate and safe manner. A pharmacist shall be in charge of and responsible for the system.

Guardian shall mean a court appointed person who by law is responsible for a patient's affairs.

Responsible Party shall mean the person who is accountable for the patient's affairs but who has not been appointed by the court.

Routine means the regular performance of a particular task.

Abbreviations

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| R.N. | Registered Nurse |
| L.P.N. | Licensed Practical Nurse |
| L.P.T.N. | Licensed Psychiatric Technician Nurse |
| N.A. | Nurse's Aide |
| P.T. | Part-time |
| F.T. | Full-time 40 hours per week in these rules and should not be confused with (Fair Labor Standards Act) |
| N.H. | Nursing Home |
| LTC | Long Term Care |
| OLTC | Office of Long Term Care |
| O.T.C. | Over-the-counter drugs |

200 GENERAL PROVISIONS FOR LICENSURE

201 LICENSURE

Nursing homes, or related institutions, shall be operated, conducted, or maintained in this State by obtaining a license pursuant to the provisions of these Licensing Standards. Separate institutions operated by the same management require separate licenses. Separate licenses are not required for separate buildings on the same grounds. The classification of license shall be Skilled Nursing Facility, Intermediate Care Facility, and Intermediate Care Facility for the Mentally Retarded.

Whenever ownership or controlling interest in the operation of a facility is sold, both the buyer and the seller must notify the Office of Long Term Care at least thirty (30) days prior to the completed sale. The thirty (30) day notice shall be the date the paperwork is stamped received by the Office of Long Term Care.

202 APPLICATION FOR LICENSE

Applicants for license shall file a notarized application with the Division upon forms prescribed by the Division and shall pay an annual license fee of ten cents (~~\$0.10¢~~) per patient bed, or Ten Dollars (\$10), whichever is greater. This fee shall be paid to the State Treasury. If the license is denied, the fee will be returned to the applicant. Facilities operated by any unit or division of state or local government shall be exempted from payment of a licensing fee. Application shall be signed by the owner if individually owned, by one partner if owned under partnership, by two (2) officers of the board if operated under corporation, church, or non-profit association, and ~~increase in case~~ of a governmental unit, by the head of the governmental entity having jurisdiction over it. Applicants shall set forth the full name and address of the institutions for which license is sought, the names of the persons in control, a signed statement by a registered nurse indicating responsibility for nursing services of the home, and such other information as the Division may require.

In these instances where a distinct part of a facility is to be licensed as a Skilled Nursing Facility and the remainder of the facility is to be licensed under some other category, separate applications must be filed for each license and separate licensure fees ~~fit~~ shall be required with each application.

202.1 Each home applying for and receiving a license must furnish the following information to the Department:

- The identity of each person directly or indirectly having an ownership interest of five (~~5~~) percent (5%) or more in such nursing home.
- In case such nursing home is organized as a corporation, the identify of each officer and director of the corporation.
- In case such nursing home is organized as a partnership, the identity of each partner.
- Identity of owners of building and equipment leased, including ownership breakdown of the leasing entity.
- Information on the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility.

- Information on the owner or owners of the building or other structures that will be used in the operation of the facility.
- Information on all other facilities owned, operated, or managed by the applicant or applicants.
- Information on all other facilities owned, operated, or managed by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility; and
- Affirmative evidence of ability to comply with standards, rules, and regulations as may be lawfully prescribed.

202.2 The Department may deny a license if:-

- The administrator, officers, directors, or management company, operator, or other management agent that the applicant will use to manage the facility has ever been convicted of a felony;
- A facility or facilities owned or operated by the applicant or applicants have been found, after final administrative decision, to have committed a Class A violation;
- A facility or facilities owned or operated by the administrator, directors, management company, operator, or other management agent (that the applicant or applicants will use to manage the facility) has~~ve~~ been found, after final administrative decision, to have committed a Class A violation;
- The applicant or applicants have had a license revoked or suspended;~~or~~
- The administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have had a license revoked;:-
- T~~he~~ applicant or applicants have not demonstrated to the satisfaction of the department that any other facility owned, operated, or administered by the applicant or applicants, administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility, is and has been in substantial compliance with the standards as set by applicable state and federal law; or-
- The applicant or applicants have not demonstrated to the satisfaction of the Department that any other facility (owned, operated, or administered by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility) is and has been in substantial compliance with the standards as set by applicable state and federal law.;

The Department may consider the mitigation of compliance issues by an applicant or applicants that would fall under the aforementioned section, including the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility.

203 RENEWAL OF APPLICATION FOR LICENSURE

Annual licensure fees shall be tendered with each application for a new long-term care facility license and annually thereafter by the anniversary of the date the department issued the long-term care facility license. A license or licensure renewal shall not be issued unless the initial annual licensure fee has been paid in full. Any fee not paid when due shall be delinquent and shall be subject to assessment of a ten-percent penalty. If a long-term care facility fails to pay the annual licensure fee within sixty (60) calendar days of the anniversary of the date that the department issued the long-term care facility license, the department may suspend the license until the annual licensure fee is paid in full. Application for annual license renewal shall be postmarked no later than January 2nd of the succeeding calendar year. License applications for existing institutions shall be subject to a penalty of one dollar (\$1) per day after January 2nd of the succeeding year.

204 ISSUANCE OF LICENSE

A license shall be effective on a calendar year basis and shall remain effective unless revoked, suspended, or terminated by the Department. License applications shall expire on December 31st of each year. A license shall be issued only for the premises and persons in the application and shall not be assignable or transferable.

205 DENIAL, REVOCATION, OR SUSPENSION OF LICENSE

The Division is empowered to deny, suspend, or revoke licenses on any of the following grounds:

- 205.1 Violation of any of the provisions of Act 28 of 1979 or the rules lawfully promulgated hereunder.
- 205.2 Permitting, aiding, or abetting the commission of any unlawful act in connection with the operation of the institution, as defined in these rules.
- 205.3 Conduct or practices detrimental to the health or safety of residents and employees of any such institutions, but this provision shall not be construed to have any reference to healing practices authorized by law, as defined in these rules.
- 205.4 Failure to comply with the provisions of Act 58 of 1969 and the rules promulgated thereunder. (Note: The aforementioned act requires the licensure of nursing home administrators.)

206 CHANGE OF OWNERSHIP/MANAGEMENT

If a long-term care facility intends to add, remove, or otherwise change the management company, owner, operator, or other management agent that manages the long-term care facility, the long-term care facility shall notify the department. The long-term care facility shall notify the department of the change and request approval at least thirty (30) days before the change occurs.

The long-term care facility shall complete the appropriate documents and provide the department with the

information required to allow the department to evaluate whether the new management company, owner, operator, or other management agent that manages the long-term care facility meets the eligibility criteria set forth in the disqualifying criteria stated in the aforementioned section. The long-term care facility shall receive approval of the change from the department before the change occurs unless the change is required due to an emergency.

If a change occurs without prior approval from the department due to an emergency, the long-term care facility shall notify the Department within ten (10) days of the change. The Department may deny a requested change based on the criteria established in the above (second) paragraph of this section. If the Department denies a requested change, the long-term care facility may not employ or otherwise use the denied management company, owner, operator, or other management agent. A long-term care facility is not required to notify or receive approval from the Department for a change involving vendors that provide services to the long-term care facility but do not manage the facility.

Responsibilities of the seller and buyer:

- The seller shall remain responsible for the operation of the facility until such time as a license is issued to the buyer.
- The buyer shall be subject to any plan of correction submitted by the previous licensee and approved by the department.
- The seller shall remain liable for all penalties assessed against the facility that are imposed for violations or deficiencies occurring before the date the department issues the long-term care facility license to the buyer.
- The seller shall remain liable for all quality assurance fees and license fees that are assessed to the facility before the date that the department issues the long-term care facility license to the buyer.

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

Whenever the Division decides to deny, suspend, or revoke a license, it shall send to the applicant or licensee a notice stating the reasons for the action by certified mail. The applicant or licensee may appeal such notice to the Long Term Care Facility Advisory Board as permitted by Arkansas Statute Annotated §82-211. Procedures for appeal to the Long Term Care Facility Advisory Board are incorporated in these rules as Appendix A.

208 APPEALS TO COURTS

Any applicant or licensee who considers himself injured in his person, business, or property by final agency action shall be entitled to judicial review thereof. Proceedings for review shall be made by filing a petition in the Circuit Court₂ of any county in which the petitioner does business₂ or in the Circuit Court of Pulaski County₂ within thirty (30) days after service₂ upon the petitioner of the agency's final decision. All petitions for judicial review shall be in accordance with the Administrative Procedures Act Arkansas Statute Annotated §5-713.

209 PENALTIES

Any person, partnership, association, or corporation, establishing, conducting, managing, or operating any institution within the meaning of this act (§§ 82-327 -- 82-354), without first obtaining a license therefor as herein provided, or who violates any provision of this act or rules lawfully promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than ~~Twenty-five~~ Five ~~Dollars-dollars~~ (\$25) nor more than ~~One-Hundred-hundred~~ One ~~Dollars-dollars~~ (\$100) for the first offense and not less than ~~One-Hundred-hundred~~ One ~~Dollars-dollars~~ (\$100) nor more than ~~Five-Hundred-hundred~~ Five ~~Dollars-dollars~~ (\$500) for each subsequent offense, and each day such institution shall operate after a first conviction shall be considered a subsequent offense. (Section 27, Act 414 of 1961)

210 INSPECTION

All institutions to which these rules apply shall be subject to inspection for reasonable cause at any time by the authorized representation of the Division.

211 COMPLIANCE

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

212 NONCOMPLIANCE

When noncompliance of the licensing standards ~~are~~ is detected during surveys, licensees will be notified of the violations and will be requested to provide a plan of correction with a timetable for corrections. If an item of noncompliance is of a serious nature that affects the health and safety of patients and is not promptly corrected, action will be taken to suspend or revoke the facility's license.

213 VOLUNTARY CLOSURE

Any nursing home, or related institution, that voluntarily closes must meet the rules for new construction to be eligible for re-licensure.

214 EXCEPTION TO LICENSING STANDARDS

The Division reserves the right to make temporary exceptions to these standards where it is determined that the health and welfare of the community requires the services of the institution. Exceptions will be limited to unusual circumstances and the safety and well-being of the residents will be carefully evaluated prior to making such exceptions.

Overbeds will be authorized only in cases of emergency. An emergency exists when it can be demonstrated that the resident's health or safety would be placed in immediate jeopardy if relocation were not accomplished. A fire, natural disaster (e.g., such as a tornado or, flood, etc.), or other catastrophic event that necessitates resident relocation, will be considered an emergency. ~~The Office of Long Term Care Department~~ Department must be contacted for prior authorization of the overbed, and all authorizations must be in writing.

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~~Department has received the Application for Licensure to Conduct a Long Term Care Facility. A provisional license shall remain in effect unless the provisional license is revoked, suspended, or terminated by the department. ~~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~~Department 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~~Department 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~~Department 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~~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.

520 DIRECT CARE STAFFING REQUIREMENTS AND FLEXIBILITIES FOR NURSING FACILITIES

520.4 Average Direct Care Hours Per Resident Day; Certified Nursing Facilities

- a. Each certified nursing facility shall:
 1. Provide each month direct care services by direct care staff equivalent to at least three and thirty-six hundredths (3.36) average direct care hours per resident day; and

2. On or before the fifteenth day of each month, a certified nursing facility shall report electronically to the department the facility's actual average direct care hours per resident day for the prior month.

b. Certified nursing facilities shall report aggregate direct care hours for the month using the table provided in the electronic reporting form provided by the department. -This table shall consist of:

1. Rows for each direct care type of position (e.g., such as director of nursing, registered nurse, registered nurse with administrative tasks, certified nurse aide, medication assistant, medical director, or and nurse practitioner) consistent with the same direct care labor category titles (each with a unique job code number) used in the federal direct care data system.

2. Two (2) columns for reporting the aggregate number of direct care hours in the month attributable to each row, as follows:

(a) Column A for reporting all direct care hours reportable quarterly to the federal direct care data system. -Column A must be completed, regardless of the additional direct care hours the facility may report in Column B., if any, under Column B of the table. -A facility's direct care hours will be primarily reported under Column A.

(b) Column B for reporting hours that (i) meet the definitions of direct care services and direct care staff in Arkansas Code § 20-10-1401(3) and (4), respectively; (ii) are not reportable quarterly to the federal direct care data system; and (iii) are not reported in Column A.

(c) Direct care hours reportable under Column B will not, by themselves, be sufficient to meet the minimum average direct care hours standard.—

~~b. Hours used in determining actual average direct care hours per resident day for each month shall be:~~

~~1. Consistent with the certified nursing facility's final staffing data submission to the federal direct care data system for the applicable quarter, and~~

~~2. Based on all direct care services labor categories and all direct care staff job codes specified in the most recent CMS instructions for the federal direct care data system.~~

c. Within fifteen (15) days of the federal direct care data system reporting deadline for the quarter, the facility shall electronically file an amended report for one (1) or more of the three (3) monthly reports attributable to that quarter, if necessary to correct:

1. Direct care hours reported in Column A, based on the number of hours by type of position (labor category) that the facility reported in its quarterly submission into the federal direct care data system;

2. Direct care hours reported in Column B; or

3. The MDS-based average daily resident census shown in the original monthly report.

~~e. If necessary to correct one (1) or more of the three (3) monthly reports following data validation and based on the final staffing data reported to the federal direct care data system for the applicable quarter, the facility shall promptly file an amended monthly report(s) with the department within fifteen (15) days of the federal direct care data system reporting deadline for the quarter.~~

d. The monthly reports shall show the following information:

1. The full name and department-assigned vendor license number of the reporting nursing facility.

2. The month and year for which the report is provided and whether the report is an original or amended report for that month.—

3. The completed table described in section 540(b).

~~3. For each direct care job code for which the facility had staff (employed, contracted, agency, or consultants) providing any direct care services in the month, the total number of direct care hours by all staff in that job code combined. For example, for the certified nurse aide (CNA) job code, the report would show (a) the aggregate total of all direct care hours provided by all the facility's CNAs combined and (b) not the granular information, such as hours by individual staff person, reported to the federal direct care day system.~~

4. Grand total of direct care services hours provided in the month, which is the sum of all hours reported in Column A and Column B of the table described in section 540(b).

5. The number of calendar days in the monthly reporting period.

6. Average daily resident census for the month, which shall equal the facility's Minimum Data Set (MDS) average daily resident census for the month (the sum of the total of each daily resident census for all days in the month divided by the number of calendar days in the month).

7. The average direct care hours per resident day for the month, which is the sum of (a) the grand total of direct care hours in the month, divided by (b) the number of calendar days in the month and (c) the MDS-based average daily resident census for the month (the grand total of direct care services hours provided in the month divided by the average daily resident census for the month).

8. For the month, the difference between the actual average direct care hours per resident day and the three and thirty-six hundredths (3.36) average direct care hours per resident day standard required under Arkansas Code § 20-10-1402(a)(2), with an indication of whether the actual hours provided met the standard, ~~or~~ exceeded the standard, or did not meet the standard.

8.9. If the report is an amended report, a brief description of the reason for filing an amended report.

e. The monthly reporting under this section is not intended to ~~duplicate or exceed the comprehensive federal direct care data system~~, require reporting at the level of detail

required by the federal direct care data system, or require reporting not otherwise necessary to meet Arkansas Code § 20-10-1402(b).

- f. Consistent with Arkansas Code § 20-10-1402(e), this section does not require or advise any specific or minimum number of nursing staff hours, direct care staff hours, or hours of other services for any nursing facility resident. The services an individual resident receives ~~is~~ are based on baseline and comprehensive, person-centered care plans required under 42 CFR § 483.21 and are governed by the services and staffing-related requirements in 42 CFR Part 483 Subpart B.
- g. To ensure compliance with the requirements of this subsection, the department may:
1. Audit the monthly reports and request documentation from a certified nursing facility;
 2. Review a facility's quarterly submissions to the federal direct care data system;
 3. Compare a facility's monthly reports under this subsection with its corresponding quarterly submissions to the federal direct care data system;
 4. Review the results of federal audits of facility submissions to the federal direct care data system; and
 5. Request demonstrations of the vendor payroll and other systems that nursing facilities commonly use to report direct care hours.
- h. To ensure accurate monthly reporting and facilitate efficient auditing by DPSQA, all hours reported in Column A or Column B for a month must be adequately documented in the facility's records:
1. A facility must avoid any duplication or double counting of hours reported in Column A and Column B or under particular types of direct care positions.
 - (a) For example, a specific hour reported under Column B should not be counted in Column A or vice versa. -However, hours provided by a particular direct care staff person (such as the director of nursing) may be shown split between the columns, with some of the hours reportable in Column A and others reportable in Column B.-
 - (b) Similarly, specific hours reported for an initial~~one~~ position type should not be duplicated in any other labor category title. -For example, specific hours reported under "Registered Nurse Director of Nursing", or "Registered Nurse with Administrative Duties" should not also appear in the "Registered Nurse" row.
 2. A facility's payroll system and associated reporting capabilities are sufficient to document direct care hours by employed staff.
 3. A facility will need to use other methods to adequately document direct care hours reported under Column A or Column B, provided by contracted staff, consultants, and other non-employed but licensed or certified health professionals that are providing direct care services in the facility.

4. Acceptable methods for adequately documenting direct care service hours by non-employees as reported in Column A or Column B of a monthly report include, without limitation:

(a) A time tracking system the same or similar to that used by employed direct care staff;

(b) Signed time sheets; or

(c) Invoices, in the case of contracted or consultant staff paid by the facility, provided the invoices detail the number of direct care hours provided in the month.

Markkup

MINIMUM STAFFING REPORTING FORM

~~**THIS REPORT MUST BE TYPED. All fields must be completed for each reporting period. Indicate any shift in which minimum staffing requirements were not met by placing an asterisk beside the number of personnel for that shift for each category in which minimum staffing was not met. For example, if minimum staffing was not met for the Day Shift of the third day of the month because of insufficient direct care staff that were not licensed staff, an asterisk would be placed after the numbers in both the Total and Other fields.**~~

Facility: _____ Month/Year: _____

Signature of Person Preparing this Report: _____

| Day | Census | Day Shift Direct Care Staff | | | Evening Shift Direct Care Staff | | | Night Shift Direct Care Staff | | |
|-----|--------|--------------------------------|----------|-------|------------------------------------|----------|-------|----------------------------------|----------|-------|
| | | Total | Licensed | Other | Total | Licensed | Other | Total | Licensed | Other |
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510.1 POSTING

520.9.1 Definitions. For purposes of this rule:

- (a) ~~*Hall* means a corridor or passageway in a facility containing one or more resident rooms.~~
- (b) ~~*Wing* means a section of a facility devoted to resident care and containing one or more resident rooms.~~
- (c) ~~*Corridor* means a passageway with one or more resident rooms opening onto it.~~
- (d) ~~*Unit* means one hall, one wing, or one corridor.~~
- (e) ~~*Daily Staffing Log* means form DMS-7780.~~
- (f) ~~*Day Shift* means the period of 7:00 a.m. to 3:00 p.m. The facility may allow employees to begin their work shift up to two (2) hours prior to, or up to two (2) hours following, 7:00 a.m. to meet patient care needs.~~
- (g) ~~*Evening Shift* means the period of 3:00 p.m. to 11:00 p.m. The facility may allow employees to begin their work shift up to two (2) hours prior to, or up to two (2) hours following, 3:00 p.m. to meet patient care needs.~~
- (h) ~~*Night Shift* means the period of 11:00 p.m. to 7:00 a.m. The facility may allow employees to begin their work shift up to two (2) hours prior to, or up to two (2) hours following, 11:00 p.m. to meet patient care needs.~~
- (i) ~~*Accessible* means that the Daily Staffing Log shall not be obscured or blocked, partially or in whole, by any object; shall be located between four feet (4') to five feet (5') as measured from the floor; and shall be posted on a wall of each hall, wing or corridor that is not obstructed, blocked or is in any manner behind any fixture, nurses' station or other object. Encasing the Daily Staffing Log in a clear or transparent cover, binder or other similar object is permissible.~~

520.9.2 ~~The facility shall complete, post and maintain Daily Staffing Logs utilizing form DMS-7780, and in conformity with the instructions contained in that form and these rules.~~

- ~~520.93~~ — The Daily Staffing Log shall be conspicuously posted on each hall, wing and corridor in a manner that makes it accessible at all times.
- ~~520.94~~ — The DMS-7780 shall be retained and filed by the facility until the next standard survey by the Office of Long Term Care or one year from the month the specific form is completed, whichever is greater. All DMS-7780s filed by the facility shall be available for review by any interested person within seventy-two (72) hours of receipt of a written request.
- ~~520.95~~ — A violation of any provision of this rule shall be a Class C violation in accordance with Ark. Code Ann. § 20-10-205 and 20-10-206.

Markkup

Instructions for Completing Form DMS-7780

As required by Ark. Code Ann. § 20-10-1401 *et seq.*, a copy of the Form DMS-7780 is to be completed and posted daily as specified in these instructions and LTC Section 520.9.

Start a new Log with each Day Shift.

- 1. ~~Date~~** Enter the current date.
- 2. ~~Facility~~** Enter facility name.
- 3. ~~Hall, Wing or Corridor~~** Specify the hall, corridor, or wing that the Log covers. See Section 520.9.1.
- 4. ~~Shift Sign In Sheet~~** Staff will sign in at the beginning of each shift and sign out at the end of each shift on the Shift Sign In Sheet in the section designated for their licensure or certification status. On the log, each person will:
 - ~~specify his/her time in~~
 - ~~sign name~~
 - ~~specify time out~~

RNs, LPNs and RNAs working as CNAs will sign in under the section for their licensure, but the facility shall denote on the form that they are working as CNAs for that shift by placing "(CNA)" after their name. Likewise, RNs working as LPNs will sign in under the RN section, but the facility shall denote on the form that they are working as LPNs by placing "(LPN)" after their name.
- 5 ~~Today's Residents on Unit~~** At the beginning of each shift, the Charge Nurse or designee will enter the number of residents on that unit as of 12:01 a.m. of the date of the report. See Section 520.9.1 for the definition of shifts.
- 6. ~~Comments~~** The Administrator or designee may enter comments explaining any discrepancies between required and actual staffing.
- 7. ~~Post the log~~** See Sections 520.9.1(a), (b), (c), (e), and (i), and 520.9.3.
- 8. ~~Review~~** The Administrator, DON or Designee will sign and date each staffing log prior to filing.
- 9. ~~Save and file the logs for audit by OLTC~~** See Section 520.9.4.

401 LICENSING INFORMATION

- 401.1** Licenses to operate a Level I assisted living facility are issued to be effective without expiration unless the license is revoked, suspended, or terminated by the Department beginning July 1st and expiring on the following June 30th. Fees for new licensure applications will be prorated by dividing the total licensure fee by three hundred sixty five (365) and then multiplying the result by the total number of days from the date the application is approved through June 30th, ~~inclusive.~~
- 401.2** Licenses shall be issued only for the premises and persons specified in the application and shall not be transferable.
- 401.3** Licenses shall be posted in a conspicuous place on the licensed premises.
- 401.4** Separate licenses are required for Level I assisted living facilities maintained on separate premises, even though they are operated under the same management. When two or more buildings located on contiguous land house Assisted Living operations, the owner or operator may choose to license each operation in each building separately, or to have all operations in all buildings operate under a single license. Multiple licenses for multiple operations housed in separate buildings on contiguous land will be considered and treated under these rules as separate Assisted Living Facilities, and each licensed operation must conform to the requirements of these rules independent of the other licensed operations housed in other buildings on contiguous land.
- 401.5** Every Level I assisted living facility owner 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 prior written notification to and receipt by the owner of the assisted living facility of approval from the ~~Office of Long Term Care Department.~~

404 APPLICATION, EXPIRATION AND RENEWAL OF LICENSE

- 404.1** Applicants for licensure ~~or renewal~~ of Level I assisted living facility licensure shall obtain the necessary forms for initial ~~or renewal~~ licensure or to request relicensure of the facility after a change of ownership (see Section 404.7 and Section 405) from the ~~Office of Long Term Care Department.~~ The issuance of an application form shall not be construed to be a guarantee that the completed application will be acceptable, or that the Department will issue a license.
- 404.2** The facility shall not admit any residents until a license to operate a Level I assisted living facility has been issued, except as provided in Section 404.10(e) of these rules for purposes of inspection and initial licensure.
- 404.3** Applicants for initial licensure, ~~renewal,~~ or re-licensure after a change in ownership

shall pay in advance a license fee of ten dollars (\$10.00) per bed to the Department. Such fee shall be refunded to the applicant in the event that a license is not issued. An application fee (non-refundable) of two hundred fifty dollars (\$250.00) shall also accompany every application ~~which shall be non-refundable.~~

404.4 Annual licensure fees shall be tendered with each application for a new long-term care facility license and annually thereafter by the anniversary of the date the department issued the long-term care facility license. The annual licensure fees consist of a two hundred fifty dollar (\$250)-00 annual fee plus ten dollars (\$10) per bed.

404.3 Annual renewal is required for all Level I assisted living facility licenses. Licenses are effective beginning July 1 and shall expire on June 30th of the following year. In the event that a facility's license is not renewed by June 30, the license for the facility will be void.

404.4 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 received by the Department after June 1 is subject to a ten percent (10%) penalty.

404.5 Licenses shall be issued only for the premises and persons named in the application and shall not be transferable.

404.6 The operator of the facility shall sign applications and must successfully complete a criminal background check pursuant to Ark. Code Ann. 20-33-213, et seq., and in accordance with the Rules for Conducting Criminal Record Checks for Employees of Long Term Care Facilities.

404.7 As a part of the application process, and in addition to all other applicable requirements, facility operators:

- Must provide information on the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility;
- Must provide information on the owner or owners of the building or other structures that will be used in the operation of the facility;
- Must provide information on all other facilities owned, operated, or managed by the applicant or applicants;
- Must provide information on all other facilities owned, operated, or managed by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility; and

- Must provide affirmative evidence of ability to comply with standards, and rules, as may be lawfully prescribed.

404.8 The applicant or 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 complete name and address of the assisted living facility for which license is requested and such additional information as the Department may require including, but not limited to, affirmative evidence of ability to comply with standards, and rules as are lawfully prescribed here under;
- c. In case such facility is organized as a corporation, the identity of each officer and director of the corporation, together with a certificate of good standing from the Arkansas Secretary of State;
- d. In case such a facility is organized as a partnership, the identity of each partner and a copy of the partnership agreement;
- e. A statement from an authorized representative of the facility acknowledging that the facility is responsible for any funds that are handled for the residents by the facility or its staff, including personal allowance funds, together with an acknowledgement that the failure to make restitution within ten (10) working days for lost or stolen funds will result in the non-renewal of licensure, or other sanctions;
- f. A copy of any required contract agreement for the provision of services meeting specifications in Section 503 of these rules; and
- g. A copy of the floor plan of the assisted living facility. If the assisted living facility will be a part of another facility under a different license, the distinct part of the facility that will be assisted living shall be identified.

404.9 A Level I assisted living facility may apply for and be granted a license to operate as a Level II facility. A facility desiring to change its licensure status to a Level II from a Level I shall meet all requirements for, and for and shall make application without additional fee in accordance with, new licensure applications. The Level I facility must meet the provisions of the International Building Code in effect at the time of the licensure or construction of the facility, whichever is later.

404.10 Procedure for Licensure. The procedure for obtaining an Assisted Living License shall be:

- a. The individual or entity seeking licensure shall request or obtain all forms for licensure from the Office of Long Term Care.
- b. The individual or applicant shall fully complete all forms for licensure and submit same to the Department, along with all licensure and application fees. As applicable and required by law or rules, the individual or entity seeking licensure shall submit drawings or plans, for the facility, to —the Department at the time of application.
- c. For a new facility, at the time of application submission to the Office of Long Term Care, the applicant shall, in writing, request a life-safety code survey from the Department.
- d. For a new facility, the Department will conduct an unannounced life-safety code survey to determine compliance with applicable building code requirements.
- e. For a new facility, upon being informed that the facility meets all requirements for all applicable building codes, the facility may admit residents.
- f. For a new facility, upon admission of residents, the facility shall, in writing, request an initial survey.
- g. For a new facility, the Department will conduct an unannounced initial survey to determine compliance with applicable law and these rules.
- h. For a new facility, upon successful completion of the initial survey the facility shall be granted a license to operate as an Assisted Living Facility.
- i. The Department may elect, to perform a survey prior to issuance of the license, and issuance of the license is contingent upon the facility being found in compliance with all program requirements.

404.11 The Department may deny a license if:

- The administrator, directors, or management company, operator, or other management agent that the applicant will use to manage the facility has ever been convicted of a felony;
- A facility or facilities owned or operated by the applicant or applicants have been found, after final administrative decision, to have committed a Class A violation;
- A facility or facilities owned or operated by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have been found, after final

- administrative decision, to have committed a Class A violation;
- The applicant or applicants have had a license revoked or suspended; ~~or~~
 - The administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have had a license revoked;
 - The applicant or applicants have not demonstrated to the satisfaction of the Department that any other facility owned, operated, or administered by the applicant or applicants is and has been in substantial compliance with the standards as set by applicable state and federal law; or
 - The applicant or applicants have not demonstrated to the satisfaction of the department that any other facility owned, operated, or administered by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility, is and has been in substantial compliance with the standards as set by applicable state and federal law.

The Department may consider the mitigation of compliance issues by whether an applicant or applicants that would fall under one (1) of the above denial criteria including the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility. This includes any long-term care facility which was not licensed at the time of application or any additional bed capacity of a licensed facility.

404.12 Before the department may approve the application for licensure of the buyer, the seller or the buyer shall pay all outstanding quality assurance fees and license fees.

~~404.12 The operator of the facility shall sign applications and must successfully complete a criminal background check pursuant to Ark. Code Ann. 20-33-201, *et seq.*, and in accordance with the Rules for Conducting Criminal Record Checks for Employees of Long Term Care Facilities.~~

405 CHANGE IN OWNERSHIP

If a long-term care facility intends to add, remove, or otherwise change the management company, operator, or other management agent that manages the long-term care facility, the long-term care facility shall notify the Department of the change and request approval at least thirty (30) days before the change occurs. The Department will timely process the application; however, additional requests for information may be necessary and extend this process

The long-term care facility shall provide the Department with the information required to allow the Department to evaluate whether the new management company, operator, or other management agent that manages the long-term care facility meets the eligibility criteria set forth in the disqualifying criteria stated in the aforementioned section. The long-term care facility shall receive approval of the change from the Department before the change occurs unless the change is required

due to an emergency.

If a change occurs without prior approval from the Department due to an emergency, the long-term care facility shall notify the Department within ten (10) days of the change. The Department may deny a requested change based on the criteria established in below subdivision of this section. If the Department denies a requested change, the long-term care facility may not employ or otherwise use the denied management company, operator, or other management agent. A long-term care facility is not required to notify or receive approval from the Department for a change involving vendors that provide services to the long-term care facility but do not manage the facility.

- 405.1 ~~When a change in ownership or controlling interest in the facility is sold by person or persons named in the license to any other person or persons, the new owner shall, at least 30 days prior to completion of the sale, submit a new application and license fee, request to be inspected and meet the applicable standards and rules, including but not limited to, life safety codes, at the time of inspection. The seller, in writing, shall report such change in ownership to the Office of Long Term Care at least thirty (30) days before the change is to be implemented. With the exception of civil money penalties imposed for violations or deficiencies that occurred prior to the sale of ownership or control, when a license is granted pursuant to a change of ownership, the buyer shall be responsible for implementation or performance of any remedy listed in Section 1004.2 imposed against the facility for violations or deficiencies that occurred prior to the sale of ownership or control. The seller shall remain liable for all civil money penalties assessed against the facility that 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 Ark. Code Ann. § 20-10-224(f)(1), et seq. Failure to comply with the provisions of this section will result in the denial of licensure to the new owner.~~

~~404.13 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 complete name and address of the assisted living facility for which license is requested and such additional information as the Department may require including, but not limited to, affirmative evidence of ability to comply with standards, and 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, together with a certificate of good standing from the Arkansas Secretary of State;~~
- ~~d. In case such facility is organized as a partnership, the identity of each partner and a copy of the partnership agreement;~~

- e. ~~A statement from an authorized representative of the facility acknowledging that the facility is responsible for any funds that are handled for the residents by the facility or its staff, including personal allowance funds, together with an acknowledgement that the failure to make restitution within ten (10) working days for lost or stolen funds will result in the non-renewal of licensure, or other sanctions;~~
- f. ~~A copy of any required contract agreement for the provision of services meeting specifications in Section 503 of these rules;~~
- g. ~~A copy of the floor plan of the assisted living facility. If the assisted living facility will be a part of another facility under a different license, the distinct part of the facility that will be assisted living shall be identified.~~

~~404.14 A Level I assisted living facility may apply for and be granted a license to operate as a Level II facility. A facility desiring to change its licensure status to a Level II from a Level I shall meet all requirements for, and shall make application without additional fee in accordance with, new licensure applications. The Level I facility must meet the provisions of the International Building Code in effect at the time of the licensure or construction of the facility, whichever is later.~~

~~404.15 Procedure for Licensure. The procedure for obtaining an Assisted Living License shall be:~~

- a. ~~The individual or entity seeking licensure shall request or obtain all forms for licensure from the Office of Long Term Care.~~
- b. ~~The individual or applicant shall fully complete all forms for licensure and submit same to the Office of Long Term Care, along with all licensure and application fees. As applicable and required by law or rules, the individual or entity seeking licensure shall submit drawings or plans for the facility to the Office of Long Term Care at the time of application.~~
- c. ~~For a new facility, at the time of application submission to the Office of Long Term Care the applicant shall, in writing, request a life safety code survey from the Office of Long Term Care.~~
- d. ~~For a new facility, the Office of Long Term Care will conduct an unannounced life safety code survey to determine compliance with applicable building code requirements.~~
- e. ~~For a new facility, upon being informed that the facility meets all requirements for all applicable building codes the facility may admit residents.~~

- ~~f. For a new facility, upon admission of residents the facility shall, in writing, request an initial survey.~~
- ~~g. For a new facility, the Office of Long Term Care will conduct an unannounced initial survey to determine compliance with applicable law and these rules.~~
- ~~h. For a new facility, upon successful completion of the initial survey the facility shall be granted a license to operate as an Assisted Living Facility.~~
- ~~i. The Office of Long Term Care may elect, for any renewal application, to perform a survey prior to issuance of the license, and issuance of the license is contingent upon the facility being found in compliance with all program requirements.~~

CHANGE IN OWNERSHIP

405.2 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 any portion of facility's real or 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 An initial~~ partnership is replaced by another through the removal, addition or substitution of a partner;
- f. The corporate owner merges with, or is purchased by, another corporation or legal entity; or
- g. A not-for-profit corporation becomes a general corporation, or a for-profit corporation becomes not-for-profit.

405.3 Transactions that 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, or;
- b. Changes in the membership of a not-for-profit corporation.

406 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~~ Department 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~~ Department with written notice of the change of ownership at least thirty ~~(30) days prior to the effective date of the sale.~~
2. ~~1. (30) days prior to the effective date of the sale.~~
3. ~~2.~~ The Applicant and new operator of the long-term care facility shall provide the ~~Office of Long Term Care~~ Department 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~~ Department with evidence of the 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~~ 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~~ Department 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~~ Department.

401 LICENSING INFORMATION

- 401.1** Licenses to operate a Level II assisted living facility are issued to be effective without expiration unless the license is revoked, suspended, or terminated by the Department beginning July 1st and expiring on the following June 30th. Fees for new licensure applications will be prorated by dividing the total licensure fee by three hundred sixty five (365) and then multiplying the result by the total number of days from the date the application is approved through June 30th, inclusive.
- 401.2** Licenses shall be issued only for the premises and persons specified in the application and shall not be transferable.
- 401.3** Licenses shall be posted in a conspicuous place on the licensed premises.
- 401.4** Separate licenses are required for Level II assisted living facilities maintained on separate premises, even though they are operated under the same management. When two or more buildings located on contiguous land house Assisted Living operations, the owner or operator may choose to license each operation in each building separately, or to have all operations in all buildings operate under a single license. Multiple licenses for multiple operations housed in separate buildings on contiguous land will be considered and treated under these regulations rules as separate Assisted Living Facilities, and each licensed operation must conform to the requirements of these regulations rules independent of the other licensed operations housed in other buildings on contiguous land.
- 401.5** Every Level II assisted living facility owner 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 prior written notification to and receipt by the owner of the assisted living facility of approval from the Office of Long Term Care Department.

402 INITIAL LICENSURE

- 402.1** Initial licensure requires that the applicant for licensure possess a current, valid Permit of Approval (P-o-A) issued by the Health Services Permit Commission (HSPC) or Health Services Permit Agency (HSPA). Initial licensure shall apply to:
- a. Newly constructed facilities designed to operate as assisted living facilities;
 - b. Existing structures not already licensed as a Level II assisted living facility on the effective date of these regulations rules.

Permits of approval held by residential care facilities as of the effective date of Act 1230 of 2001 or held by subsequent purchases of those facilities shall also be considered permits of approval for assisted living without further action. However, residential care facilities that choose to offer Level II assisted living services are

not exempt from assisted living licensure requirements except as specifically provided by Act 1230 of 2001.

402.2 The initial licensure application shall be accompanied by one set of building plans.

403 COMPLIANCE

An initial license will not be issued until the Department verifies that the facility is in compliance with the licensing standards set forth in these ~~regulations~~rules.

An initial license will be effective on the date specified by the Office of Long Term Care once the Office of Long Term Care determines the facility to be in compliance with these licensing standards and applicable laws and regulations. The license will expire on June 30th following the issuance of the license.

404 APPLICATION, EXPIRATION AND RENEWAL OF LICENSE

404.1 Applicants for licensure ~~or renewal~~ of Level II assisted living facility licensure shall obtain the necessary forms for initial ~~or renewal~~ licensure or to request re- licensure of the facility after a change of ownership (see Section 404.7 and Section 405) from the ~~Office of Long Term Care Department~~. The issuance of an application form shall not be construed to be a guarantee that the completed application will be acceptable, or that the Department will issue a license.

404.2 The facility shall not admit any residents until a license to operate a Level II assisted living facility has been issued, except as provided in Section 404.10(e) of these ~~regulations~~rules for purposes of inspection and initial licensure.

404.3 Applicants for initial licensure, ~~renewal~~, or re-licensure after a change in ownership shall pay in advance a license fee of \$10.00 per bed to the Department. Such fee shall be refunded to the applicant in the event a license is not issued. An application fee of \$250.00 shall also accompany every application which shall be non-refundable.

404.4 Annual licensure fees shall be tendered with each application for a new long-term care facility license and annually thereafter by the anniversary of the date the department who issued the long-term care facility license. The annual licensure fees consist of a two hundred fifty dollars (\$250)-00 annual fee plus ten dollars (\$10) per bed.

404.5 Licenses shall be issued only for the premises and persons named in the application and shall not be transferable.

404.6 The operator of the facility shall sign applications and must successfully complete a criminal background check pursuant to Ark. Code Ann. 20-33-213, et seq., and in accordance with the Rules for Conducting Criminal Record Checks for

Employees of Long Term Care Facilities.

404.7 As a part of the application process, and in addition to all other applicable requirements, facility operators:

- Must provide information on the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility;:-
- Must provide information on the owner or owners of the building or other structures that will be used in the operation of the facility;:-
- Must provide information on all other facilities owned, operated, or managed by the applicant or applicants;:-
- Must provide information on all other facilities owned, operated, or managed by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility; and
- Must provide affirmative evidence of ability to comply with standards, and rules, as may be lawfully prescribed.

404.8 The applicant or 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 complete name and address of the assisted living facility for which license is requested and such additional information as the Department may require including, but not limited to, affirmative evidence of ability to comply with standards, rules, and regulations 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, together with a certificate of good standing from the Arkansas Secretary of State;
- d. In case such facility is organized as a partnership, the identity of each partner and a copy of the partnership agreement;
- e. A statement from an authorized representative of the facility acknowledging that the facility is responsible for any funds that are handled for the residents by the facility or its staff, including personal allowance funds, together with an acknowledgement that the failure to make restitution within ten (10)

working days for lost or stolen funds, will result in the non-renewal of licensure, or other sanctions;

- f. A copy of any required contract agreement for the provision of services meeting specifications in Section 503 of these rules; and
- g. A copy of the floor plan of the assisted living facility. –If the assisted living facility will be a part of another facility under a different license, the distinct part of the facility that will be used for assisted living shall be identified.

404.9 A Level II assisted living facility may apply for and be granted a license to operate as a Level I-only facility. The facility shall, prior to the issuance of the license, provide a written plan to the Department setting forth:

- a. The means by which alternative placement for individuals who receive, or meet the medical eligibility for, nursing home level of care, will be made; and
- b. The date of transfer to alternative placement for each resident that receives, or meets the medical eligibility for, nursing home level of care.

The Department shall evaluate all written plans, and plans and will grant the license as a Level I-only facility only upon determination, in the sole discretion of the Office, that the proposed plan meets the best interest of residents. The facility shall comply with all requirements of Section 602 regarding transfer of residents. A facility desiring to change its licensure status to a Level I from a Level II shall meet all requirements for, and for and shall make application without additional fee, in accordance with, new licensure applications.

404.10 Procedure for Licensure. The procedure for obtaining an Assisted Living License shall be:

- a. The individual or entity seeking licensure shall request or obtain all forms for licensure from the Department.
- b. The individual or applicant shall fully complete all forms for licensure and submit the same to the Department, along with all licensure and application fees. As applicable and required by law or regulation, the individual or entity seeking licensure shall submit drawings or plans for the facility to the Department at the time of application.
- c. For a new facility, at the time of application submission to the Department, the applicant shall, (in writing); request a life-safety code survey from the Department.
- d. For a new facility, the Department will conduct an unannounced life-safety

code survey to determine compliance with applicable building code requirements.

- e. For a new facility, upon being informed that the facility meets all requirements for all applicable building codes the facility may admit residents.
- f. For a new facility, upon admission of residents the facility shall; (in writing); request an initial survey.
- g. For a new facility, the Department will conduct an unannounced initial survey to determine compliance with applicable law and these rules.
- h. For a new facility, upon successful completion of the initial survey, the facility shall be granted a license to operate as an Assisted Living Facility.
- i. The Department may elect, for any renewal application, to perform a survey prior to issuance of the license, and issuance of the license is contingent upon the facility being found in compliance with all program requirements.

404.11 The Department may deny a license if:

- The administrator, directors, management company, operator, or other management agent that the applicant will use to manage the facility has ever been convicted of a felony;
- A facility or facilities owned or operated by the applicant or applicants have been found, after final administrative decision, to have committed a Class A violation;
- A facility or facilities owned or operated by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have been found, after final administrative decision, to have committed a Class A violation;
- The applicant or applicants have had a license revoked or suspended;~~or~~
- The administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility have had a license revoked;
- The applicant or applicants have not demonstrated to the satisfaction of the Department that any other facility owned, operated, or administered by the applicant or applicants is and has been in substantial compliance with the standards as set by applicable state and federal law; or
- The applicant or applicants have not demonstrated to the satisfaction of the department that any other facility owned, operated, or administered by the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility is and has been in substantial compliance with the standards as set by applicable state and federal law.

The Department may consider the mitigation of compliance issues by based on whether an applicant

or applicants (including the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility) that would fall under one (1) of the above denial criteria including the administrator, directors, management company, operator, or other management agent that the applicant or applicants will use to manage the facility. This includes any long-term care facility which was not licensed at the time of application or any additional bed capacity of a licensed facility.

404.12 Before the department may approve the application for licensure of the buyer, the seller or the buyer shall pay all outstanding quality assurance fees and license fees.

400.1 Annual renewal is required for all Level II assisted living facility licenses. Licenses are effective beginning July 1 and shall expire on June 30th of the following year. In the event that a facility's license is not renewed by June 30, the license for the facility will be void.

400.2 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 received by the Department after June 1 is subject to a ten percent (10%) penalty.

400.3 The operator of the facility shall sign applications and must successfully complete a criminal background check pursuant to Ark. Code Ann. 20-33-201, et seq., and in accordance with the Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities.

405 CHANGE IN OWNERSHIP

If a long-term care facility intends to add, remove, or otherwise change the management company, operator, or other management agent that manages the long-term care facility, the long-term care facility shall notify the Department of the change and request approval at least thirty (30) days before the change occurs. The Department will timely process the application; however, additional requests for information may be necessary and may extend the time it takes to complete this process.

The long-term care facility shall provide the Department with the information required to allow the Department to evaluate whether the new management company, operator, or other management agent that manages the long-term care facility, meets the eligibility criteria set forth in the disqualifying criteria stated in the aforementioned section. The long-term care facility shall receive approval of the change from the Department before the change occurs unless the change is required due to an emergency.

If a change occurs without prior approval from the Department due to an emergency, the

long-term care facility shall notify the Department within ten (10) days of the change. The Department may deny a requested change based on the criteria established in below-subdivision of this section section 405.1. If the Department denies a requested change, the long-term care facility may not employ or otherwise use the denied management company, operator, or other management agent. A long-term care facility is not required to notify or receive approval from the Department for a change involving vendors that provide services to the long-term care facility but do not manage the facility.

~~405.1 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 new owner shall, at least 30 days prior to completion of the sale, submit a new application and license fee, request to be inspected and meet the applicable standards and regulations, including but not limited to, life safety codes, at the time of inspection. The seller, in writing, shall report such change in ownership to the Office of Long Term Care at least thirty (30) days before the change is to be implemented. With the exception of civil money penalties imposed for violations or deficiencies that occurred prior to the sale of ownership or control, when a license is granted pursuant to a change of ownership, the buyer shall be responsible for implementation or performance of any remedy listed in Section 1004.2 imposed against the facility for violations or deficiencies that occurred prior to the sale of ownership or control. The seller shall remain liable for all civil money penalties assessed against the facility that 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 Ark. Code Ann. § 20-10-224(f)(1), et seq. Failure to comply with the provisions of this section will result in the denial of licensure to the new owner.~~

~~405.2 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 complete name and address of the assisted living facility for which license is requested and such additional information as the Department may require including, but not limited to, affirmative evidence of ability to comply with standards, rules and regulations 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, together with a certificate of good standing from the Arkansas Secretary of State;~~
- ~~d. In case such facility is organized as a partnership, the identity of each partner and a copy of the partnership agreement;~~
- ~~e. A statement from an authorized representative of the facility acknowledging that the facility is responsible for any funds that are handled for the residents~~

by the facility or its staff, including personal allowance funds, together with an acknowledgement that the failure to make restitution within ten (10) working days for lost or stolen funds will result in the non-renewal of licensure, or other sanctions;

- f. ~~A copy of any required contract agreement for the provision of services meeting specifications in Section 503 of these regulations;~~
- g. ~~A copy of the floor plan of the assisted living facility. If the assisted living facility will be a part of another facility under a different license, the distinct part of the facility that will be assisted living shall be identified.~~

~~405.3 A Level II assisted living facility may apply for and be granted a license to operate as a Level I only facility. The facility shall, prior to the issuance of the license, provide a written plan to the Office of Long Term Care setting forth:~~

- a. ~~The means by which alternative placement for individuals who receive, or meet the medical eligibility for, nursing home level of care, will be made; and~~
- b. ~~The date of transfer to alternative placement for each resident that receives, or meets the medical eligibility for, nursing home level of care.~~

~~The Office of Long Term Care shall evaluate all written plans, and will grant the license as a Level I only facility only upon determination, in the sole discretion of the Office, that the proposed plan meets the best interest of residents. The facility shall comply with all requirements of Section 602 regarding transfer of residents. A facility desiring to change its licensure status to a Level I from a Level II shall meet all requirements for, and shall make application without additional fee in accordance with, new licensure applications.~~

~~405.4 Procedure for Licensure. The procedure for obtaining an Assisted Living License shall be:~~

- a. ~~The individual or entity seeking licensure shall request or obtain all forms for licensure from the Office of Long Term Care.~~
- b. ~~The individual or applicant shall fully complete all forms for licensure and submit same to the Office of Long Term Care, along with all licensure and application fees. As applicable and required by law or regulation, the individual or entity seeking licensure shall submit drawings or plans for the facility to the Office of Long Term Care at the time of application.~~
- c. ~~For a new facility, at the time of application submission to the Office of Long Term Care the applicant shall, in writing, request a life-safety code survey from the Office of Long Term Care.~~

- ~~d. For a new facility, the Office of Long Term Care will conduct an unannounced life safety code survey to determine compliance with applicable building code requirements.~~
- ~~e. For a new facility, upon being informed that the facility meets all requirements for all applicable building codes the facility may admit residents.~~
- ~~f. For a new facility, upon admission of residents the facility shall, in writing, request an initial survey.~~
- ~~g. For a new facility, the Office of Long Term Care will conduct an unannounced initial survey to determine compliance with applicable law and these regulations.~~
- ~~h. For a new facility, upon successful completion of the initial survey the facility shall be granted a license to operate as an Assisted Living Facility.~~
- ~~i. The Office of Long Term Care may elect, for any renewal application, to perform a survey prior to issuance of the license, and issuance of the license is contingent upon the facility being found in compliance with all program requirements.~~

~~406~~ **CHANGE IN OWNERSHIP**

~~406.1405.2~~ 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 any portion of facility's real or 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. The corporate owner merges with, or is purchased by, another corporation or legal entity; or
- g. A not-for-profit corporation becomes a general corporation, or a for-profit corporation becomes not-for-profit.

~~406.2405.3~~ Transactions that 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, or;
- b. Changes in the membership of a not-for-profit corporation.

407406 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.