

Title 20. Public Health and Welfare

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

Subchapter A. Generally

Part 408. Rules for Adult Day Care Providers

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"PREFACE

These rules and regulations have been prepared for the purpose of establishing minimum standards for the licensure of Adult Day Care (ADC) providers in Arkansas that is consistent with current trends in ADC. The regulations herein should be considered the minimal design and operational standards for these facilities. Each Adult Day Care provider has a responsibility for providing optimum care and treatment for the clients it serves within the context of these regulations. These regulations are subject to periodic revisions as warranted."

Subpart 1. Generally

20 CAR § 408-101. Definitions.

(a) Where this part refers to an enactment of the General Assembly, such reference shall include subsequent enactment or amendments by the General Assembly on the same subject matter.

(b) As used in this part the following definitions shall apply unless the context clearly states otherwise.

(1)(A) "Abuse" shall have the same meaning as prescribed by Arkansas Code § 12-12-1703.

(B) "Abuse" also includes sexual abuse as defined in Arkansas Code § 12-12-1703(22);

(2)(A) "Activities of daily living" means the tasks for self-care that are performed either independently, with supervision, with assistance, or by others.

(B) "Activities of daily living" include but are not limited to:

- (i) Ambulating;
- (ii) Transferring;
- (iii) Grooming;
- (iv) Bathing;
- (v) Dressing;
- (vi) Eating; and
- (vii) Toileting;

(3) "ADA" means the Americans with Disabilities Act;

(4) "Adult day care (ADC) program" means a program that provides care and supervision to meet the needs of four (4) or more functionally impaired adults for periods of less than twenty-four (24) but more than two (2) hours per day in a place other than the adult's own home;

(5) "Adult day care provider" means a person, corporation, partnership, association, or organization legally responsible for the overall operation of the ADC program and that is licensed to operate as an ADC by the Department of Human Services;

(6) "Applicant" means the person, corporation, partnership, association, or organization that has submitted an application to operate an ADC but has not yet been approved and issued a license by the Department of Human Services;

(7) "Caregiver" shall have the same meaning prescribed by Arkansas Code § 12-12- 1703;

(8) "Contact days" means the number of days the client actually attended the adult day care facility;

(9) "Deficiency" means a facility's failure to meet program participation requirements as defined in these and other applicable rules and laws;

(10) "Department" means the division within the Department of Human Services that has the responsibility for the licensure and certification of long-term care facilities;

(11) "Direct care services" means services that directly help a client with certain routines and activities of daily living such as assistance with:

(A) Mobility and transfers;

(B) Clients to consume a meal;

(C) Grooming;

(D) Shaving;

(E) Trimming or shaping fingernails and toenails;

(F) Bathing;

(G) Dressing;

(H) Personal hygiene;

(I) Bladder and bowel requirements, including incontinence; or

(J) Medication only to the extent permitted by the state Nurse Practice Act and interpretations thereto by the Arkansas State Board of Nursing;

(12) "Direct care staff" means any staff, compensated or volunteer, acting on behalf of, employed by, or contracted by the facility either directly or through an employment agency to provide services and who provides direct care services or assistance to clients, including activities of daily living and tasks related to medication administration or assistance;

(13) "Direct contact" means the ability or opportunity of employees of the facility, or individuals with whom the facility contracts either directly or through an agency, to physically interact with or be in the presence of clients;

(14)(A) "Director" means the individual or entity that:

(i) Conducts the business of the facility; and

(ii) Is in charge of the daily operations of the facility.

(B) The director is the resource contact between the facility and the Department of Human Services;

(15) "Discharge" means when a client leaves the facility and it is not anticipated that the client will return;

(16) "Emergency measures" means those measures necessary to respond to a serious situation that threatens the health and safety of clients;

(17) "Exploitation" shall have the same meaning as prescribed by Arkansas Code § 12-12-1703 and as amended;

(18) "Functionally impaired adult" means an individual, eighteen (18) years of age or older, who by reason of mental or physical disability requires care and supervision;

(19)(A) "HIPAA" means the Health Insurance Portability and Accountability Act required by federal law to "protect health information" of clients.

(B) See www.dhhs.gov/ocr/hipaa for specific details;

(20)(A) "License" means a time-limited, nontransferable permit:

(i) Required by Arkansas Code § 20-10-224; and

(ii) Issued for a maximum period of twelve (12) months to a licensee who complies with the Office of Long-Term Care rules.

(B) This document shall list the maximum number of slots for the facility;

(21)(A) "Long-term care facility" shall have the same meaning as prescribed by Arkansas Code § 12-12-1703.

(B) Per Arkansas Code § 20-10-101(9)(B), a long-term care facility does not include an adult day care program that provides:

(i) Care and supervision to meet the needs of twelve (12) or fewer functionally impaired adults at any time in a place other than the adult's home; or

(ii) Services to clients for four (4) hours or less per day for no more than two (2) days per week;

(22) "Long-term care facility resident" shall have the same meaning as prescribed by Arkansas Code § 12-12-1703 and as amended;

(23) "Maltreatment" shall have the same meaning as prescribed in Arkansas Code § 12-12-1703;

(24) "Mental abuse" means verbal, written, or gestured communications to a client, a visitor, or staff, about a client within the client's presence, or in a public forum, that a reasonable person finds to be a material endangerment to the mental health of a client;

(25) "Neglect" shall have the same meaning as prescribed by Arkansas Code § 12-12-1703;

(26) "Noncompliance" means any violation of this part or of applicable laws;

(27) "Person" means:

- (A) An individual;
- (B) A partnership;
- (C) An association;
- (D) A corporation; or
- (E) Another entity;

(28) "Personnel/staff/employee" means any person who, under the direction, control, or supervision of facility administration, provides services as defined in this part for compensation, or who provides services voluntarily, and may include the owner, professional, management and person, firms, or entities providing services pursuant to a contract or agreement;

(29) "Plan of care" means the adult day care provider's written description of the scope of services to be provided to each individual client;

(30) "Plan of correction (PoC)" means a plan developed by the facility and approved by the Department of Human Services that:

- (A) Describes the actions the facility will take to correct deficiencies;
- (B) Specifies the date by which those deficiencies will be corrected; and
- (C) Sets forth the means and methods used to evaluate the efficacy of the corrections;

(31) "PRN" means a medication or treatment prescribed by a medical professional to a person, allowing the medication or treatment to be given "as needed";

(32) "Program director" means the person responsible for the operation of the program;

(33) "Program requirements" means the requirements for participation and licensure under these and other applicable rules and laws as an adult day care facility;

(34) "Proprietor/licensee" means any person, firm, corporation, governmental agency, or other legal entity:

(A) Issued an adult day care license; and

(B) Responsible for maintaining approved standards; and

(35) "Survey" means the process of inspection, interviews, or record reviews conducted by the Department of Human Services to determine an adult day care facility's compliance with program requirements and with applicable rules and laws.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Codification Notes. Americans with Disabilities Act is codified generally at 42 U.S.C. § 12101 et seq.

The Health Insurance Portability and Accountability Act of 1996 was enacted as Pub. L. No. 104-191.

Subpart 2. Licensure

20 CAR § 408-201. Generally.

(a)(1) No adult day care facility may be established, conducted, or maintained in Arkansas without first obtaining a long-term care facility license as required by Arkansas Code § 20-10-201 et seq. and these licensing standards.

(2) All licenses issued hereunder are nontransferable:

(A) From one (1) owner or proprietor to another; or

(B) From one (1) site to another.

(3) Except when waived by the Office of Long-Term Care in times of emergency, no adult day care facility may:

(A) Operate with more slots than is stated in the license; and

(B) Accept more clients than the number of slots stated on the license.

(b)(1) The issuance of an adult day care facility license shall be a grant of authority to the facility to operate an adult day care facility.

(2) The initial license shall state the number of slots.

(3) Subsequent licenses issued to the same owner will state the number of slots for which the facility has been licensed at the time of the issuance of the subsequent license.

(4) Licenses issued as a result of a change of ownership shall state the number of slots for which the facility was licensed on the date of sale of the facility or the date of sale of ownership of the facility.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-202. Licensing information.

(a) Licenses to operate an adult day care facility are effective beginning July 1 and expiring on the following June 30.

(b) Licenses shall be issued only for the premises and persons specified in the application and shall not be transferable.

(c) Licenses shall be posted in a conspicuous place on the licensed premises.

(d)(1) Separate licenses are required for adult day care facilities maintained on separate premises even though they are operated under the same management.

(2) Multiple buildings on contiguous land that serve clients shall require and shall be licensed under a single license.

(e)(1) Every adult day care facility owner shall designate a distinctive name for the facility which shall be included on the application for a license.

(2) The name of the facility shall not be changed without prior written notification to and approval from the Office of Long-Term Care.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-203. Initial license.

(a) Initial licensure shall apply to:

- (1) Newly constructed facilities designed to operate as adult day care facilities;
- (2) Existing structures not already licensed as adult day care facilities on the effective date of this part; and
- (3) Facilities that change ownership.

(b) The initial licensure application shall be accompanied by:

- (1)(A) Building plans showing a detailed floor plan of the facility.
 - (B) Floor plans must contain exact measurements and identify each room, hallway, window, exit, etc.;
- (2) A letter from the city or county zoning commission stating that the facility meets zoning requirements;
- (3) A letter from a licensed electrician and licensed plumber, with their name and license number included, stating that the facility complies with state codes; and
- (4) A letter from the county or state division of health stating approval for facilities with wells and septic tanks, if applicable.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-204. Compliance.

(a) An initial license will not be issued until the Department of Human Services verifies that the facility is in compliance with, and able to meet, the licensing standards and program requirements set forth in this part.

(b)(1) An initial license will be effective on the date specified by the Office of Long-Term Care once the office determines the facility to be in compliance with these licensing standards and applicable laws and rules.

(2) The license will expire on June 30 following the issuance of the license.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-205. Application, expiration, and renewal of license.

(a)(1) Applicants for licensure or renewal of adult day care facility licensure shall obtain the necessary forms for initial or renewal licensure or relicensure of the facility after a change of ownership (see 20 CAR § 408-206) from the Office of Long-Term Care.

(2) The issuance of an application form is not a guarantee that the completed application will be acceptable or that the Department of Human Services will issue a license.

(b) The facility shall not admit any clients until a license to operate an adult day care facility has been issued.

(c)(1) Applicants for initial licensure, renewal, or relicensure after a change in ownership shall pay in advance a license fee of five dollars (\$5.00) per slot to the department.

(2) Such fee shall be refunded to the applicant in the event a license is not issued.

(d)(1) Annual renewal is required for all adult day care facility licenses.

(2) Licenses are effective beginning July 1 and shall expire on June 30 of the following year.

(3) In the event that a facility's license is not renewed by June 30, the license will be void.

(e)(1) Applications for annual license renewal shall be delivered or, if mailed, postmarked to the office no later than June 1 before the June 30 expiration of the license.

(2) Any license fee received by the department after June 1 is subject to a ten percent (10%) penalty.

(f) The director of the facility shall sign applications and must successfully complete a criminal background check pursuant to Arkansas Code § 20-33-201 et seq., and in accordance with the Rules for Conducting Criminal Record Checks for Employees of Long-Term Care Facilities, 20 CAR pt. 404.

(g)(1)(A) When a change in ownership or controlling interest in the facility is sold by a person or persons named in the license to any other person or persons, the new owner shall, at least thirty (30) days prior to completion of the sale:

(i) Submit a new application and license fee;

(ii) Request to be inspected; and

(iii) Meet the applicable standards and rules, including but not limited to life safety codes, at the time of inspection.

(B) The seller, in writing, shall report such change in ownership to the office at least thirty (30) days before the change is to be implemented.

(2)(A) 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 20 CAR § 408-803 imposed against the facility for violations or deficiencies that occurred prior to the sale of ownership or control.

(B) 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.

(3) The department shall consider and may deny a license based upon any criteria provided for at Arkansas Code § 20-10-224(f)(1) et seq.

(4) Failure to comply with the provisions of this section will result in the denial of licensure to the new owner.

(h) The applicant/licensee must furnish the following information:

(1) The identity of each person having, directly or indirectly, an ownership interest of five percent (5%) or more in the facility;

(2) The complete name and address of the adult day care facility for which licensure 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;

(3) 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 Secretary of State; and

(4) In case such facility is organized as a partnership, the identity of each partner and a copy of the partnership agreement.

(i) Procedure for licensure. The procedure for obtaining an adult day care license shall be:

(1) The individual or entity seeking licensure shall request or obtain all forms for licensure from the office;

(2)(A) The individual or applicant shall fully complete all forms for licensure and submit same to the office, along with all licensure fees.

(B) As applicable and required by law or rule, the individual or entity seeking licensure shall submit drawings or plans for the facility to the office at the time of application;

(3) For a new facility, the office will conduct a life-safety code survey to determine compliance with applicable building code requirements;

(4) For a new facility, upon being informed that the facility meets all requirements for all applicable building codes, the facility may admit clients;

(5) For a new facility, upon successful completion of the initial survey, the facility shall be granted a license to operate as an adult day care;

(6) The office may elect, for any renewal application, to perform a survey prior to the issuance of the license, and issuance of the license is contingent upon the facility being found in compliance with all program requirements;

(7)(A) The office may elect, for any renewal application, to deny relicensure if the facility has unpaid civil money penalties imposed by the office.

(B) The time for an appeal has passed with no appeal being filed or all appeals have been exhausted and the imposition of the CMPs was upheld; and

(8) The office shall deny renewal of any license when a facility is unable to meet program requirements at the time of renewal.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Codification Notes. "CMPs" means civil money penalties.

20 CAR § 408-206. Change in ownership.

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

(1) A sole proprietor becomes a member of a partnership or corporation, succeeding him or her as the new director;

(2) A partnership dissolves;

(3) One (1) partnership is replaced by another through the removal, addition, or substitution of a partner;

(4) The corporate owner merges with, or is purchased by, another corporation or legal entity; or

(5) A not-for-profit corporation becomes a general corporation or a for-profit corporation becomes not-for-profit.

(b) Transactions that do not constitute a change of ownership include, but are not limited to, the following:

(1) Changes in the membership of a corporate board of directors or board of trustees; or

(2) Changes in the membership of a not-for-profit corporation.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Subpart 3. Administration

20 CAR § 408-301. Governing body.

Each adult day care facility shall have an owner or governing body that has ultimate authority for:

(1) The overall operation of the facility;

- (2) The adequacy and quality of care;
- (3) The financial solvency of the facility and the appropriate use of its funds;
- (4) The implementation of the standards set forth in this part; and
- (5) The adoption, implementation, and maintenance, in accordance with the requirement of state and federal laws and regulations and this part, of the adult day care policies and administrative policies governing the operation of the facility.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-302. General program requirements.

(a) Each person or legal entity issued a license to operate an adult day care facility shall, through their employees and agents, provide an organized program of supervision, care, and services that:

- (1) Conform to Office of Long-Term Care rules;
- (2) Meet the needs of the clients of the facility;
- (3) Provide for the full protection of clients' rights; and
- (4) Promote the social, physical, and mental well-being of clients.

(b) The facility shall provide any authorized agents of the Department of Human Services or their designee full access at any time during business hours to:

- (1) Clients;
- (2) Grounds;
- (3) Buildings; and
- (4) Books, files, and/or papers relating to clients or operation of the facility.

(c) The facility shall provide for maintenance and submission of such statistical, financial, or other information records or reports in such form, at such time, and in such a manner as the department may require.

(d) The facility shall provide notification to the department when incidents/accidents occur involving the facility or its clients as specified in 20 CAR § 408-305.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-303. Personnel and general policies and procedures — Required policies and procedures governing general administration of the facility.

(a)(1) The facility must develop, maintain, follow, and make available for public inspection the following policies and procedures:

- (A) Client policies and procedures as set forth in 20 CAR § 408-305;
- (B) Admission policies as set forth in 20 CAR § 408-403;
- (C) Discharge policies as set forth in 20 CAR § 408-404;
- (D) Incident report policies and procedures including procedures for reporting suspected abuse or neglect as set forth in 20 CAR § 408-305;
- (E) Clients' rights policies and procedures as set forth in 20 CAR § 408-404;
- (F) Fire safety standards as set forth in 20 CAR § 408-701 et seq.;
- (G) Smoking policies for clients and facility personnel as set forth in 20 CAR § 408-303(b), 20 CAR § 408-501(4)(R), and 20 CAR § 408-705;
- (H) Emergency treatment plan policies and procedures as set forth in 20 CAR § 408-306;
- (I) Medication storage and administration policies and procedures as set forth in 20 CAR § 408-501(2); and
- (J) Policies and procedures for the relocation of clients in cases of emergencies, such as fires, natural disasters, or utility outages, 20 CAR § 408-704.

(2) Failure of a facility to meet the requirements of this subsection shall be a violation pursuant to Arkansas Code § 20-10-205 et seq.

(b)(1) Each facility must have written employment and personnel policies and procedures.

(2) Personnel records shall include, as a minimum, the following:

- (A) Employment applications for each employee;

(B) Written functional job descriptions for each employee that are signed and dated by the employee;

(C)(i) Minimum qualifications, to include educational qualification and documentation of continuing training, including orientation training and continuing education units (CEU) related to professional license, personal care, food management, etc.

(ii)(a) CEU documentation must include copies of the documentary evidence of the award of hours by the certifying organization.

(b) Each facility is responsible for maintaining employee educational records;

(D) Evidence of credentials, including current professional licensure or certification;

(E)(i) Written statements of reference or documentation of verbal reference check.

(ii) Verbal check documentation must include the:

(a) Name and title of the person giving the reference;

(b) Substance of any statements made;

(c) Date and time of the call; and

(d) Name of the facility employee who is making the call;

(F) Employee's signed acknowledgement that he or she has received and read a copy of the Clients' Bill of Rights;

(G) Verification that the employee is at least eighteen (18) years of age;

(H)(i) Verification that the employee has not been convicted or does not have a substantiated report of abusing or neglecting clients or misappropriation of client property.

(ii) The facility shall, at a minimum, prior to employing any individual or any individuals working in the facility through contract with a third party, make inquiry to the Employment Clearance Registry of the Office of Long-Term Care and the Adult and Long-Term Care Facility Resident Maltreatment Central Registry maintained

by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, and shall conduct rechecks of all employees every five (5) years.

(iii) Inquiries to the Adult and Long-Term Care Facility Resident Maltreatment Central Registry shall be made by requesting a Request for Information form addressed to:

Adult Protective Services Central Registry
P.O. Box 1437, Slot S540
Little Rock, AR 72203;

(I) Documentation that all employees and other applicable individuals utilized by the facility as staff have successfully completed a criminal background check pursuant Arkansas Code § 20-33-201 et seq. and in accordance with the Rules for Conducting Criminal Record Checks for Employees of Long-Term Care Facilities, 20 CAR pt. 404;

(J) A copy of a current health card issued by the Department of Human Services or other entities as provided by law;

(K)(i) Documentation that the employee has been provided a copy of all personnel policies and procedures.

(ii) A copy of all personnel policies and procedures must be made available to office personnel or any other Department of Human Services personnel;

(L) Documentation that policies and procedures developed for fire safety standards and evacuation of building has been provided to the employee; and

(M) Documentation that policies and procedures developed for tobacco use has been provided to the employee.

(3) The facility shall meet all rules issued by the Department of Health regarding communicable diseases.

(c) Failure to comply with the provisions of this subsection or violation of any policies and procedures developed pursuant to this subsection shall be a violation

pursuant to Arkansas Code § 20-10-205 or may constitute a deficiency finding against the facility.

(d) Orientation records will be maintained for each employee to include but not limited to:

- (1) Job duties;
- (2) Orientation to client rights;
- (3) Abuse/neglect reporting requirements; and
- (4) Fire and tornado drills.

(e)(1) In-service training sessions for direct care staff are required at a minimum of four (4) hours per annual quarter for a total of sixteen (16) hours per year.

(2) Training shall be appropriate to job function and shall include but is not limited to:

- (A) Client rights;
- (B) Safety standards;
- (C) Abuse reporting;
- (D) Normal signs of aging;
- (E) Health problems of aging;
- (F) Communications; and
- (G) Dementia training.

(f) In-service training sessions for nondirect care staff are required at a minimum of two (2) hours per annual quarter for a total of eight (8) hours per year.

(g) In-service training sessions for part-time workers (twenty (20) hours or less per week) are required at a minimum of two (2) hours per annual quarter for a total of eight (8) hours per year.

(h) **Staffing.**

(1)(A) The staffing pattern shall be dependent upon the enrollment criteria and the particular needs of the clients who are to be served.

(B) The ratio of paid staff to client shall be adequate to meet the goals and objectives of the program.

(C) The minimum ratios shall be at least two (2) staff persons when two through sixteen (2 – 16) clients are present and one (1) additional staff person for any portion of eight (8) additional clients are present.

(D) The office may require additional staff when it is determined that the needs and services of the clients are not being met.

(E) Secretaries, accountants, and other nondirect care staff members shall not be considered in the staffing ratio.

(F) In case of an emergency when a direct care staff must leave, one (1) nondirect care staff may count until the emergency has been resolved.

(2) Substitutes.

(A) Whenever paid staff are absent, substitutes must be used to:

- (i) Maintain the staff-client ratio; and
- (ii) Ensure proper supervision and delivery of health services.

(B) In the absence of a regular staff person, a substitute staff person may be used in order to maintain the required staff-client ratio.

(C) Such substitute staff shall have the same qualifications, training, and personal credentials as the regular staff position for whom they are substituting.

(D) Trained volunteers with the same qualifications, training, and personal credentials as the regular staff for whom they are volunteering may be used instead of paid substitutes.

(3) Program director.

(A) The program director shall:

- (i) Have the authority and responsibility for the management of activities and direction of staff; and
- (ii) Ensure that activities and services are appropriate and in accordance with established policies.

(B) ADC facilities licensed for more than fifteen (15) clients must have a full-time director.

(C) The director shall meet all the minimum qualifications:

- (i) Shall be at least twenty-one (21) years of age;

(ii) Shall have at least one (1) year of work experience in the area of human services (e.g., services to the elderly, disabled, or adults with disabilities);

(iii) Shall have demonstrated ability in supervision and administration;

(iv) Shall have a current health card; and

(v) Shall have knowledge of the aspects of aging and appropriate activity programming.

(4) **Executive director.** In adult day care programs where the executive director is responsible for more than adult day care services, the executive director may not be counted as direct care staff.

(5) **Personal care staff.**

(A) The ADC shall have sufficient other staff responsible for personal care to comply with this part and the care requirements of the clients.

(B) Minimum requirements are:

- (i) Be at least eighteen (18) years of age;
- (ii) Have a current health card;
- (iii) Have successfully completed a training course for nurse's aides, personal care technicians, or home health aides; and
- (iv) Upon the effective date of this part, those noncertified employees have one (1) calendar year to complete a certification class.

(C)(i) In-service training sessions are required for all direct care staff.

(ii) In-service sessions are four (4) hours per quarter for a total of sixteen (16) hours per year.

(6) **Volunteers.**

(A) The ADC shall comply with the following in regard to utilization of volunteers who provide direct care in lieu of paid staff:

(i) Volunteers shall:

- (a) Be at least eighteen (18) years of age; and
- (b) Have a current health card;

(ii)(a) Volunteers shall be provided written job descriptions.

(b) These shall describe in detail:

(1) Task or tasks to be performed; and
(2) Qualifications for performing assigned task;
(iii) The facility shall designate a paid staff position who is responsible for supervising the volunteer regarding:

(a) Hours;

(b) Days; and

(c) Length of commitment of volunteer's services; and

(iv) Volunteers shall receive a formal orientation.

(B)(i) In-service training sessions are required for all volunteers.

(ii) In-service sessions shall total a minimum of four (4) hours per annual quarter for full time volunteers and eight (8) hours per year for part time volunteers (less than twenty (20) hours per week).

(C) Paid staff shall be informed of their responsibilities to the volunteer prior to the volunteer's working in the program.

(D) The volunteer's job performance shall be evaluated as necessary.

(E) Provision shall be made for recognition and appreciation of the volunteer, at least on an annual basis.

(F)(i) Trained volunteers may be counted in the direct care staff-client ratio.

(ii) When counted in direct care staff-client ratio, the volunteer shall have the same qualifications as the staff position being substituted for.

(7) **Universal worker.** Each staff person on duty may be counted as direct care staff even if they are currently involved in housekeeping, laundry, or dietary activities as long as universal precautions are followed.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-304. General requirements concerning clients.

The facility shall:

(1)(A) Permit unrestricted visiting hours.

(B) However, facilities may deny visitation when visitation results or a substantial probability exists that visitation will result in disruption of service to other clients or threatens the health, safety, or welfare of the client or clients;

(2)(A) With the exception of fish in aquariums and service animals (e.g. guide dogs), live animals shall not be permitted in:

- (i) Common dining areas;
- (ii) Storage areas;
- (iii) Food preparation areas; or
- (iv) Common serving areas.

(B) Pets may be permitted in adult day care facilities if sanitary conditions and appropriate behavior are maintained.

(C) If the facility permits pets, the facility shall ensure that:

- (i) The facility is free of pet odors; and
- (ii) Pets' waste is disposed of regularly and properly.

(D) Pets must not present a danger to clients or guests.

(E) Current records of inoculations and license, as required by state law or local ordinance, shall be maintained on file in the facility.

(F) For purposes of this part, "pets" mean domesticated mammals (such as dogs and cats), birds or fish, but not wild animals, reptiles, or livestock.

(G) Parameters for pets, including behavior and health, must be set and be included in the admission agreement;

(3) Require that conduct in the common areas is appropriate to the community standards as defined by the clients and staff;

(4) Ensure that clients not perform duties in lieu of direct care staff, but may be employed by the facility in other capacities;

(5) Ensure that clients are not left in charge of the facility; and

(6) In the event of a client's acute change of condition or accident:

(A)(i) Notify the client's responsible party or next of kin.

(ii) A competent client may decline to have someone contacted, if such a request is in writing and filed in the client's file;

- (B) Take immediate steps to see that the client receives necessary medical attention including transfer to an appropriate medical facility; and
- (C) Make a notation of the illness or accident in the client's records.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-305. Reporting suspected abuse, neglect, or misappropriation of client property.

(a)(1) Pursuant to the Adult and Long-Term Care Facility Resident Maltreatment Act, Arkansas Code § 12-12-1701 et seq., and Arkansas Code § 12-12- 501 et seq. [repealed], the facility must develop and implement written policies and procedures to ensure incidents are prohibited, reported, investigated, and documented as required by this part and by law, including:

- (A) Alleged or suspected abuse or neglect of clients; and
- (B) Exploitation of clients or any misappropriation of client property.

(2)(A) A facility is not required under this part to report death by natural causes.

(B) However, nothing in this part negates, waives, or alters the reporting requirements of a facility under other rules or statutes.

(3) Facility policies and procedures regarding reporting, as addressed in this part, must be:

- (A) Included in orientation training for all new personnel/staff/employees; and
- (B) Addressed at least annually during in-service training for all facility staff.

(b) Next-business-day reporting of incidents.

(1) The following events shall be reported to the Office of Long-Term Care by facsimile transmission to telephone number 501-683-5306 of the completed Incident & Accident Intake Form (Form DMS-731) no later than 11:00 a.m. on the next business day following discovery by the facility:

(A) Any alleged, suspected, or witnessed occurrences of abuse, including verbal statements or gestures, or neglect to clients;

(B) Any alleged, suspected, or witnessed occurrence of misappropriation of client property or exploitation of a client; and

(C) Any alleged, suspected, or witnessed occurrences of sexual abuse to clients by any individual.

(2)(A) In addition to the requirement of a facsimile report by the next business day on Form DMS-731, the facility shall complete a Form DMS-742 in accordance with 20 CAR § 408-305(f).

(B) Form DMS-731 and Form DMS-742 are found in the Appendix or on the office website at:

<http://www.medicaid.state.ar.us/InternetSolution/General/units/oltc/forms/forms.aspx>

**(c) Incidents or occurrences that require internal reporting only —
Facsimile report or Form DMS-742 not required.**

(1) The following incidents or occurrences:

(A) Shall require the facility to prepare an internal report only; and

(B) Do not require a facsimile report or Form DMS-742 to be made to the office.

(2) The internal report shall include all content specified in 20 CAR § 408-305(f), as applicable.

(3) Facilities must maintain these incident report files in a manner that allows verification of compliance with this provision:

(A)(i) Incidents where a client attempts to cause physical injury to another client without resultant injury.

(ii) The facility shall maintain written reports on these types of incidents to document patterns of behavior for subsequent actions;

(B) All cases of reportable disease as required by the Department of Health; and

(C) Loss of heating, air conditioning, or fire alarm system for a period of greater than two (2) hours.

(d) Internal-only reporting procedure.

(1)(A) Written reports of all incidents and accidents shall be completed within five (5) days after discovery.

(B) The written incident and accident reports shall be comprised of all information specified in Form DMS-731 and Form DMS-742 as applicable.

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

(2) All reports involving accident or injury to clients will also be reviewed, initialed, and dated by the facility director within five (5) days.

(3) The care plan portion of the admission agreement shall be reviewed by the director and:

(A) Shall be amended upon any change of a client's condition or need for services; and

(B) Copies of the amended versions of the care plan shall be attached to the written report of the incident or accident.

(4) Reports of incidents specified in this subsection will be maintained in the facility only and are not required to be submitted to the office.

(5) All written incident and accident reports shall be maintained on file in the facility for a period of three (3) years from the date of occurrence or report, whichever is later.

(e) Other reporting requirements. The facility's program director or designee is also required to make any other reports as required by state and federal laws and regulations.

(f) Abuse investigation report.

(1) The facility must ensure that all alleged or suspected incidents involving client abuse, exploitation, neglect, or misappropriations of client property are thoroughly investigated.

(2) The facility's investigation must:

(A) Be in conformance with the process and documentation requirements specified on the Form DMS-742; and

(B) Prevent the occurrence of further incidents while the investigation is in progress.

(3) The results of all investigations must be reported to the facility's program director or designated representative and to other officials in accordance with state law, including the office, within five (5) working days of the facility's knowledge of the incident.

(4) If the alleged violation is verified, appropriate corrective action must be taken.

(5)(A) The DMS-742 shall be completed and mailed to the office by the end of the fifth working day following discovery of the incident by the facility.

(B) The DMS-742 may be amended and resubmitted at any time circumstances require.

(g) Reporting suspected abuse or neglect.

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

(2) The requirement that the facility's program director or his or her designated agent immediately reports all cases of suspected abuse or neglect of clients of an adult day care to the local law enforcement agency in which the facility is located as required by the Adult and Long-Term Care Facility Resident Maltreatment Act, Arkansas Code § 12-12-1701 et seq., and as amended.

(3) The requirement that the facility's program director or his or her designated agent report suspected abuse or neglect to the office as specified in this part.

(4) The requirement that all facility personnel/staff/employees who have reasonable cause to suspect that a client has been subjected to conditions or circumstances that have resulted in abuse or neglect shall immediately notify the facility program director or his or her designated agent (this does not negate that all mandated reporters employed by or contracted with the facility shall report immediately to the local law enforcement agency in which the facility is located as required by the Adult

and Long-Term Care Facility Resident Maltreatment Act, Arkansas Code § 12-12-1701 et seq.).

(5)(A) The requirement that, upon hiring, each facility employee:

(i) Be given a copy of the abuse or neglect reporting and prevention policies and procedures; and

(ii) Sign a statement that the policies and procedures have been received and read.

(B) The statement shall be filed in the employee's personnel file.

(6) The requirement that all facility personnel receive annual, in-service training in identifying, reporting, and preventing suspected abuse or neglect, and that the facility develops and maintains policies and procedures for the prevention of abuse and neglect and accidents.

(7)(A) When the office makes a finding that a facility employee or personnel of the facility committed an act of abuse, neglect, or misappropriation of client property against a client, the name of that employee or personnel shall be placed in the Employment Clearance Registry of the office.

(B) If the employee or personnel against whom a finding is made is a CNA, the name of the CNA will be placed in the CNA Registry of the office.

(C) Further, the office shall make report of its finding to the appropriate licensing or enforcement agencies.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Codification Notes. Code § 12-12-501 et seq. was repealed by Acts 2009, No. 749, § 2.

"CNA" means certified nursing assistant.

20 CAR § 408-306. Emergency medical plan.

(a) Each provider shall have a written emergency medical plan which ensures transportation to a hospital or other type of facility providing emergency care.

(b) The facility shall have on file a written agreement, signed by the client or legal guardian, granting permission to transport a client who needs emergency care to the designated hospital or other type of facility.

(c) Client records must note any accident, injury, or illness and emergency procedures that occur.

(d) Emergency telephone numbers shall be posted in a prominent place near the telephone where facility staff has full access to its use.

(e) Emergency telephone numbers for each client shall be documented in the client's file.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-307. Administrative records.

Administrative records must include at least:

(1)(A) A written program description, copies of which are available to:

- (i) The Department of Human Services;
- (ii) Clients;
- (iii) Families; or
- (iv) Other interested parties.

(B) The document shall describe at a minimum the:

- (i) Administrative organization;
- (ii) Maximum number of clients that can be served;
- (iii) Admission criteria for clients to be accepted;
- (iv) Days of the week and hours of operation;
- (v) Services available to clients, including cost for such services; and
- (vi) Criteria for discharge;

(2) Current facility inspection reports from the local fire department, as applicable, and the department;

- (3) A current inspection report for any catered services;
- (4) A record of activities conducted for the previous three (3) months;
- (5) A weekly menu plan and record of actual meals served for the previous month;
- (6) An emergency medical plan;
- (7) A fire safety plan;
- (8) A record of fire drills, disaster drills, and tornado drills for the past twelve (12) months; and
- (9) A record of smoke detector checks and fire extinguisher checks for the past twelve (12) months.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-308. Client records.

- (a) The facility must maintain a separate and distinct record for each client.
- (b) The record must contain:
 - (1) The client's name;
 - (2) The client's address;
 - (3) The admission date;
 - (4) The name, office telephone number, and emergency telephone number of each primary care physician or advanced practice nurse who treats the client;
 - (5) The name, address, and telephone number of family members and the person identified by the client who should be contacted in the event of an emergency;
 - (6) The date of birth;
 - (7) All identification numbers, such as Medicaid, Medicare/Medipak, and Department of Veterans Affairs;
 - (8) Transportation arrangements, if applicable;
 - (9) A copy of the client's signed rights statement;
 - (10) A copy of the client's signed admission, discharge agreements;

(11) A written acknowledgement that the client or responsible party has been notified of the charges for the services provided;

(12) Medical and social history;

(13)(A) Progress notes, including any significant change in the client's health status, either positive or negative.

(B) Significant changes must be reported to the appropriate person (physician, advance practice nurse, or caregiver, etc.) as soon as possible;

(14) Documentation of who was notified and when they were notified shall be placed in the client's file;

(15) A list of all current medications kept by the facility for the client;

(16) Documentation of any treatment or therapies;

(17) Documentation of any special diets, if applicable;

(18) Documentation regarding any accident or incident;

(19) A copy of court orders, letters of guardianship, or power of attorney, if applicable;

(20) A copy of any advance directive;

(21) A copy of the client's care plan;

(22) The discharge date; and

(23) A signed copy of the HIPAA release form.

(c) Confidentiality of records.

(1) A client's records are confidential and shall not be released without legal authorization or subpoena.

(2) Active records shall be available to authorized agents of the Department of Human Services or their designee during normal business hours.

(3) The record shall contain a copy of a signed copy of the HIPAA release form indicating that the facility is in compliance with HIPAA regulations.

(d) Record retention.

(1)(A) All client records will be retained for a period of five (5) years.

(B) In the event that an audit, litigation, or other action involving these pertinent records is started before the end of the five-year period, those records shall

be retained until all issues arising out of the actions are resolved or until the end of the five-year period, whichever is later.

(2) Documentation concerning persons whose requests for services were denied as a result of the assessment process will also be retained for five (5) years.

(3)(A) All records shall be maintained on site.

(B) They shall be made available within twenty-four (24) hours of an official request.

(C) When a facility changes ownership, the original records shall remain at the facility.

(4) Documentation shall be on file that the client or responsible party has been informed of their right to privacy under HIPAA.

(e) **Care plan.**

(1) There shall be a written care plan for each client.

(2) Care plans shall:

(A) Be developed within five (5) contact days following the client's entry into the program;

(B) Be designed to maintain the client at the optimal level of functioning;

(C) Cover all:

(i) Medications;

(ii) Treatments;

(iii) Rehabilitative services, where appropriate;

(iv) Diets;

(v) Precautions related to activities;

(vi) Plans for continuing care; and

(vii) Discharge;

(D) Be individualized for each client to address:

(i) Functional activities, interests, and specific goals; and

(ii) Means of accomplishing these goals;

(E) Identify the client's regularly scheduled days for attendance, including arrival and departure times;

(F) Be revised as frequently as warranted by the client's condition; and
(G) Be reviewed and documented at least every six (6) months and updated as necessary.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Codification Notes. Health Insurance Portability Accountability Act of 1996 was enacted as Pub. L. No. 104-191.

Subpart 4. Admission — Discharge

20 CAR § 408-401. Admission agreement.

(a) Each director shall execute with and provide to each client at or prior to admission, and periodically thereafter, for changes as specified in this section, a written admission agreement dated and signed by the client or their legal guardian.

(b) The ADC shall have a written agreement that shall be printed and contain the entire agreement between the parties, that includes but is not limited to:

(1) A complete statement enumerating in detail all charges, expenses, and other assessments, if any, for services, materials, equipment, and food required by law or rule, and other services, materials, equipment, and food which the facility agrees to furnish and supply to clients during their period of stay;

(2) The maximum total monthly, weekly, daily, or hourly rate to be charged to the client or responsible person;

(3) A provision that no additional charges shall be levied by the director unless specified in the listing of supplemental services and supplies and agreed to in writing by the client or the responsible person;

(4) The conditions under which the director may adjust the basic monthly, daily, or hourly charges for supplemental services and supplies, including the provision of written notification, in writing, of such adjustments to the client or responsible person at least thirty (30) days prior to their effective date; and

(5)(A) A provision that refund of advance payment or payments in the event of death or voluntary or involuntary discharge shall be calculated on a pro-rata basis.

(B) The formula for such calculations shall be detailed.

(c) Once executed, neither party may waive any provision of the admission agreement and changes to the admission agreement must be agreed to in writing by all parties subject to the admission agreement.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-402. Admission criteria.

(a) To be eligible for an ADC, clients must:

- (1) Be a functionally impaired adult;
- (2) Have a current medical history provided; and
- (3) Have a written plan of care, if the client is on an approved waiver program.

(b) Clients will be ineligible for an ADC if they:

- (1) Are bed-fast;
- (2) Cannot self-administer their medications; or
- (3) Have behavior problems that create a hazard or danger to themselves or others.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-403. Discharge criteria.

The facility must develop and implement written discharge policies and procedures that are in accordance with Arkansas Code § 20-10-1005 and that include, at a minimum, the following:

(1) A client may be discharged only when:

(A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;

(C) The transfer or discharge is appropriate because the resident is no longer benefiting from therapeutic programming;

(D) The safety of individuals in the facility is endangered;

(E) The health of individuals in the facility would otherwise be endangered;

(F) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws and regulations; or

(G) The facility ceases to operate;

(2)(A) The reasons for discharge of a client must be documented in the client's permanent record and the discharge must be discussed with the client and his or her guardian or personal representative, who must be given a copy of the documentation setting forth the alternatives available.

(B) This notice must be given thirty (30) days prior to the date of discharge.

(C)(i) An immediate discharge for emergency on the grounds set forth in subdivision (1) of this section does not require that the facility provide notice of the discharge thirty (30) days in advance of the discharge.

(ii) However, the facility shall provide the notice as soon as practicable.

(iii) The facility shall document, prior to the discharge, the facts and circumstances leading to the emergency discharge;

(3)(A) A written appeals process for clients objecting to discharge must be developed by the facility in conformity with Arkansas Code § 20-10-1002, as amended, as well as all applicable rules.

(B) That process shall include:

(i)(a) The written notice of discharge must state the reason for the proposed discharge as documented in subdivision (2) of this section.

(b) The notice must inform the client that he or she has the right to appeal the decision to the Secretary of the Department of Human Services within seven (7) calendar days.

(c) The client must be assisted by the facility in filing the written objection to the discharge;

(ii) Within fourteen (14) days of filing of the written objections, a hearing will be scheduled;

(iii) A final determination in the matter will be rendered within seven (7) days of the hearing; and

(iv) The facility must provide assistance to clients to ensure safe and orderly discharge;

(4) The facility, in conjunction with the responsible party, must make arrangements to discharge clients who require a higher level of medical, nursing, or psychiatric care than can be safely and effectively provided in an adult day care facility; and

(5)(A)(i) If the Office of Long-Term Care determines that a client is inappropriate for continued placement in the facility, the provider must arrange for discharge of the client within ten (10) calendar days of such notification or as otherwise specified by the office.

(ii) Less time may be given by the office when a client's life or health requires immediate medical attention.

(B) The responsibility for the client's care or lack of care shall rest with the provider.

(C) If the office determines that the discharge of a client is necessary for reasons other than appropriateness of placement, the facility will have up to thirty (30) days to effectuate the discharge or as otherwise specified by the office.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-404. Client rights.

(a)(1) The facility shall develop, maintain, and follow written policies and procedures defining the rights and responsibilities of clients.

(2) The policies shall present a clear statement defining how clients are to be treated by the facility, its personnel, volunteers, and others involved in providing care.

(b) A copy of the synopsis of the Clients' Bill of Rights must be prominently displayed within the facility in a general use area.

(c) Each client admitted to the facility is to be fully informed of these rights and of all rules governing client conduct and responsibilities.

(d) Appropriate means shall be utilized to inform non-English speaking, deaf, or blind clients of their rights.

(e) The facility shall communicate these expectations/rights during the period of not more than two (2) weeks before or five (5) working days after admission.

(f) The facility shall obtain a signed and dated acknowledgement from the client or his or her legal guardian that they have read and understand these rights.

(g) The signed and dated acknowledgement shall be maintained in the client's file.

(h) Clients' rights shall be deemed appropriately signed if signed by:

(1) A client capable of understanding: client and one (1) witness sign;

(2) A client incapable because of illness. the attending physician documents the specific impairment that prevents the client from understanding or signing their rights, and legal guardian and two (2) witnesses sign;

(3)(A)(i) A client has intellectual disabilities: rights are read and if understood by the client, he or she and two (2) witnesses sign.

(ii) At least one (1) witness shall be an outside disinterested party.

(B) If client cannot understand rights: a legal guardian and one (1) witness sign; and

(4) A client capable of understanding but signs with a mark other than name: client signs with a mark (i.e. "X") and two (2) witnesses sign.

(i)(1) Facility employees shall be provided a copy of client rights and complete a signed and dated acknowledgement stating they have received and read the rights.

(2) A copy of the acknowledgement shall be placed in the employee's personnel file.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-405. Clients' Bill of Rights.

(a)(1) Each adult day care must post the Clients' Bill of Rights, as provided by the Department of Human Services, in a prominent place in the facility.

(2) The Clients' Bill of Rights must prominently display the toll-free number for contacting the Office of Long-Term Care and filing a complaint, or the facility must post the number and its purpose beside the Clients' Bill of Rights.

(3) Further, the facility shall prominently display the contact information for the State Ombudsman's office.

(4) A copy of the Clients' Bill of Rights must be given to each client in a manner and form comprehensible to the client or his or her responsible party.

(b)(1) A client has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws and rules of this state and the United States except where lawfully restricted.

(2) The client has the right to be free of interference, coercion, discrimination, or reprisal in exercising these civil rights.

(c) In addition to the provisions of subsections (a) and (b) of this section, each client in the adult day care has the right to, and the facility shall ensure that clients shall:

(1) Be free from physical or mental abuse, including corporal punishment;

(2) Be permitted to participate in activities of social, religious, or community groups unless the participation interferes with the rights of others;

(3) Be provided a schedule of individual and group activities appropriate to individual client's needs, interests, and wishes;

(4) Be, at a minimum, provided:

(A) In-house activities and programs, the character and scope of which shall be disclosed to potential clients or their responsible parties in writing as part of the application process; and

(B) Group recreation and socialization;

(5)(A) Not be prevented in any way from the practice of the religion of the client's choice.

(B) The adult day care facility shall not be expected to participate or facilitate the practice of religion beyond arranging or coordinating transportation to the extent possible;

(6)(A) Be treated with respect, kindness, consideration, and recognition of his or her dignity and individuality, without regard to:

(i) Race;

(ii) Religion;

(iii) National origin;

(iv) Gender;

(v) Age;

(vi) Disability;

(vii) Marital status;

(viii) Sexual orientation; or

(ix) Source of payment.

(B) This means that the client:

(i) Has the right to make his or her own choices regarding personal affairs, care, benefits, and services; and

(ii) Has the right to be free from abuse, neglect, and exploitation;

(7) Be provided a safe and appropriate environment;

(8) Not be confined to his or her chair;

(9) Not be prohibited from communicating in his or her native language with other clients or personnel/staff/employees;

(10)(A) Be permitted to complain about the client's care or treatment.

(B) The complaint may be made anonymously or communicated by a person designated by the client.

(C) The provider must promptly respond to resolve the complaint.

(D) The provider must not discriminate or take any punitive, retaliatory, or adverse action whatsoever against a client who makes a complaint or causes a complaint to be made;

(11) Be allowed communication, including personal visitation with any person of the client's choice, including:

(A) Family members;

(B) Representatives of advocacy groups; and

(C) Community service organizations;

(12)(A) Be allowed access to the client's records.

(B) Client records are confidential and may not be released without the client's or his or her responsible party's consent unless the release without consent is required by law;

(13) Have the right and be allowed to choose and retain a personal physician or advance practice nurse;

(14) Participate in the development of the individual care that describes the client's direct care services and how the needs will be met;

(15) Be given the opportunity to refuse medical treatment or services after the client or his or her responsible party:

(A) Is advised by the person providing services of the possible consequences of refusing treatment or services; and

(B) Acknowledges that he or she understands the consequences of refusing treatment or services;

(16) Be allowed unaccompanied access to a telephone;

(17)(A) Have privacy while attending to personal needs and a private place for receiving visitors or associating with other clients, unless providing privacy would infringe on the rights of other clients.

(B) The right applies to:

- (i) Medical treatment;
- (ii) Toileting and bathing;
- (iii) Written communications;
- (iv) Telephone conversations; and
- (v) Meeting with family;

(18) Be allowed to determine his or her dress, hairstyle, or other personal appearance according to individual preference, except the client has the responsibility to maintain personal hygiene;

(19) Be allowed to refuse to perform services for the facility;

(20) Clients are discharged or transferred in conformity with Arkansas Code § 20-10-1005 and the provisions governing transfer and discharge in this part;

(21) Be allowed to immediately leave the adult day care facility, either temporarily or permanently, subject to contractual or financial obligations as specified in 20 CAR § 408-401(b) and (c);

(22) Have access to the services of a representative of the State Long-Term Care Ombudsman Program of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(23) Be allowed to maintain an advance directive or designate a guardian in advance of need to make decisions regarding the client's health care should the client become incapacitated; and

(24) Receive reimbursement from the facility for any lost, misappropriated, or destroyed property or funds when the loss, misappropriation, or destruction occurs at a time in which the facility was exercising care or control over the funds or properties, including loss or destruction of client's property that occurs during laundering or cleaning of the facility, or the client's property, excluding normal wear and tear.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Subpart 5. Services

20 CAR § 408-501. Mandatory services.

The adult day care program shall provide at least the following services:

(1) Activities of daily living.

(A) The adult day care program shall provide assistance with walking, toileting, feeding, grooming, dressing, and other activities of daily living.

(B) Assistance to clients and caregivers with diets.

(C) Counseling with individual clients, as needed, regarding health care.

(D) Minor first aid treatment if needed.

(E) Facilitating specialized services (i.e., speech therapy, physical therapy, counseling, etc.) which may be arranged for or provided through the program as needed by individual clients or as available through community sources;

(2) Activities.

(A) A monthly schedule of group activities shall be planned and posted in the facility.

(B) Activities may be conducted individually and in groups.

(C) Activities shall be:

(i) Planned to suit the needs and interests of clients; and

(ii) Designed to:

(a) Stimulate interest;

(b) Rekindle motivation; and

(c) Encourage physical exercise.

(D) Planned activities shall include but not be limited to:

(i) Exercise;

(ii) Recreation; and

(iii) Social activities.

(E) Physical exercise shall be:

(i) Designed in relation to each individual's needs, impairments, and abilities; and

(ii) Alternated with rest periods or quiet activities;

(3) Medications.

(A) Administration.

(i)(a) Each adult day care must have written policies and procedures to ensure, and facilities shall ensure, that clients receive medications as ordered.

(b) In-service training on facility medications policies and procedures (20 CAR § 408-303(a)) shall be provided at least annually for all facility personnel/staff/employees/volunteers supervising or administering medications.

(ii) Clients must be able to self-administer their own medication.

(iii) Facilities must comply with applicable state laws and rules governing the administering of medications and restrictions applicable to nonlicensed personnel/staff/employees/volunteers.

(iv) The facility shall document in the client's record whether the client or the facility is responsible for storing the client's medication.

(v) The facility shall document in the client's record whether the client will self-administer medication.

(vi)(a) Clients who self-administer their medications must be familiar with their medications and comprehend administration instructions.

(b) Facility staff shall provide assistance to enable clients to self-administer medications.

(c) For clarification, examples for acceptable practices are listed below:

(1) The medication regimen on the container label may be read to the client;

(2)(A) A larger sterile or disposable container may be provided to the client if needed to prevent spillage.

(B) The containers shall not be shared by clients;

(3) The client may be reminded of the time to take the medication and be observed to ensure that the client follows the directions on the container; and

(4)(A) Facility staff may assist the client in the self-administration of medication by taking the medication in its container from the area where it is stored and handing the container with the medication in it to the client.

(B) In the presence of the client, facility staff may remove the container cap or loosen the packaging.

(C) If the client is physically impaired but cognitively able (has awareness with perception, reasoning, intuition, and memory), facility staff, upon request by or with the consent of the client, may assist the client in removing oral medication from the container and in taking the medication e.g., if the client is physically unable to place a dose of oral medication in his or her mouth without spilling or dropping it, facility staff may place the dose of medication in another container and place that container to the mouth of the client.

(vii)(a) Changes in dosage or schedule of the medication shall be made only upon the authorization of the client's attending physician or advance practice nurse or the client or the client's responsible party.

(b) Any such authorization shall be documented by the facility in the client's care plan.

(B) Medication storage.

(i)(a) Medication stored for clients by the facility must be stored in a locked area in individual compartments or bins labeled with the client's name.

(b) Drugs or medications kept by the facility for external use shall be kept in a location accessible to clients and staff and that is separate and apart from other medications and drugs.

(c) Provided, however, that if the client administers his or her own medication, the client shall have access to his or her medication.

(ii)(a) Medications may be kept on the client's person.

(b) Prior to a client being permitted to keep his or her medications, the facility shall:

(1) Assess the client to determine the client's understanding of, and ability to follow, the instructions on the prescription or label, and the

understanding of and ability to follow storage requirements or recommendations on the prescription or label, or as made by the pharmacist; and

(2)(A) Document the assessment in the client's records.

(B) The assessment shall include at a minimum the:

(i) Date of the assessment;

(ii) Name of person performing the assessment;

and

(iii) Information obtained by the assessment that indicated the client's ability to understand and follow prescription or label directions and instructions.

(c)(1) After the initial assessment, facilities shall perform reassessments as needed, including changes of conditions of clients, and shall perform the steps outlined in subdivisions *(B)(ii)(b)(1) and (2) of this section*.

(2) Failure to assess or reassess, or to identify clients at risk of harm from medications in unsecured locations or rooms, shall constitute a deficient facility practice.

(3) Resulting harm from a failure to assess or reassess, or to identify clients at risk of harm from medications in unsecured locations or rooms, shall constitute a deficient facility practice.

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

(b) Medications requiring cold storage shall be refrigerated.

(c) A locked container placed below food level in a facility's refrigerator is acceptable storage.

(d) All drugs on the premises of the facility shall be labeled in accordance with accepted professional principles and practices, and shall include the appropriate accessory and cautionary instructions and the expiration date.

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

(v) All medications in the control or care of the facility shall have an expiration date that is not expired.

(vi)(a) Medications must be individually labeled with the client's name and kept in the original container unless the client or responsible party transfers the medication into individual dosage containers.

(b) Under no circumstances may an owner or personnel/staff/employee of the facility repackage medication.

(vii)(a) Any medication that is stored by the facility that has been prescribed for but is no longer in use by a client must be destroyed or disposed of in accordance with state law or may be given to the client's family in accordance with this section.

(b) Schedule II, III, IV, and V drugs dispensed by prescription for a client and no longer needed by the client must be delivered in person or by registered mail to: Drug Control Division, Arkansas Department of Human Services, along with the Department of Human Services' Form (PHA-DC-1) Report of Drugs surrendered for Disposition According to Law.

(c) When unused portions of controlled drugs go with a client who leaves the facility, the person who assumes responsibility for the client and the person in charge of the medications for the facility shall sign the controlled drug record in the facility.

(d) This shall be done only on the written order of the physician or advance practice nurse and at the time that the client is discharged, transferred, or visits home.

(e) All other medications not taken out of the facility when the client leaves the facility shall be destroyed or returned in accordance with law and applicable rules.

(viii) Under no circumstance will one (1) client's medication that is under the facility's control be shared with another client.

(ix)(a) For all medication that is stored by the facility, the facility must remove from use:

(1) Outdated or expired medication or drugs;
(2) Drug containers with illegible or missing labels; and
(3) Drugs and biologicals discontinued by the physician or
advance practice nurse.

(b) All such medications shall be destroyed or returned in
accordance with law and applicable rules.

(x)(a) All controlled drugs or substances stored by the facility shall be
stored in a locked, permanently affixed, substantially constructed cabinet within a
locked room designed for the storage of drugs.

(b) When mobile medication carts for unit-dose or multiple day
card systems are used:

(1) The cart must be in a locked room when the cart is not
in use and the unit contains controlled drugs; and

(2)(A) The facility shall ensure that the cart remains in the
observation of staff utilizing the cart when the cart is in use and that clients are not
able to access the cart or obtain medications from the cart.

(B)(i) Controlled substances of less than minimal
quantity shall be stored in a separately locked compartment within the cart.

(ii) "Minimal quantity" means a twenty-four-hour or
less supply.

(xi)(a) Medication destruction shall comply with state and federal laws
and regulations governing the destruction of drugs.

(b) The record of the destruction shall be recorded in a bound
ledger, in ink, with consecutively numbered pages, and retained by the facility as a
permanent, retrievable record.

(C) Medication charting.

(i) If a facility stores a client's medications, the facility shall maintain
a list of those medications.

(ii)(a) If the facility stores and supervises a client's medication, a
notation must be made on the individual record for each client who refuses, either

through affirmative act, omission, or silence, or is unable to self-administer his or her medications or refuses to take his or her medication.

(b) The notation shall include the date, time, and dosage of medication that was not taken or administered to or by the client, including a notation that the client's family or responsible party was notified.

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

(iv)(a) A record shall be maintained in a bound ledger book, in ink, with consecutively numbered pages, of all controlled drugs stored and which are supervised by the facility.

(b) The record shall contain the:

- (1) Name, strength, and quantity of drug;
- (2) Date received and date, time, and dosage administered;
- (3) Name of the client for whom the drug was prescribed, or who received the drug;
- (4) Name of the prescribing physician or advance practice nurse;
- (5) Name of the dispensing pharmacy;
- (6) Quantity of drug remaining after each administered dosage; and
- (7) Signature of the individual observing the client's self-administration of the drug.

(v) When a dose of a controlled drug is dropped, broken, or lost, two (2) employees shall record in the record the facts of the event and sign or otherwise identify themselves for the record.

(vi)(a) For all medications stored by the facility, there shall be a weekly count of all Schedule II, III, IV, and V controlled medications.

(b) The count shall be made by the person responsible for medications in the facility and shall be witnessed by a nonlicensed employee.

(c) The count shall be documented by both employees and shall include the date and time of the event, a statement as to whether the count was correct, and if incorrect, an explanation of the discrepancy.

(d) When the count is incorrect, the facility shall document as required under subdivision (3)(B)(vii) of this section.

(vii)(a) Medications stored and supervised by the facility shall be recorded in each client's medical record.

(b) The notation shall be in ink, and shall state, at a minimum:

(1) The name of the medication;

(2) The dosage prescribed and the dosage taken or administered;

(3) The method of administration; and

(4) The date and time of the administration.

(D) Pharmaceutical services — Responsibility for pharmacy compliance.

(i) The director shall be responsible for full compliance with federal and state laws and regulations governing procurement, control, and administration of all drugs.

(ii) Full compliance is required with the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, and all amendments of this set and all regulations and rulings passed down by the United States Drug Enforcement Agency, Arkansas Acts 1971, No. 590 (Title 5, Subtitle 6, Chapter 64 of the Arkansas Code) and all amendments to it and this part; and

(4) Dietary — Required facility dietary services.

(A)(i) Each adult day care facility must make available food for balanced meals and make between-meal snacks available.

(ii) Potable water and other drinking fluids shall be available at all times.

(iii) Meals shall be served at approximately the same time each day.

(iv)(a) Variations from these stated parameters may be permitted at the written request of the client or his or her responsible party or as directed by the client's personal physician or advance practice nurse in writing.

(b) The facility shall retain documentation of the request to, and stating the reason for, the variance.

(B)(i) In the event that a client is unable or unwilling to consume regular meals served to him or her for more than two (2) consecutive days, the facility shall immediately notify the client's family or responsible party.

(ii) If a client chooses not to consume regular meals, this must be documented in the care plan.

(C)(i) For those facilities that prepare food on site, a supply of food shall be maintained on the premises at all times.

(ii) This shall include at least a twenty-four-hour supply of perishable food and a three-day supply of nonperishable food.

(iii) The food supply shall come from a source approved by the Department of Health.

(iv)(a) Adult day care facilities attached to other licensed long-term care facilities may utilize the kitchen facilities of the attached long-term care facility.

(b) However, the adult day care shall ensure that the kitchen facilities so utilized are adequate to meet the needs of the clients of the adult day care.

(D) Dietary personnel/staff/employees shall wear clean clothing and hair coverings.

(E) Each facility shall comply with all applicable regulations relating to food service for sanitation, safety, and health as set forth by state, county, and local health departments.

(F) Food service personnel/staff/employees shall ensure that all food is prepared, cooked, served, and stored in such a manner that protects against contamination and spoilage.

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

(H)(i) An adequate supply of eating utensils (e.g., cups, saucers, plates, glasses, bowls, and flatware) will be maintained in the facility's kitchen to meet the needs of the communal dining program.

(ii) An adequate number of pots and pans shall be provided for preparing meals.

(iii) Eating utensils shall be free of chips or cracks.

(I)(i) Each adult day care facility shall have adequate refrigeration and storage space.

(ii) An adequately sized storage room shall be provided with adequate shelving.

(iii)(a) The storage room shall be constructed to prevent the invasion of:

(1) Rodents;

(2) Insects;

(3) Sewage;

(4) Water leakage; or

(5) Any other contamination.

(b) The bottom shelf shall be of sufficient height from the floor to allow cleaning of the area underneath the bottom shelf.

(J)(i) Refrigerator temperature shall be maintained at forty-one degrees Fahrenheit (°14) F) or below, and freezer temperatures shall be maintained at zero degrees Fahrenheit (°0) F) or below.

(ii) Thermometers will be placed in each refrigerator and freezer.

(K)(i) Raw meat and eggs shall be separated from cooked foods and other foods when refrigerated.

(ii) Raw meat is to be stored in such a way that juices do not drip on other foods.

(L) Fresh whole eggs shall not be cracked more than two (2) hours before use.

(M) Hot foods should leave the kitchen (or steam table) above one hundred forty degrees Fahrenheit (°140 F) and cold foods at or below forty-one degrees Fahrenheit (°14 F).

(N)(i) Containers of food shall not be stored on the floor of a walk-in refrigerator, freezer, or storage rooms.

(ii) Containers shall be seamless with tight-fitting lids and shall be clearly labeled as to content.

(O)(i) In facilities that have a home-style type kitchen, a five-pound ABC fire extinguisher is required in the kitchen.

(ii) In facilities that have commercial kitchens with automatic extinguishers in the range hood, the portable five-pound fire extinguisher must be compatible with the chemicals used in the range hood extinguisher.

(iii) The manufacturer recommendations shall be followed.

(P)(i) Food scraps shall be placed in garbage cans with airtight fitting lids and bag liners.

(ii) Garbage cans shall be emptied as necessary, but no less than daily.

(Q) Leftover foods placed in the refrigerator and freezer shall be sealed, dated, and used or disposed of within forty-eight (48) hours.

(R) Personnel/staff/employees shall not use tobacco, in any form, while engaged in food preparation or service, nor while in areas used for equipment or utensil washing or for food preparation.

(S)(i) Menus shall be posted on a weekly basis.

(ii) The facility shall retain a copy of the last month's menus.

(T) The adult day care facility shall arrange for clients' special diets and other diet modifications.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-502. Other services.

(a) The provider may offer the following services: transportation between the client's home and the facility.

(b) If transportation services are offered, whether provided directly or under contract, the facility shall ensure that:

- (1) The driver has a valid Arkansas driver's license;
- (2) Liability insurance is in force;
- (3) All vehicles have seat belts;
- (4) All clients wear seat belts while being transported;
- (5) Any charge for transportation shall be described in advance to the client or responsible party;
- (6) All applicable federal, state, and local laws and ordinances are followed concerning the condition of the vehicle used for transportation and the manner in which it is operated; and
- (7) Add locking mechanisms for vans with wheelchairs.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Subpart 6. Facility Physical Requirements

20 CAR § 408-601. Space requirements.

- (a) Space requirements shall be forty square feet (40 sq. ft.) per participant.
- (b) Minimum space requirements do not include office space, bathrooms, storage, or dining rooms, unless the latter are also used for activities.
- (c)(1) Adult day care facilities located in buildings that house other facilities (e.g., child care) shall not share required space or bathrooms.
 - (2) Kitchen facilities are not included in this requirement.
- (d) There shall be at least one (1) room where all of the clients can gather.
- (e)(1) There shall be a quiet room for rest.
 - (2) This room shall have walls that extend to the ceiling and a swinging door that latches.

(f) The quiet room shall be equipped with a comfortable bed in good repair with clean linens and pillows.

(g) The quiet room shall not be used for any other purpose.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-602. Furnishings.

(a)(1) All equipment and furnishings shall be safe and in good condition.

(2) Furniture, including dining tables and chairs, shall be of a size and design that is easily used by persons with physical limitations.

(3) Furniture shall be sturdy and secure so that it cannot easily tip when used for support by someone walking, standing, sitting, or arising from the furniture.

(b) Minimum requirements for furnishings:

(1) At least one (1) comfortable chair per participant;

(2) Table space and chairs adequate for all clients to be served a meal at the same time; and

(3) Reclining lounge chairs or other sturdy comfortable furniture, the number to be determined by the needs of the clients.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-603. Equipment and supplies.

(a) Equipment and supplies shall be adequate to meet the needs of clients.

(b) They shall include items necessary to:

(1) Provide direct care; and

(2) Encourage active participation and group interaction.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-604. Building construction/maintenance.

(a) The building in which the program is located shall be of sound construction and maintained in good repair.

(b) No facility shall be licensed in a factory-built structure constructed in accordance with the Federal Manufactured Home Construction and Safety Standards and transported to the site as one (1) or more sections on a permanent chassis.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-605. Ventilation.

(a) Ventilation shall be by either natural or mechanical means.

(b) All screen doors shall:

(1) Be equipped with self-closing devices; and

(2) Fit tightly within the door frame.

(c) Doors, windows, and other openings to the outside shall be screened to prevent entrance of insects and vermin.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-606. Heating and cooling.

(a) The heating system shall be in compliance with the all state and local codes.

(b) Exposed heating pipes, hot water pipes, or radiators in rooms and areas used by clients shall be covered or protected and insulated when appropriate.

(c) Portable space heaters shall not be used.

(d) Room temperatures shall be maintained between seventy degrees Fahrenheit (°70 F) and eighty-five degrees Fahrenheit (°85 F) in all seasons, and the reasonable comfort needs of the individual clients shall be met.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-607. Lighting/electrical.

(a) There shall be illumination in all participant use areas that is appropriate to the uses of the area and the needs of clients.

(b) Glare shall be kept at a minimum by providing shades at all windows exposed to direct sunlight.

(c) Light fixtures shall have shades or globes.

(d) Extension cords shall not be used.

(e)(1) Facilities may utilize transient voltage surge protectors or surge suppressors with microprocessor electronic equipment such as computers or CD/DVD recorders or players.

(2) Any transient voltage surge protectors or surge suppressors must have a:

(A) Maximum UL rating of three hundred thirty volts (330v); and

(B) Functioning protection indicator light.

(3) Facilities may not use transient voltage surge protectors or surge suppressors that do not have a functioning protection indicator light or transient voltage surge protectors or surge suppressors in which the functioning protection indicator light does not light to indicate that the device is functioning.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Codification Notes. "UL" means Underwriters Laboratories.

20 CAR § 408-608. Plumbing.

(a) All plumbing and plumbing fixtures shall conform to applicable local codes.

(b) There shall be no cross-connection between any potable water supply and any source of pollution through which the potable water supply might become contaminated.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-609. Water system.

(a) An adequate supply of water, the source of which is approved by the state water control authority, under sufficient pressure to properly serve the facility, shall be provided.

(b) The potable water system shall be installed to preclude the possibility of backflow.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-610. Drinking water.

(a) Drinking water shall be easily accessible to the clients and provided by either an angle jet drinking fountain with mouth guard or by a running water supply with individual drinking cups, or bottled water supply with individual drinking cups.

(b) Drinking facilities shall not be located in the toilet room.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-611. Toilet facilities.

(a) At least one (1) toilet and washbowl shall be provided for each ten (10) clients and shall have an additional toilet and washbowl for each five (5) clients over the ten (10) e.g., if the facility has thirty-five (35) licensed slots, the facility shall have four (4) toilets and washbowls.

(b) At least one (1) toilet room shall be accessible to handicapped persons.

(c) Toilet rooms shall provide privacy for clients.

(d) Each toilet room shall be equipped with ventilation approved by the Office of Long-Term Care.

(e) All toilets shall have grab rails that are securely affixed to walls in such a manner as to support the weight of clients using the rails to raise or lower themselves.

(f) The washbowl shall:

(1) Be in proximity to each toilet; and

(2) Have hot and cold running water.

(g) Hot water temperature will be between one hundred and one hundred fifteen degrees Fahrenheit (°001) F – 115° F).

(h) Individual paper towels, a trash receptacle, soap, and toilet paper shall be:

- (1) Provided at all times; and
- (2) Within reach of the clients.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-612. Accommodations for individuals with disabilities.

(a) Facilities shall have ramps or other means of accessibility for individuals with disabilities to all areas of the facility utilized by clients.

(b) All facilities will make provisions for the clients they accept.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-613. Stairways/hallways.

(a) Stairways and hallways shall be:

- (1) Kept free of obstructions; and
- (2) Well lighted.

(b) All stairways and ramps shall have nonslip surface or treads.

(c) All inside and outside stairways and ramps shall have handrails securely affixed to the wall and able to support the weight of a client utilizing the handrail in locomotion or in raising or lowering themselves.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-614. Floor covering.

(a) All rugs and floor coverings shall be secured to the floor.

(b) Throw rugs shall not be used.

(c) Polish used on floors shall provide a nonslip finish.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-615. Housekeeping and maintenance.

(a) Sufficient housekeeping and maintenance service shall be provided to maintain the facility in good repair and in a safe, clean, orderly, and sanitary manner.

(b) All areas of the facility must be kept clean and free of:

- (1) Insects;
- (2) Trash; and
- (3) Lingering odors.

(c) Corridors shall not be used for storage.

(d) Attics, cellars, basements, under or below stairways, and similar areas shall be kept clean of accumulation of refuse, old newspapers, and discarded furniture.

(e) Garbage shall be stored in a closed container and disposed of in a manner approved by the Office of Long-Term Care, applicable law or rule, or ordinance.

(f)(1) Ventilation, heating, air conditioning, and air changing systems shall be properly maintained.

(2)(A) Gas systems shall be inspected at least every twelve (12) months to ensure safe operation.

(B) Inspection certificates, where applicable, shall be maintained for review.

(g) Entrances, exits, steps, and outside walkways must be free from ice, snow, and other hazards.

(h) Repairs or additions must meet applicable building codes at the time construction begins.

(i)(1) The facility shall be maintained free of insects and rodents.

(2) Documented control measures shall be taken to prevent rodent and insect infestation.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-616. Storage of cleaning supplies.

Cleaning agents, pesticides, and poisonous products shall be:

- (1) Stored at all times apart from food and in a locked room, closet, or cabinet; and
- (2) Issued and utilized in a manner which ensures the safety of clients and staff.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Subpart 7. Fire Safety

20 CAR § 408-701. Written approval.

(a) Adult day care facilities located in organized areas or municipalities shall obtain from local fire safety officials annual written certification that the facility complies with local fire codes.

(b) If there are no applicable codes, or if the Division of Provider Services and Quality Assurance determines that such codes are not adequate to ensure the safety of older or handicapped persons, the provisions of the National Fire Protection Association Life Safety Code 101, Section 16, 2000 Edition, shall apply.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-702. Exits.

(a) The facility shall have a minimum of two (2) exits remote from each other.

(b) Exits shall be clearly marked with exit signs.

(c)(1) Exits shall provide egress at ground level.

(2) Facilities shall be housed only on the ground floor of the building.

(d) Each exit door shall be equipped with a device to sound an alarm when the door is opened.

(e) Each exit door shall swing out in those facilities with over twenty (20) licensed slots.

(f) Emergency lighting shall be provided in accordance with NFPA Life Safety Code 101, Section 16.2.9, 2000 Edition, and be in working order.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Codification Notes. "NFPA" means National Fire Protection Association.

20 CAR § 408-703. Smoke detection/fire extinguishers.

(a)(1) Each provider shall locate, install, and maintain in operable condition smoke detectors in each room of the adult day care.

(2)(A) Smoke detectors shall be inspected monthly.

(B) Documentation of the monthly inspection shall be kept at the facility.

(b)(1) Fire extinguishers, of the appropriate type as determined in consultation with local fire authorities, shall be installed and maintained in operable condition.

(2) Fire extinguishers shall comply with NFPA 10 requirements.

(3) Fire extinguishers shall be inspected monthly and the inspection results documented.

(4) Fire extinguishers shall be inspected annually by a company/person licensed by the State of Arkansas to provide this service.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Codification Notes. "NFPA" means National Fire Protection Association.

20 CAR § 408-704. Fire/disaster drills.

(a) Employees shall be trained in the rapid evacuation of the building, including assistance to clients in evacuation.

(b)(1) Clients and staff shall take part in quarterly fire drills.

- (2) Documentation of the fire drills shall be kept at the facility.
- (c)(1)(A) Disaster drills shall be held annually.
 - (B) Documentation of the annual disaster drill shall be kept at the facility.
- (2)(A) The facility shall have a written training plan and schedule for staff and volunteers on safety responsibilities and actions to be taken if an emergency occurs.
 - (B) Such training shall be conducted and documented semi-annually.
- (3)(A) Tornado drills shall be conducted at least annually.
 - (B) Documentation of training by clients and staff shall be kept at the facility.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-705. Smoking.

- (a) Facilities may elect to prohibit smoking in the facility, on the grounds, or both.
- (b) If a facility elects to permit smoking in the facility or on the grounds, the facility shall include the following minimal provisions, and the facility shall ensure that:
 - (1)(A) In facilities equipped with sprinkler systems, the facility may designate a smoking area or areas within the facility.
 - (B) The designated area or areas shall have a ventilation system that is separate from the ventilation system for nonsmoking areas of the facility.
 - (C) Facilities lacking a sprinkler system are prohibited from designating smoking areas in any area in which there is not constant, uninterrupted supervision and observation by facility staff;
 - (2)(A) Smoking shall be prohibited in any room, ward, or compartment where flammable liquids, combustible gases, or oxygen is used or stored and in other hazardous location and any general use/common areas of the assisted living facility.
 - (B) Such areas shall be posted with "NO SMOKING" signs;
 - (3) Smoking by residents classified as not responsible shall be prohibited unless the resident is under direct supervision;

(4) Ashtrays of noncombustible material and safe design shall be placed in all areas where smoking is permitted; and

(5) Metal containers with self-closing cover devices into which ashtrays may be emptied shall be placed in all areas where smoking is permitted.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Subpart 8. Imposition of Remedies

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"The following Rules and Regulations for the Imposition of Remedies are duly adopted and promulgated by the Arkansas Department of Health and Human Services, Office of Long Term Care, pursuant to the authority conferred by Ark. Code Ann. §20-10-203 and Ark. Code Ann. §25-10-129."

20 CAR § 408-801. Inspections by the department.

(a)(1) All areas of the facility that are accessible to clients or are used in the care or support of clients, including but not limited to kitchen or food preparation areas, laundry areas, and storage areas, and all client records, including but not limited to clients' financial records maintained by the facility and clients' medical records maintained by the facility, shall be open for inspection by the:

- (A) Department of Human Services;
- (B) Office of Long-Term Care; or
- (C) Office of the Attorney General.

(2) All facility records related to the care or protection of clients and all employee records related to the care or protection of clients shall be open for inspection by the department, the Office of Long-Term Care, or the Attorney General's office for the purpose of enforcing this part and applicable laws.

(3)(A) The facility shall provide access to any copying equipment the facility has on premises to permit the above-named entities the ability to make copies of facility records.

(B) This shall not be construed as a requirement that a facility be required to have copy equipment on its premises.

(b)(1) The facility shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive or maintain a license.

(2) The facility shall inform clients of the survey process and clients' rights with regard to privacy during the process.

(3) Clients or employees may refuse to be interviewed or photographed.

(4) The department or its agents, the Office of Long-Term Care or its agents, or the Attorney General's office or its agents have the right to conduct interviews in a private area with clients or employees who consent to interviews, and shall be permitted to photograph the facility.

(5) Clients shall be photographed in accordance with Arkansas Code § 20-10-104.

(6) This part shall not be construed as a waiver of any constitutional rights, including but not limited to the right against self-incrimination.

(c) An inspection may occur at any time, in the discretion of the:

(1) Department or its agents;

(2) Office of Long-Term Care or its agents; or

(3) Attorney General's office or its agents.

(d)(1) The facility shall provide for the maintenance and submission of such statistical, financial, or other information, records, or reports related to client care or property in such form and at such time and in such manner as the department or its agents, the Office of Long-Term Care or its agents, or the Attorney General or its agents may require.

(2) Provided, however, those records created by, or for the exclusive use of, the quality assessment unit shall not be subject to release to the:

(A) Department or its agents; or

(B) Office of Long-Term Care or its agents.

(e)(1) Facilities must provide a written acceptable plan of correction within fifteen (15) business days of receipt of written notification of deficiencies (also referred to as a statement of deficiencies) found during any inspections or surveys.

(2) The Office of Long-Term Care shall determine whether the proposed plan of correction, including any proposed dates by which correction will be made, is acceptable.

(f)(1) The facility must post the statement of deficiencies and the facility's response and the outcome of the response from the latest survey in a public area utilized by clients or their responsible parties and visitors.

(2) A copy shall be provided to each client or client's responsible party upon request of the client or the client's responsible party.

(3) The last twelve (12) months of deficiency notices and facility responses and outcomes of responses, for all surveys, shall be provided to persons or their responsible parties upon request when they apply for residence in the facility.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-802. General provisions.

(a) The provisions of this section are supplemental to, and independent of, the provisions of Title 20 of the Arkansas Code.

(b) **Purpose of remedies.** The purpose of remedies is to ensure prompt compliance with program requirements.

(c) **Basis for imposition and duration of remedies.** When the Office of Long-Term Care chooses to apply one (1) or more remedies specified herein, the remedies are applied:

(1) On the basis of noncompliance found during surveys or inspections of any nature conducted by the office; or

(2) For failure to comply with applicable laws or rules.

(d) **Number of remedies.** The office may apply one (1) or more remedies for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

(e) **Plan of correction requirement.**

(1)(A) Regardless which remedy is applied, or the nature or severity of the violation, each facility that has deficiencies must submit a plan of correction for approval by the office.

(B) The plan of correction shall be set forth on the statement of deficiencies.

(C) While a facility may provide a disclaimer in the plan of correction, the facility is still required to provide:

(i) Corrective actions to address the cited deficiencies;

(ii) The time frames in which the corrective actions will be completed;

and

(iii) The manner to be utilized by the facility to monitor the effectiveness of the corrective action.

(2) Failure by the facility to provide an acceptable plan of correction may result in the imposition of additional remedies pursuant to this part at the discretion of the office or in a finding of a violation and imposition of additional remedies set forth in Title 20 of the Arkansas Code, set forth in this part, or both.

(f) **Notification requirements.**

(1) Except in cases of emergency termination of a license or in cases of emergency removal or transfer of clients, the office shall give the provider notice of the remedy, including:

(A) Nature of the noncompliance;

(B) Remedy or remedies imposed;

(C) Date the remedy begins; and

(D) Right to appeal the determination leading to the remedy.

(2) Notice shall not be required for state monitoring.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-803. Remedies.

(a) **Available remedies.** In conformity with, and in addition to remedies as set forth in Title 20 of the Arkansas Code, the following remedies are available:

- (1) Civil money penalties pursuant to Arkansas Code §§ 20-10-205 and 20-10-206;
- (2) Denial of new admissions;
- (3) Directed in-service training;
- (4) Directed plan of correction;
- (5) State monitoring;
- (6) Temporary director;
- (7) Termination of license; and
- (8) Transfer of clients.

(b) **Duration of remedies.** Unless otherwise provided by law or other applicable rules, remedies continue until:

- (1) The facility has corrected the cited deficiencies that resulted in the imposition of the remedy or remedies as determined by the Office of Long-Term Care based upon a revisit, or after an examination of credible written evidence that it can verify without an on-site visit, or both; or
- (2) The office terminates the adult day care license.

Authority. Arkansas Code §§ 20-10-203, 20-10-206, 20-10-224.

20 CAR § 408-804. Temporary director.

(a)(1) "Temporary director" means the temporary appointment by the Office of Long-Term Care, or by the facility with the approval of the office, of a substitute facility director with authority to hire, terminate, or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility's operation, or to assist in the orderly closure of a facility.

(2) A temporary director may be appointed by the office only upon the consent and agreement of the facility.

(3) The temporary director shall provide reports to the office regarding the operation of the facility and the efforts toward correction by the facility as requested by the office.

(b) **Qualifications.** The temporary director must:

(1) Be qualified to oversee correction of deficiencies on the basis of experience and education, as determined by the office;

(2) Not have been found guilty of misconduct by any licensing board or professional society in any state;

(3) Have, or a member of his or her immediate family have, no financial ownership interest in the facility;

(4) Not currently serve or, within the past two (2) years, have served, unless approval has been obtained from the office, as a member of the staff of the facility; and

(5) Successfully undergo a criminal record check pursuant to the rules of the office.

(c) **Payment of salary.** The temporary director's salary:

(1) Is paid directly by the facility while the temporary director is assigned to that facility;

(2) Must be at least equivalent to the sum of the following:

(A) The prevailing salary paid by providers for positions of this type in what the office considers the facility's geographic area;

(B) Additional costs that would have reasonably been incurred by the provider if such person had been in an employment relationship; and

(C) Any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the office; and

(3) May exceed the amount specified in subdivision (c)(2) of this section if the office is otherwise unable to attract a qualified temporary director.

(d) **Failure to relinquish authority to temporary director.**

(1) **Termination of adult day care licensure.** If a facility fails to relinquish authority to the temporary director, the office may impose additional remedies, including but not limited to termination of the adult day care license.

(2) **Failure to pay salary of temporary director.** A facility's failure to pay the salary of the temporary director is considered a failure to relinquish authority to temporary administration.

(3) **When imposed.**

(A) The remedy of temporary director shall be used only in lieu of termination of the facility license.

(B) Provided, however, that if the appointment of the temporary director does not result in compliance by the facility within the time frames estimated by the temporary manager and agreed to by the office, the remedy of termination or revocation of license may be imposed.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-805. State monitoring.

(a) A state monitor:

(1) Oversees the correction of deficiencies specified by the Office of Long-Term Care at the facility site and protects the facility's clients from harm;

(2) Is an employee or a contractor of the office;

(3) Is identified by the office as an appropriate professional to monitor cited deficiencies;

(4) Is not an employee of the facility;

(5) Does not function as a consultant to the facility;

(6) Does not have an immediate family member who is a client of the facility to be monitored; and

(7) Does not have an immediate family member who owns the facility or who works in the facility or the corporation that operates or owns the facility.

(b) A state monitor may be utilized by the Office of Long-Term Care for any level or severity of deficiency.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-806. Directed plan of correction.

(a) The Office of Long-Term Care, or the temporary manager with office approval, may develop a plan of correction.

(b) A directed plan of correction sets forth the:

- (1) Tasks to be undertaken;
- (2) Manner in which the tasks are to be performed by the facility to correct deficiencies; and
- (3) Time frame in which the tasks will be performed.

(c) A facility's failure to comply with a directed plan of correction may result in additional remedies, including revocation of license when the failure to correct meets the conditions specified in 20 CAR § 408-809.

(d) The intent of a directed plan of correction is to achieve correction of identified deficiencies and compliance with applicable rules.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-807. Directed in-service training.

(a) **Required training.**

(1) The Office of Long-Term Care may require the staff of a facility to attend an in- service training program if education is likely to correct, or is likely to assist in correcting, cited deficiencies.

(2) The office may specify the:

- (A) Time frames in which the training will be performed;
- (B) Type or nature of the training; and
- (C) Individual or entities to provide the training.

(b) **Action following training.** After the staff has received in-service training, if the facility has corrected the violations or deficiencies that led to the imposition of remedies, the office may impose one (1) or more other remedies.

(c) **Payment.** The facility pays for directed in-service training.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-808. Transfer of clients or closure of the facility and transfer of clients.

(a) **Transfer of clients or closure of the facility and transfer of clients in an emergency.** The Office of Long-Term Care has the authority to transfer clients to another facility when:

(1) An emergency exists wherein the health, safety, or welfare of clients is imperiled, and no other remedy exists that would ensure the continued health, safety, or welfare of the clients;

(2) A facility intends to close but has not arranged for the orderly transfer of its clients at least thirty (30) days prior to closure; or

(3) The facility exceeds its slot capacity as indicated or stated on the facility's license, or accepts more clients than the facility has number of slots as indicated or stated on the facility's license, unless granted a waiver by the office.

(b) **Required transfer when a facility's adult day care license is terminated.** When a facility's license is terminated, or when the facility closes either voluntarily or involuntarily, the office may assist in the safe and orderly transfer of all clients to another facility.

(c) When the office orders transfer of clients from a facility, the office may:

(1) Assist in providing for the orderly transfer to other suitable facilities or make other provisions for the clients' care and safety;

(2) Assist in or arrange for transportation of the clients, their medical records, and belongings, assist in locating alternative placement, assist in preparing the client

for transfer, and permit the clients' legal guardians or responsible party to participate in the selection of the clients' new placement; and

(3) Unless transfer is due to an emergency, explain alternative placement options to the clients and provide orientation to the placement chosen by the client or their guardian or responsible party.

(d) **Notice of transfer remedy.** Unless transfer is due to an emergency, the office shall provide the facility from which the clients are to be transferred at least fifteen (15) days' notice of the proposed transfer.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-809. Termination of adult day care license.

(a) The remedy of termination or revocation of licensure is a remedy of last resort and may be imposed only in accordance with law or as set forth in this part.

(b) **Basis for termination.** The Office of Long-Term Care may terminate a facility's adult day care license if a facility:

(1) Permits, aids, or abets in the commission of any unlawful act in connection with the operation of the adult day care;

(2) Refuses to allow entry or inspection by the office;

(3) Fails to make any or all records set forth in 20 CAR § 408-801 available to representatives or agents of the Department of Human Services or the office, unless such refusal is made pursuant to court order or during the pendency of an appeal specifically on the issue of the release of the records, or the records are records created by the quality assessment unit;

(4) Closes either voluntarily or through action of the state;

(5) Director or owner refuses to obtain a criminal record check of any individual required to undergo a criminal record check pursuant to the Rules for Conducting Criminal Record Checks for Employees of Long-Term Care Facilities, 20 CAR pt. 404, or pursuant to Arkansas Code § 20-33-201 et seq.;

(6) Is cited for a third Class A violation within six (6) months of the citation of the first Class A violation, or is cited for a third Class B violation within six (6) months of the citation of the first Class B violation, in accordance with Arkansas Code §§ 20-10-205 and 20-10-206;

(7) Has conditions wherein the health, safety, or welfare of client is imperiled, and no other remedy exists that would ensure the continued health, safety, or welfare of the clients; or

(8) Is unable to meet program requirements.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-810. Denial or suspension of new admissions.

The Office of Long-Term Care may deny to, or suspend the ability of, a facility to admit new admissions upon the imposition of a Class A violation as defined and set forth in Arkansas Code §§ 20-10-205 and 20-10-206.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

20 CAR § 408-811. Civil money penalties.

The Office of Long-Term Care may impose civil money penalties in accordance with Arkansas Code §§ 20-10-205 and 20-10-206.

Authority. Arkansas Code §§ 20-10-203, 20-10-206, 20-10-224.

20 CAR § 408-812. Closure.

(a)(1) Any adult day care facility that closes or ceases operation or surrenders or fails to timely renew its license must meet the rules then in effect for new construction and licensure to be eligible for future licensure.

(2) Closure of a facility shall result in the immediate revocation of the license.

(b)(1) A facility that closes or is unable to operate due to natural disaster or similar circumstances beyond the control of the owner of the facility, or a facility that closes, regardless of the reason, to effectuate repairs or renovations, may make written request to the Office of Long-Term Care for renewal of the facility license to effect repairs or renovation to the facility.

(2) The office may, at its sole discretion, grant the written request.

(c)(1) If the request for licensure renewal is granted, the office will provide written notification to the facility, which will include deadlines for various stages of the repairs or renovations, including the completion date.

(2)(A) In no event shall the completion date set by the office extend beyond twenty- four (24) months of the date of the request, provided, however, that the deadlines may be extended by the office upon good cause shown by the facility.

(B)(i) For purposes of this part, "good cause" means natural disasters or similar circumstances, such as extended inclement weather that prevents repairs or construction within the established deadlines beyond the control of the owner of the facility.

(ii) "Good cause" shall not include the unwillingness or inability of the owner of the facility to secure financing for the renovations or repairs.

(3)(A) The facility shall comply with all deadlines established by the office in its notice.

(B) Failure to comply with the deadlines established by the office shall constitute grounds for revocation of the license and for denial of relicensure.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.

Subpart 9. Appeals to Court

20 CAR § 408-901. Appeals.

(a) Any applicant or licensee who considers himself or herself injured in his or her person, business, or property by final Department of Human Services administrative adjudication shall be entitled to judicial review thereof as provided for by law.

(b) All petitions for judicial review shall be in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code §§ 20-10-203, 20-10-224.