



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Sarah Huckabee Sanders

Renee Mallory, RN, BSN, Secretary of Health

Jennifer Dillaha, MD, Director

December 29, 2023

Senator Kim Hammer, Co-Chair
Representative Brian Evans, Co-Chair
Administrative Rules Subcommittee
Arkansas Legislative Council
Via Rebecca Miller-Rice Email miller-ricer@blr.arkansas.gov

Dear Co-Chairs,

First, pursuant to Ark. Code Ann. § 25-15-216(b)(4), please consider the following Arkansas Department of Health (ADH) Division of Health-Related Boards and Commissions update on rulemaking resulting from Acts of 2023. Arkansas law requires that each rule be promulgated by the specific Board or Commission, which meets at various times of the year. Various regulatory boards under the ADH Division of Health-Related Boards and Commissions are now drafting and amending rules specifically required due to legislation from the 2023 session. Please find a summary of the Boards' efforts made thus far below.

Arkansas State Board of Nursing

Act 672 of 2023 establishes nursing earn-to-learn programs and authorizes a nursing student to earn direct patient care clinical credit hours for working in a healthcare facility in certain jobs. The nursing program and the healthcare facility shall establish boundaries and expectations of the senior-level nursing student based on accreditation standards and rules of the Arkansas State Board Nursing. The Arkansas State Board of Nursing (ASBN) has drafted rule changes to comply with the Act and has submitted its draft changes for further review.

The Arkansas State Medical Board and the Arkansas State Board of Pharmacy

Act 575 of 2023 amends the Prior Authorization Transparency Act and exempts certain healthcare providers that provide certain healthcare services from prior authorization requirements. The Arkansas State Board of Pharmacy and the Arkansas State Medical Board, jointly, may establish criteria and procedures to review whether a request made under subdivision (a)(1) of the statute should be granted for the requesting party and specified health

benefit plan. This specific act does not require a rule to be promulgated and currently the Arkansas State Board of Pharmacy and the Arkansas State Medical Board have worked together on joint criteria and procedures to help determine whether specific medications may require prior authorization in Arkansas. At this time, the Boards are requesting the exclusion of Act 575 of 2023 from further reporting requirements.

The Arkansas Department of Health Division of Health-Related Boards and Commissions will continue to provide updates on rulemaking. If there are changes or additional updates identified, the ADH will provide further information in these updates as submitted to the Administrative Rules Subcommittee. Please let us know if you have questions or need additional information.

Second, pursuant to Ark. Code Ann. § 25-15-216 (b)(4), please also consider the following Arkansas Department of Health (ADH) and State Board of Health update on rulemaking resulting from Acts of 2023. The State Board of Health meets quarterly each year and ADH has drafted proposed amendments to rules and proposed repeal of rules to implement new laws. As evidenced below, ADH and the Board will continue the rule promulgation process outlined in the Administrative Procedure Act, including the public notice and comment period, followed by the Legislative review and approval process under Ark. Code Ann. § 10-3-309, prior to filing the final rules.

Coach Safely Act

Act 642 of 2023, the Coach Safely Act, required ADH to adopt rules. The final rules were filed with the Secretary of State on December 18, 2023, effective December 28, 2023, prior to the January 1, 2024, deadline. Please see [Board of Health Rules pertaining to Youth Injury Mitigation and Information Courses](#) and <https://www.healthy.arkansas.gov/programs-services/topics/coach-safely-act> for more information and resources.

Prescription Drug Monitoring

Act 67 of 2023 provided various amendments to sections of the Prescription Drug Monitoring law. After ALC approval, the final rules were filed with the Secretary of State on December 18, 2023, effective December 28, 2023. Please see [Board of Health Rules pertaining to Arkansas Prescription Drug Monitoring Program](#)

Newborn Infant Testing

Act 490 of 2023 provided for amendments to the core medical conditions for which screening is required. In July, the Board of Health approved the proposed rule amendments. The proposed rule was filed with the Secretary of State and the Bureau of Legislative Research on October 19, 2023. Notice was published in October and the public comment period ended in November. The Department will present this rule to the Public Health Committee and ALC-Rules Subcommittee in January for review and approval.

Abortion Facilities

Act 162 of 2023 removed licensure from abortion facilities. The repeal of the abortion facility rules was approved by the Board of Health in July and filed with the Secretary of State and the Bureau of Legislative Research on October 27, 2023. Notice was published and the public comment period ended with a public hearing on November 30, 2023. The Department will present this rule to the Public Health Committee and ALC-Rules Subcommittee in January for review and approval.

Rules for Orthotic, Prosthetic and Pedorthic Providers, Perfusionists, and Radiologic Technology Licensure

Act 137 of 2023 required modification to certain occupational rules, specifically amendments to the rules addressing the automatic licensure requirements for uniformed service members. The proposed revisions were approved by the Board of Health in July and filed with the Secretary of State and the Bureau of Legislative Research in October. Notice was published in October, and the public comment periods ended in November 2023. The Department will present the rules to the Public Health Committee and ALC-Rules Subcommittee in January for review and approval.

Controlled Substances List

Act 629 of 2023 amended Ark. Code Ann. § 5-64-215, Substances in Schedule VI, which are also listed in the Controlled Substances List. The Board of Health approved the initial controlled substances list at its January meeting. ADH added specific references to Act 629 of 2023 and conducted a public comment period and hearing on June 22, 2023. To the extent that the proposed changes to the list contain references to implement Act 629 of 2023, the enforcement of the Act is enjoined by a federal court as of September 7, 2023. On October 26, 2023, the Board of Health approved the remaining list of substances moving forward with the promulgation process to file the final rule with a notation that the portion of the list referencing specific changes resulting from Act 629 of 2023 was enjoined from enforcement.

In closing, the Arkansas Department of Health, the Division of Health-Related Boards and Commissions, and the State Board of Health will continue to provide updates on rulemaking. If there are changes or additional updates identified, the ADH will provide further information in these updates as submitted to the Administrative Rules Subcommittee. Please let us know if you have questions or need additional information.

Sincerely,



Matt Gilmore
Boards and Commissions and Public Health
Programs Policy Coordinator
Arkansas Department of Health
4815 West Markham Street
Little Rock, AR 72205-3867
Office (501) 661-2332
Cell (501) 247-4340
Matt.Gilmore@arkansas.gov



Laura Shue
General Counsel
Arkansas Department of Health
4815 West Markham Street
Little Rock, AR 72205
Office (501) 661-2297
Cell (501) 580-3493
Laura.Shue@arkansas.gov

Cc: Rebecca Miller-Rice, Administrator, Administrative Rules Review Section, BLR
Renee Mallory, Secretary of Health, ADH
Jennifer Dillaha, Director, ADH
Don Adams, Chief of Staff, ADH
Jack Sisson, Senior Advisor for Healthcare, Governor's Office
Cortney Kennedy, Chief Legal Counsel, Governor's Office
Cole Jester, Deputy Legal Counsel, Governor's Office