

**ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

Wednesday, May 18, 2022

9:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. Call to Order.**
- B. Reports of the Executive Subcommittee.**
- C. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the quarter ending March 31, 2022.**
 - 1. Department of Corrections (Lindsay Wallace)**
 - 2. Parole Board (Lindsay Wallace)**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**
 - 1. ARKANSAS DEPARTMENT OF TRANSPORTATION, STATE HIGHWAY COMMISSION (Gill Rogers)**

- a. SUBJECT: Amendment to the Permit Rules for the Movement of Oversized Vehicles on the State Highway System**

DESCRIPTION: The State Highway Commissions is amending its Permit Rules for the Movement of Oversized Vehicles on the State Highway System. In 2021, the 93rd General Assembly of the State of Arkansas enacted Act 871 during the Regular Session, which amended the law concerning the maximum vehicle height in Arkansas. The maximum vehicle height was increased from 13' 6" to 14'.

The increase in the maximum vehicle height is to provide increased hauling volume for lightweight agricultural commodities, such as rice hulls, while maintaining load weights that are at or under the legal limit. This change in State law is also needed because the lightweight agricultural commodities are divisible loads.

PUBLIC COMMENT: A public hearing was held on March 11, 2022. The public comment period expired on March 9, 2022. The commission received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The commission indicated that the amended rules do not have a financial impact.

LEGAL AUTHORIZATION: The State Highway Commission is authorized to adopt reasonable rules and regulations from time to time for the protection of, and covering, traffic on and in the use of the state highway system and in controlling use of, and access to, the highways. Ark. Code Ann. § 27-65-107(a)(14). This rule implements Act 871 of 2021, sponsored by Representative Rick Beck, which amended the law concerning the maximum height of a motor vehicle authorized to operate on a state highway.

2. **DEPARTMENT OF AGRICULTURE, ARKANSAS MILK STABILIZATION BOARD** (Frederic Simon, Kolton Jones, Wade Hodge)

a. **SUBJECT:** Milk Stabilization Rules

DESCRIPTION: The Department of Agriculture’s Arkansas Milk Stabilization Board proposes its Milk Stabilization Rules.

In the 2021 General Assembly, the Arkansas Legislature passed House Bill 1729 which amended the law regarding the powers and duties of the Arkansas Milk Stabilization Board, giving the Board significantly more responsibility. Act 521 became effective July 28, 2021, and requires the Board to ensure that Arkansas milk producers receive Class I prices for milk utilized or sold as fluid milk within Arkansas.

Prior to the enactment of Act 521, Arkansas milk transactions were only governed by the Federal Milk Marketing Order 7 (“FMMO” and “FMMO 7”) for the Southeast Region, which covers all of Arkansas and parts or all of eight other states. 7 C.F.R. § 1000 et al. The FMMO is a complex pricing regulatory system that sets the minimum prices to be paid for milk products based on the end use (“utilization”) of the milk (*i.e.*, skim milk, cheese, cream, etc.). Under that system, the FMMO sets the price based on the utilization of milk in the region as a whole. Class I milk, which includes fluid milk, is worth the most money. Classes II-IV include various other uses of milk, including but not limited to ice cream, soft and hard cheeses, butter, yogurt, and condensed milk, and Classes II-IV are worth less money than Class I milk.

The FMMO considers the overall use of the milk and assigns the price to be paid to producers based on the percentage of utilization as a whole within the regional market. So, if 75% of milk for the month was used as Class I fluid milk, 75% of all milk in the region would be worth the Class I price, and the remaining 25% of the milk produced would be paid at the rate for the utilization of that milk as Class II, III, or IV. All producers in the region would be paid as if 75% of the milk they produced was used as Class I milk, and 25% was used as Class II, III, or IV milk.

From discussion held at Board meetings, it has been determined that the percentage of producers' milk in Arkansas used as Class I is approximately 94%, while the regional market average use is approximately 65%. Therefore, Arkansas producers receive substantially less compensation than they would for the actual utilization of their milk. In Arkansas, nearly all milk producers are members of cooperatives, the most prevalent being Dairy Farmers of America ("DFA"), a national cooperative association. The proposed rule will require the cooperative to pay Class I prices to its Arkansas members for milk utilized and sold as fluid milk in Arkansas.

From May 2021 through January 2022, the Board met six times to discuss the Act and various versions of the proposed rule. The Board voted to move forward with adoption of the proposed rule on January 27, 2022.

The proposed rule:

- Requires a determination of whether the local Arkansas utilization for Class I milk exceeds the FMMO 7 utilization for Class I milk;
- Requires the cooperative to pay an over-market premium to producers in Arkansas if the local utilization exceeds the FMMO 7 utilization;
- Provides that processors may pay the premium to the cooperative instead of the producers; and
- Requires the cooperatives to pass the premium through to producers in an amount sufficient to ensure that producers receive Class I prices.

The FMMO sets the base price for milk, but there are other economic factors that determine what prices are ultimately paid to producers. Cooperatives have greater bargaining power than individual farmers because they consist of all the producers together as opposed to each one advocating on their own. The cooperatives also do tasks that are traditionally handled by the milk processor, like picking up and delivering the milk to the processor, which reduce the processor's costs but also gives the cooperative power because the cooperative then controls where the milk is delivered, and it has the power to choose to whom it sells milk.

Because of these things, and various other factors, the cooperatives have the bargaining power to then negotiate with the processor a price that is above what the FMMO dictates as the base price. That negotiated price is referred to as an over-order premium, which is negotiated between the cooperative and the processor monthly.

The proposed rule provides that the premium to be paid to the producers is the premium that is already negotiated between the processor and the cooperative, and the cooperative is required to pass that money through to the producers in an amount that would ensure that the producers receive Class I prices.

PUBLIC COMMENT: A public hearing was held on March 2, 2022. The public comment period expired on March 7, 2022. The Board provided the following summary of the comments that it received and its responses thereto:

FOR

Tana Henson, Mount Judea, AR; Angela Moore, Conway, AR; Austin Lester, Quitman, AR; Ben Gander, Greene County, AR; Benton Felts, Joiner, AR; Bill Haak, Gentry, AR; Brenda Patton, Bentonville, AR; Brian Roper, Fox, AR; Caleb Fielder, Greenbrier, AR; Caleb Plyler, Hope, AR; Caroline Lester, Rose Bud, AR; Charles Coffelt, Centerton, AR; Chase Groves, Garland City, AR; Chris Acre, Greenbrier, AR; Chris Ferguson, Booneville, AR; Chris Schaefer, Conway, AR; Chuck Davis, Ashdown, AR; Clay Antley, Fulton, AR; Corbin Brown, Wynne, AR; Dan Wright, Waldron, AR; Danny Dalmut, Mansfield, AR; Danny Naegle, Little Rock, AR; Danny Wood, Bee Branch, AR; David Head, Mena, AR; Debbie Douglas, Gentry, AR; Don Bradford, Greenbrier, AR; Donna Bemis, Little Rock, AR; Dwayne Burns, Austin, AR; Emily Holland, Des Arc, AR; Everett Mason, Brinkley, AR; Flora Harrington, Casa, AR; Fredese Wheatley, Judsonia, AR; Garrett Moix, Bigelow, AR; George Tidwell, Austin, AR; Gordon Greene, Fordyce, AR; Harlie Treat, Leslie, AR; Heather Graves, Huntsville, AR; Howell Fielder, Conway, AR; Jack Evans, Carlisle, AR; James Harvey, Adona, AR; James Singleton, Gravette, AR; Jessica Brothers, Waldron, AR; Joel Pace, Wilmar, AR; John Bailey, Benton, AR; John Freeman, Centerton, AR; John Petrus, Carlisle, AR; Jonathan Dent, Beebe, AR; Judith Armstrong, Ozark, AR; Kara Wheeler, Beebe, AR; Kathy Ratcliffe, Little Rock, AR; Keith Martin, Searcy, AR; Kimie Head, Mena, AR; Larry Strack, Conway, AR; Laura Busbee, Marshall, AR; Laura Craig, Sulphur Springs, AR; Leah Kloss, Beebe, AR; Lester Tracy, Quitman, AR; Lonni Davis, Hamburg, AR; Lucas Whittenton, Forrest City, AR; Luke Hooks, Hazen, AR; Maggie Dent, Beebe, AR; Mark Keaton, Mountain Home, AR; Mark Lockhart, Hope, AR; Mary Hastings, Austin, AR; Melanie Fosko, Clinton, AR; Melanie Malone, Conway, AR; Michael Lee, Conway, AR; Mike

Freeze, Keo, AR; Monica Simon, Conway, AR; Nancy Corley, Beebe, AR; Randy Clark, Harriet, AR; Reed Storey, Marvell, AR; Reginald Smith, Bentonville, AR; Rich Hillman, Carlisle, AR; Rita Garrett, Fayetteville, AR; Robert Balentine, Conway, AR; Robert Balloun, Dardanelle, AR; Rocky Harrell, Mayflower, AR; Roger Pitchford, Norfolk, AR; Roger Thompson, Mansfield, AR; Russell Smith, Des Arc, AR; Scott Kloss, Beebe, AR; Seth Moore, Beebe, AR; Stanley Hill, Little Rock, AR; Steven Jones, Conway, AR; Sue Billot, Smithville, AR; Terry Laster, Strong, AR; Tommy Sorrells, Royal, AR; Tommy Thompson, Morrilton, AR; Tony Suit, Bonnerdale, AR; William Groce, Little Rock, AR; Phillip Steed, Zion, AR

Ninety-two (92) comments submitted by Farm Bureau members:

As an Arkansan and Farm Bureau member, I am writing to support the Arkansas Department of Agriculture's proposed Milk Stabilization Rules. I believe the proposed rules will help breathe life back into our dairy industry by ensuring our hard-working dairy farmers are paid the Class I price.

Agency Response: The board appreciates your comments and believes the rule is the way the legislature intended for the law to be implemented and will benefit the Arkansas dairy industry.

Mark Fratu; Kathy Swapp; Mike Fisher, Beebe, AR; Abid Anjum Masih, Pakistan; Eugene Taylor; Tamra Dozer; Courtney Daniels; Andy Evers; Robert Gatz; Kevin McCartney; Jann McKenzie, San Tan Valley, AZ; Eduard Ban; Kim McInturff; Wayne Smith, Glendale, AZ; Julie Huver, AZ; Kristen Hargett, Siloam Springs, AR; Summer Kelley; Karian Tjader; Karian Manev; Kathy Thompson; Kareth Hoffer; Matt Hargett; Jake Haak; Chris Whorton, Siloam Springs, AR; Robert Haak; Lyn Dilbeck, Mena, AR; Jan Tjader, Ozark, AR; J Bledsoe; Harold Kelley

Thirty (30) comments submitted contained one or more of the following:

- Support the rule
- The rule will benefit consumers
- The rule will benefit dairy producers

Agency Response: The board appreciates your comments and believes the rule is the way the legislature intended for the law to be implemented and will benefit the Arkansas dairy industry.

Bill Haak, Gentry, Arkansas Dairy Farmer:

Dairy Farmers of America (DFA) is shipping my Arkansas-produced milk out of state to Springfield, Missouri. They are giving me approximately \$0.50 per hundredweight to do that and that DFA is paying \$4.50 per mile to transport my milk from Gentry, Arkansas to Springfield. It costs DFA

\$5.00 a hundredweight to transport out-of-state milk into Arkansas to replace my milk that they ship out. DFA deducts transportation costs from my milk check. If my milk was instead transported to Fayetteville, I would receive Class 1 price under the proposed rule. By DFA routing my milk out of state and paying increased costs to replace my milk, DFA is “re-blending the blend price,” canceling out the small premium I receive for producing pasture-based milk and sometimes deducting more for transportation expenses such that I receive less money for my milk.

Agency Response: The board appreciates your comments and believes the rule is the way the legislature intended for the law to be implemented and will benefit the Arkansas dairy industry.

AGAINST

Brad Holt, CA Dairy Farmer; Perry Tjaarda, Shafter, CA; Stephen Maddox, Holstein USA; Ray S. Prock Jr., Former CA Dairy Farmer

Four (4) comments submitted by current and former California Dairy Farmers:

Although the Arkansas law has the best of intentions, there are serious unintended consequences. Will cause cheaper out-of-state milk to be brought in, and if out-of-state milk cannot be controlled, it will destroy the competitiveness of Arkansas milk.

Agency Response: The Board appreciates your comments. Arkansas milk is already a small percentage of the milk processed in Arkansas, so the situation here is different than California.

Steve Goode, on behalf of the Arkansas Grocers and Retail Merchants Association:

I am a farmer and the owner of a supermarket. There is only one dairy from which my business is able to buy milk, which drives prices up at the retail and consumer levels. I and my association are afraid that the rule will cause the prices of milk to rise for retailers and for end-consumers. The rule will create an unlevel playing field for those who buy from Arkansas suppliers versus retailers that buy their milk from out of state. I estimate that the price of a gallon of milk for retailers will increase \$0.16 to \$0.23 due to the change in legislation. I do not want in-state retailers to be put at an unfair price disadvantage to processors who are located out of state.

Agency Response: The Board appreciates your comments. Arkansas milk is already a small percentage of the milk processed in Arkansas, so the cooperative should be able to absorb the cost.

Dennis Rodenbaugh, Dairy Farmers of America, Kansas City, KS:

I recommend the rule not be adopted but that the legislature should change the law. The rule is not fair to DFA and may result in other cooperatives not marketing Arkansas milk. Arkansas processors will not be able to pass the extra premium costs on to retailers and consumers, and as a result the processors would be forced to displace milk produced in Arkansas.

Pennsylvania's milk premium program is not supported by Pennsylvania Farm Bureau or the Pennsylvania Department of Agriculture due to an inequity in the benefits of that program's premium among dairy farmers in that state. Arkansas's rules may create the same inequities.

Act 521 is flawed and unconstitutional, and the proposed rules suffer the same legal problems. The Act and the rules violate the federal commerce clause in the United States Constitution and unlawfully interferes with the relationship between an out-of-state cooperative association and its members. The rules take money due to out-of-state farmer cooperative members and reallocates that money to others in Arkansas, which is an illegal taking of property. The rules unlawfully create a cause of action.

The proposed rule's definition of "dealer" is vague and could be interpreted to include cooperatives, which would require the cooperatives to prepare information gathering, information sharing and over-market premium calculations. It claims that would cause the cooperative to share proprietary and confidential information and it is unreasonably burdensome.

DFA's concerns cannot be addressed with a rewrite of the proposed rules. The Board should work with the industry and policymakers on a new law to implement an industry change.

Agency Response:

- Act 521 requires the Arkansas Milk Stabilization Board to ensure that Arkansas producers receive Class 1 price for milk produced and sold as fluid milk within Arkansas, and adopting a rule is the only mechanism the Board has to ensure so.
- Arkansas law and rules are substantially different from Pennsylvania's, as is the number of cooperatives in both states. The rule does not prohibit cooperatives from taking deductions from producers' milk checks to offset the costs of marketing and balancing costs in the future, so long as the producers continue to receive class 1 price for milk produced and sold as fluid milk within Arkansas.
- Act 521 is presumed constitutional, and the legislature has mandated the rule. Research regarding the issues raised do not support DFA's arguments.
- The definition of "dealer" was amended by the board to more closely meet the intent of the board's rule.

GENERAL

Mike Fisher:

Change Section III. A and B from “produced in and sold as” to “produced and processed.”

Agency Response: Changing that could have the appearance of conflicting with the law.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Arkansas Code Annotated § 2-10-104(d)(1)(B)(i), as amended by Act 521 of 2021, § 1, provides that the Board shall require that an Arkansas milk producer receive Class 1 prices for milk utilized or sold as fluid milk in this state. The statute further provides that this provision of law “applies only to milk that is both produced in and sold as fluid milk in this state.” Ark. Code Ann. § 2-10-104(d)(1)(B)(ii), as amended by Act 521, § 1. Is there a reason that the term “fluid milk” as defined in Ark. Code Ann. § 2-10-104(e)(3), as amended by Act 521, § 2, was not included in the rules? **RESPONSE:** Since Fluid milk is defined in Act 521, we opted not to repeat the definition in the rule, because the Act’s definition applies to the rule.

(2) Along the same lines, is there a reason that the definitions of “base milk price” and “Class 1 price,” as defined in Ark. Code Ann. § 2-10-104(e), as amended by Act 521, § 2, were not also included?

RESPONSE: Same response as in Question 1. We opted not to repeat the Act’s definition, and that definition does still apply to our rule.

(3) Section III.C. – There are three references to “Section II, paragraph D.” Should those be to “Section III, paragraph D” instead? **RESPONSE:** Yes, those citations need to be updated. Section III, paragraph D is correct. See amended versions of the rule attached.

(4) Section IV.B.1. – Should the reference to “Section II, Paragraph B” be a reference to “Section III, Paragraph B” instead? **RESPONSE:** Yes, that citation needs to be updated. Section III, paragraph B is correct. See amended versions of the rule attached.

(5) Section IV.B.4. – Should the reference to “Section II, paragraph D” be a reference to “Section III, paragraph D” instead? **RESPONSE:** Yes, that citation needs to be updated. Section III, paragraph D is correct. See amended versions of the rule attached.

(6) Section VI.B. – Should the reference to “Section VI(C)” be a reference to “Section V(C)” instead? **RESPONSE:** Yes, that citation needs to be updated. Section V(C) is correct. See amended versions of the rule attached.

(7) Section VI.C. – This section provides for a cause of action for a producer who is not paid an over-market premium as required under the rules. What is the Board’s authority for authorizing and including a cause of action where one does not appear to be outlined in the Arkansas Milk Stabilization Board Act, Ark. Code Ann. §§ 2-10-101 to -104, as amended by Act 521? **RESPONSE:** Act 521 requires that producers receive class one price for milk produced and sold in Arkansas. It also requires the Board to ensure that the producers receive that price, which we have done through this rule. However, there is no authority in Act 521 or elsewhere in the Milk Stabilization Act that would allow the Board to enforce the rule or penalize a handler or cooperative association that fails to pay the class one price. We do not view the rules as creating a new cause of action. Rather, the producer, as the injured party, because the producer is not receiving the class one price for its milk produced and sold in Arkansas, would be entitled to utilize appropriate common law remedies available to those injured by another party’s failure to follow a law.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the proposed rule has no financial impact.

LEGAL AUTHORIZATION: The proposed rule implements Act 521 of 2021, sponsored by Representative Mary Bentley, which amended the Arkansas Milk Stabilization Board Act; amended powers and duties of the Arkansas Milk Stabilization Board; and set the price to be paid for milk produced and sold in Arkansas. Pursuant to Arkansas Code Annotated § 2-10-104(d)(2)(B), as amended by Act 521, § 1, the Arkansas Milk Stabilization Board may make, modify, and enforce rules that the Board deems necessary to effectively carry out the statute’s subsection (d). *See also* Ark. Code Ann. § 2-10-104(d) (providing that the Board shall have jurisdiction over milk and milk products marketed in the State of Arkansas, including without limitation the base milk price paid to an Arkansas milk producer and shall require that an Arkansas milk producer receive Class 1 prices for milk utilized or sold as fluid milk in this state).

3. **DEPARTMENT OF AGRICULTURE, ARKANSAS NATURAL RESOURCES COMMISSION** (Chris Colclasure, Blake Forrest, Wade Hodge)

a. **SUBJECT:** Title 14: Water Resource Conservation and Development Incentives

DESCRIPTION: The Department of Agriculture’s Arkansas Natural Resources Commission proposes changes to its Title 14: Rules Implementing the Water Resource Conservation and Development Incentives Act. The Water Resource Conservation and Development Incentives Act (“the Incentives Act”) provides tax incentives to those who invest in projects to promote water conservation. During the 2021 session of the Arkansas General Assembly, the legislature passed Act 563 and Act 875, both of which modified the Incentives Act. Act 563 extended the deadline for completion of eligible projects from three years to five years. Current Title 14 language indicates that water projects must be completed within three years. The proposed amendment changes that language to require completion within “the deadline set in Ark. Code Ann. § 26-51-1011(c)(1).” Therefore, if the law is amended again to reflect a change in the time frame, the rule will not need to be amended.

Act 875 increased the credit amounts available for eligible projects under the Incentives Act. Act 875 is self-implementing and does not require a rule. Current Title 14 language as it relates to tax credit or tax incentive amounts is merely a recitation of the Incentives Act and does not explain or clarify the Incentives Act in any way, so that unnecessary language was removed.

On September 15, 2021, the Commission considered the changes required by Acts 563 and 875 and voted to initiate rulemaking to bring Title 14 in compliance with the Incentives Act. Ark. Code Ann. § 25-51-1010(a)(2) requires that the rule must also be approved by the Department of Finance and Administration (“DF&A”). The rules were forwarded to DF&A on September 29, 2021. DF&A requested the rules also be amended to reflect that records regarding the incentives must be kept for fifteen years instead of thirteen years. That change was made, and approval to proceed was received from DF&A on February 18, 2022.

PUBLIC COMMENT: A public hearing was held on March 24, 2022. The public comment period expired on March 26, 2022. The Commission submitted the following summary of the comment received and its response thereto:

Kelly Robbins, Arkansas Rice Federation, stated that they were very supportive of the rule, but asked why certain language [Subtitle IV. Tax Credits] was being deleted from the rule.

RESPONSE: The language being deleted is repetitious of what is in the law and is therefore not necessary to be in the rule. Deleting the language will also avoid the necessity of additional rule amendments should the law change again.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The Commission states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 26-51-1010(a)(1), the Arkansas Natural Resources Commission shall promulgate such rules as may be deemed necessary in administering projects submitted with the intent of qualifying for the tax incentives provided for in the Water Resource Conservation and Development Incentives Act (“Act”), Ark. Code Ann. §§ 26-51-1001 to -1015. The rules shall not be adopted without the approval of the Department of Finance and Administration. *See* Ark. Code Ann. § 26-51-1010(a)(2). The proposed changes include those made in light of Act 563 of 2021, which was sponsored by Representative David Hillman and amended the law to conform to federal law concerning agricultural water resource conservation and development measures; amended the Act; and amended the time period during which projects must be completed under the Act; and Act 875 of 2021, which was also sponsored by Representative David Hillman and amended the Act.

4. — ~~DEPARTMENT OF AGRICULTURE, STATE PLANT BOARD~~

a. — ~~Arkansas Industrial Hemp Production Rule~~

5. ~~DEPARTMENT OF AGRICULTURE, VETERINARY MEDICAL EXAMINING BOARD (Cara Tharp, Wade Hodge)~~

a. ~~SUBJECT: Veterinary Telehealth and Telemedicine~~

DESCRIPTION: The Department of Agriculture’s Veterinary Medical Examining Board proposes its Veterinary Telehealth and Telemedicine Rule. Act 130 of 2021 authorized the Board to promulgate rules regarding telehealth and telemedicine. Department staff engaged with large and small animal practitioners, local and national veterinary associations, and a representative of multiple national companies to gather input regarding the proposed rule. A stakeholder meeting was held on November 9, 2021,

and the Board reviewed the proposed rule on December 9, 2021, and decided that another stakeholder meeting should be held. Accordingly, another stakeholder input meeting was held on January 13, 2022, and the Board approved the proposed rule on February 3, 2022.

The stakeholder meetings have been an important part of the process in developing the proposed rule. Separate groups reached out to Department staff regarding how the veterinarian-client-patient relationship (“VCPR”) should be established. National corporations that own veterinary clinics across the country believe that the VCPR may be established virtually, while the veterinary associations believe that it should be established through an in-person examination of the animal. After discussion at the stakeholder meetings, as well as discussion by the Board at its meetings, the current version of the proposed rule requires the VCPR to be established through an in-person examination. Most other states that provide a telemedicine option also require, either by law or by rule, that the VCPR be established in-person.

The proposed rule:

- Requires that veterinarians delivering telemedicine service to a patient located in Arkansas must be licensed in Arkansas;
- Requires that a veterinarian-client-patient relationship (“VCPR”) be established by an in-person examination;
- Provides for limited exceptions to the requirement of establishing an in-person VCPR for emergencies; and
- Provides definitions of key terms such as “telehealth,” “telemedicine,” and “teletriage.”

PUBLIC COMMENT: A public hearing was held on February 25, 2022. The public comment period expired on March 12, 2022. The Board provided the following summary of the comments that it received and its responses thereto:

FOR

American Veterinary Medical Association

Specifically support the requirement that a veterinarian providing a telemedicine service must have established a veterinary-client-patient relationship because of the many issues that can arise if such a relationship does not exist. This ensures compatibility with federal laws and regulations, and conflicting state and federal regulations can lead to confusions and enforcement challenges.

RESPONSE: The Board appreciates your comments and believes the rule reflects the intent of the law.

AGAINST

Dr. Judith Cychol, DVM; Dr. Stephenie Kessler, DVM; Dr. Ashley Lackey, DVM

Expressed concerns that veterinarians may allow the certified veterinary technician to see the patient prior to the VCPR being established and without the veterinarian being on-site at the veterinary facility. Concerned that this may be especially true in emergency clinics or situations. Concerned that the certified veterinary technician is being used to perform the physical examination to establish the VCPR. Also concerned about teletriage being performed by televisit.

RESPONSE:

A VCPR can only be established by the veterinarian with an in-person examination. Further, Ark. Code Ann. § 17-101-306(g) states that “a licensed veterinarian shall not establish a separate office or clinic in a location other than his or her regular office and place the separate office or clinic under the control or supervision of a veterinary technician or veterinary technologist.” Teletriage authorizes veterinarians to identify patient medical emergencies, advise owners as to the appropriate steps for addressing the medical emergency, and to refer the patient to in-person emergency services. Teletriage does not authorize veterinarians to provide nonemergency medical care without establishing a VCPR through an in-person examination.

Carol Wrape

Opposed due to concerns that the pet owner cannot clearly explain their pet’s health issue to a veterinarian via a telemedicine visit, and that any treatment prescribed should be administered by the veterinarian and not the pet owner. She stressed the importance of an in-person examination by the veterinarian.

RESPONSE:

Veterinarians will be responsible for determining whether telemedicine is an appropriate method of care based on a detailed patient history. Veterinarians engaging in telemedicine will be subject to the standards set forth in the Arkansas Veterinary Medical Practice Act and Board rules.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency states that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-101-203(12)(B), as amended by Act 130 of 2021, § 1, the Veterinary Medical Examining Board shall have the power to promulgate rules outlining the use of telehealth and telemedicine in the practice of

veterinary medicine. The proposed rules implement Act 130, which was sponsored by Representative DeAnn Vaught and authorized the Veterinary Medical Examining Board to promulgate rules regarding telehealth and telemedicine and to issue restricted licenses for veterinarians and replaced references to the secretary-treasurer and the executive secretary of the Board with the director of the Board.

6. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION** (Amy Douglas, items a-e; Lori Freno, items f-h; Cristy Parks, items i-j; Courtney Salas-Ford, items k-m)

a. **SUBJECT: Background Checks**

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Background Checks. Prior to the 2021 legislative session, fingerprints were submitted through the Arkansas State Police and sometimes with physical fingerprint cards. Now, due to new legislation, all fingerprints must be electronically submitted with only out-of-state applicants being allowed to submit physical fingerprint cards. The Division has been utilizing digital fingerprint submissions for some time. The new law aligns the Division's best practices with current legislation.

Changes to the rules include:

- Updated the rules to meet the requirement of new legislation that all fingerprints must be electronically submitted.
- Updated language to reflect how certain notices will be sent and received by the Division.

Following the public comment period, only non-substantive clarifying and technical changes were made.

PUBLIC COMMENT: A public hearing was held on December 7, 2021. The public comment period expired on December 17, 2021. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/16/2021)

Comment (1): 4.6.6: I believe that this is supposed to be referencing 4.6.5 instead of 4.5.5.

Division Response: Comment considered. Non-substantive changes made.

Comment (2): 5.2: “Division of Education” should be changed to either “Division” or “Division of Elementary and Secondary Education.”

Division Response: Comment considered. Non-substantive changes made.

Comment (3): 8.12: I would recommend “provide” instead of “forward.”

Division Response: Comment considered. Non-substantive changes made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-410(i), the State Board of Education shall adopt the necessary rules to fully implement the provisions of Ark. Code Ann. § 6-17-410, which concerns applying for, renewing an application for, revocation of, suspension of, and probation for, teacher licensure, as well as criminal records checks and Child Maltreatment Central Registry checks. Likewise, the State Board shall adopt the necessary rules to implement Ark. Code Ann. § 6-17-414, which concerns a criminal records check as a condition for initial employment of nonlicensed personnel. *See* Ark. Code Ann. § 6-17-414(i). The proposed changes incorporate those made in light of Act 630 of 2021, which was sponsored by Senator Jim Hendren and concerned noncriminal background check requests submitted to the Division of Arkansas State Police.

b. SUBJECT: Master Principal

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes changes to its Rules Governing Eligibility and Financial Incentives for Arkansas Leadership Academy Master Principal Program. The proposed amendments incorporate the revisions made due to the State Board’s approval of the Arkansas Public School Resource Center’s five-year plan regarding the Arkansas Leadership Academy Master Principal Program. The amendments to the rules were made to incorporate program requirement changes and provide clarity to the Program.

Prior to the rule change, a high-need public school was not specifically stated. A principal in a high-need public school qualifies for a higher bonus. The new definition allows for growth opportunity for principals and schools falling within the selected categories. The Master Principal applicant criteria was updated to allow the Master Principal program to be accessible to a larger group of administrators. The program consists of

three phases. The updates to the phase requirements provide more flexibility for participants. It allows participants to work at various paces in applying strategies and to collect evidence of improvement in student learning and school processes.

The changes proposed include:

- Chapter 3 – Updated the definitions of building level principal as well as high-need school salary bonus requirements.
- Chapter 4 – Updated applicant and selection criteria and process to include a broader range of administrators.
- Chapter 5 – Outdated language was removed.

Following the public comment period, only non-substantive clarifying and technical changes were made.

PUBLIC COMMENT: A public hearing was held on December 7, 2021. The public comment period expired on December 16, 2021. The Division provided the following summary of the comment received and its response thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/16/2021)

Comment: 3.03: I would recommend adding “as” between “years” and “in need.”

Division Response: Comment considered. Non-substantive changes made.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

Section 3.03 – Is the new language referencing high-needs schools in this section meant to be the “certain established levels of academic achievement under rules established by the State Board” that are referenced in Section 3.02? **RESPONSE:** Yes, that is correct.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-1602(e)(1), the Division of Elementary and Secondary Education and the Arkansas Leadership Academy shall develop criteria for selection of candidates for the Master School Principal Program; review and modify, as deemed appropriate, the program performance areas; and develop a rigorous assessment process based on the performance areas.

The State Board of Education shall further promulgate rules for the nine-thousand-dollar yearly incentive bonus provided under Ark. Code Ann. § 6-17-1603 for principals receiving master school principal status. *See* Ark. Code Ann. § 6-17-1603(a). Additionally, the State Board shall promulgate rules for an additional high-need school salary bonus, including a hold-back longevity bonus, for each principal receiving master school principal status and serving as a principal of a high-need public school. *See* Ark. Code Ann. § 6-17-1604(a).

c. **SUBJECT: National Board Certified Teacher**

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes changes to its Rules Governing Eligibility and Financial Incentives for National Board for Professional Teaching Standards. Pursuant to Arkansas Code Annotated §§ 6-17-412 and 6-17-413, rules are required to state standards and protocols for Eligibility and Financial Incentives for National Board for Professional Teaching Standards. The rules provide guidance to educators on program requirements, eligibility, and payment opportunities for service in various defined areas.

Beginning with the 2019-2020 school year, bonuses were submitted directly to the employer for verification and payment. With direct verification and payment at the employer level, a National Board Certified Teacher (“NBCT”) profile proved redundant and a barrier to qualifying National Board Certified Teachers. Remaining changes were due to deadlines listed that are past and clarification of eligibility.

The changes include:

- Section 5.3: The Division no longer requires a yearly NBCT profile. Beginning with the 2019-2020 school year, bonuses were submitted directly to the employer for verification and payment.
- Removed Section 5.5.1, which is no longer applicable due to date.
- Section 5.7.5: Clarified eligibility of a classroom teacher to include definition.

Following the public comment period, only non-substantive clarifying and technical changes were made.

PUBLIC COMMENT: A public hearing was held on December 7, 2021. The public comment period expired on December 16, 2021. The Division provided the following summary of the public comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (11/16/2021)

Comment (1): In Section 3.4.1: I would recommend adding a comma after “funding.”

Division Response: Comment considered. Non-substantive changes made.

Comment (2): 3.4.2: I would recommend adding a comma after “bonus.”

Division Response: Comment considered. Non-substantive changes made.

Comment (3): 3.11: There appears to be an unnecessary space between “6-” and “17-2803.”

Division Response: Comment considered. Non-substantive changes made.

Comment (4): 4.4: For consistency with other Rules, I would recommend adding the longhand of fourteen here.

Division Response: Comment considered. Non-substantive changes made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-413(a)(2)(A), the State Board of Education (“State Board”) shall promulgate rules for the selection process of teacher participants in the program of the National Board for Professional Teaching Standards (“National Board”). The State Board is further authorized to promulgate rules to establish a support program for teachers selected to participate in the program of the National Board. *See* Ark. Code Ann. § 6-17-413(a)(4).

d. SUBJECT: Code of Ethics

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes changes to its Rules Governing the Code of Ethics for Arkansas Educators. Pursuant to Ark. Code Ann §§ 6-17-428 and 24-15-201 et seq., the State Board of Education has been given general supervision of the public schools of the state and to perform all other functions that may now or hereafter be delegated to the State Board by law. The Rules Governing the Code of Ethics for Arkansas Educators are used to improve educator knowledge and responsibility regarding ethical conduct and misconduct.

The changes proposed include:

- Updated Chapter 5 to remove reference to Chief Investigator duties as the position is no longer available. Revised all references to DESE and changed to Division to align with all of the rules from the Division of Elementary and Secondary Education.
- Chapter 9 was changed to update the amount of time the sanctions are listed on the Division webpage.
- Updated Validation requirements to remove reference to Chief Investigator and updated to roles and responsibilities of PLSB investigators.
- Throughout the rules, updated the response time an educator has once under investigation.
- Made appropriate updates to Appendix A to reflect new response time requirements.

Prior to the 2021 legislative session, one third of the investigative timeline for an ethics violation was given to the educator. Oftentimes, the full use of the response times fell in such a way that the PLSB was unable to stay within the statutory requirements for evidentiary hearings. The change of response time for the educator allows for the educator and the PLSB staff to adequately work through an ethics investigation while maintaining due process for the educator.

The roles and responsibilities of the PLSB staff are now aligned with the duties performed. Prior to legislation changes, there was confusion on which party made certain decisions regarding ethics violations. With the new changes, educators can be certain who is responsible each step of the process.

Following the public comment period, only non-substantive clarifying and technical changes were made.

PUBLIC COMMENT: A public hearing was held on January 10, 2022. The public comment period expired on January 11, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (12/20/2021)

Comment (1): In Section 5.00: Due to the deletion of 5.05, all of those following 5.05 should actually be one number less than they are in the rules.

Division Response: Comment considered. Non-substantive changes made.

Comment (2): In Section 5.30: There is a comma missing from between “requirements” and “or” here twice.

Division Response: Comment considered. Non-substantive changes made.

Comment (3): In Section 6.00, Standard 7: “state law or regulations” should be changed to “state law or rule.” “required by law or regulations” should be changed to “required by law, rule, or regulation.”

Division Response: Comment considered. Non-substantive changes made.

Comment (4): In Section [9, t]he numbering appears to jump from 9.03.3 all the way to 9.06.

Division Response: Comment considered. Non-substantive changes made.

Comment (5): In Section 17.01: “Procedures” should be “Procedure.” Appendix C, Standard 7: FERPA is the “Family Educational Rights and Privacy Act” rather than the “Federal.”

Division Response: Comment considered. Non-substantive changes made.

Commenter Name: Tripp Walter, APSRC (01/27/2022)

Comment: Summary of timeline for the Ethics Complaint Process – Appendix A: “Educator Action – Response of Educator to Ethics Complaint”: Under this section, the time period stated in the “Deadline” section is “30 calendar days after receiving notice.” The stated time period does not seem to appear in Ark. Code Ann. § 6-17-428, as amended by Act 96 of 2021. Was this intentional or an oversight? If intentional, what is the basis for the 30-day time period?

Division Response: This timeline has been an internal timeline and is not statutory. Nothing in Act 96 of 2021 changed that listed response time. This allows time for the educator to gather their thoughts prior to responding to the allegations against them.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

Section 5.13 – What prompted the change to the required membership of the Ethics Hearing Subcommittee? **RESPONSE:** The Subcommittee makes the initial determination for recommendation on an ethics violation. To be fair to the educator, the panel for a hearing should be a completely unbiased one without prior knowledge.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-422(h)(3)(A), the Professional Licensure Standards Board shall establish a code of ethics for administrators and teachers, including those employed under a waiver from licensure as a teacher of record or as an administrator, in educational environments for students in prekindergarten through grade twelve (preK-12), including procedures and recommendations for enforcement as provided in Ark. Code Ann. § 6-17-422(h)(3). The Professional Licensure Standards Board shall establish procedures for receiving and investigating an ethics complaint, enforcing the code of ethics, granting and conducting hearings under Ark. Code Ann. § 6-17-428, and publicizing notifications equivalent to the recommendations for enforcement of the code of ethics; make recommendations for enforcement of the code of ethics; develop public notifications equivalent to the recommendations for enforcement of the code of ethics; and establish an ethics subcommittee of the Professional Licensure Standards Board with equal representation of public school teachers and administrators as well as one (1) member from any other category of representation on the Professional Licensure Standards Board. *See* Ark. Code Ann. § 6-17-428(b)(1). All rules, procedures, hearings, and appeals relating to the code of ethics complaints under Ark. Code Ann. § 6-17-428 shall be promulgated and implemented under the Arkansas Administrative Procedure Act, § 25-15-201 et seq. *See* Ark. Code Ann. § 6-17-428(b)(2).

The proposed changes include those made in light of Act 96 of 2021, which was sponsored by Senator James Sturch and amended provisions of the Arkansas Code concerning ethical violations applicable to educators.

e. **SUBJECT: Educator Licensure**

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Educator Licensure. Pursuant to Ark. Code Ann §§ 6-17-401 et seq. and 6-17-413, rules are required to state standards and protocols for educator licensure. The Rules Governing Educator Licensure provide pathways to licensure through traditional and alternate Educator Preparation Programs. The Rules also provide protocols to eliminate barriers to licensure and provide new ways to get educators into the classroom.

The rules are reorganized and contain the following substantive changes:

Chapter 2 – Types of Permits and Licenses

- This chapter provides explanations for each type of license and for the tiered licensure system developed as the Educator Career Continuum. Created a new subsection to clarify the requirements for the Career Continuum.

Chapter 3 – Preparation for Licensure

- Section 3-1.03.1: Add the Code of Ethics training to Educator Preparation Programs to receive a first-time license.
- Section 3-2.01.4.1: Made the requirement for institutions of higher education preparation programs to be accredited by CAEP optional.
- Section 3-2.02: Institution of Higher Education (“IHE”) will collaborate with the Division of Higher Education to develop a strategic plan to diversify the educator pipeline.
- Section 3-5.01.3: State approval of an educator preparation program is suspended if the educator preparation provider fails to achieve minimum standards, set by the Division, during the annual state review.
- Section 3-5.01.3.1: The state review (replaces the external review) process shall, at a minimum:
 - Consist of an annual desk audit to determine whether an Educator Preparation Program is meeting continuous improvement indicators that are aligned with Arkansas’s workforce needs.
 - Be based on common data measures that are included in the annual Educator Preparation Program Quality Report. Be conducted by a team consisting of content and pedagogical specialists. Include an on-site in-depth formative review of programs to analyze quality of programs and their inclusion of state initiatives at least every four years.

Chapter 4 – Application Requirements

- Section 4-7.0: (New Section) Highly Qualified Professor (“HQP”) Pathway to licensure due to Act 657 of 2021.
- Section 4-9.0: Removed exclusion of the administrator endorsement as an ancillary license.

Chapter 5 – License Effective Dates, Renewal, Reinstatement, and Conversion

- Section 5-5.0: (New section) Outlines the requirements for the Alternate Assessment Plan (“AAP”)

Chapter 6 – Administrator Endorsement Requirements

- Section 6-1.01.4.2: Allows for postsecondary employment to satisfy the experience requirement for administrators.

Chapter 7 – Licensure Exceptions Generally

- Section 7-1.02: (Note: Beginning 2024-2025 school year, a Long-Term substitute waiver will not be available for special education.)
- Section 7-2.01: An emergency teaching permit holder may serve as teacher of record.

Appendix A: Levels and Areas of Licensure

- Added the Early Childhood PreK first time licensure area.

The main goal for changes in the Rules Governing Educator Licensure was to make clear the pathways and options for educator licensure. Changes also included removal of outdated information, clarification and definition of terminology, and the addition of sections to quality of educator preparation programs.

Following an initial public comment period, additional changes were made to the rules, and the rules went out for a second public comment period. The changes included the following:

Chapter 3 – Preparation for Licensure

- Section 3-1.03.4.4: Clarified where clinical experiences for Pre-K licensure shall be completed.
- Section 3-5.0: State Review Process – Created completely new section instead offering clarification of how the process will roll out.
- Section 3-6.0: Updated numbers.

Chapter 4 – Application Requirements

- Section 4-2.01.3.2: Inserted Alternate Assessment Plan requirements here in lieu of Chapter 7.
- Updated all available licensure requirements to include the Alternate Assessment Plan if applicable in lieu of having the Alternate Assessment Plan in its own section. (4-3.01.4.1.3; 4-5.01.3.1; 4-6.01.3.1; 4-8.01.3.1)
- Updated APPEL to the new name of ArPep throughout.

Chapter 7 – Licensure Exceptions Generally

- Section 7-1.02: Updated to reflect the long-term substitute waiver will not be available for a special education vacancy as teacher of record.

APPENDIX

- Removed Library-Media Tech permit as it is not available and should have never been added.

Non-substantive changes included:

- Updated “EPP” to educator preparation provider or educator preparation program as appropriate throughout.
- Updated numbering that was out of sync throughout.

Following the second public comment period, only non-substantive clarifying and technical changes were made.

PUBLIC COMMENT: A public hearing was held on January 10, 2022. The public comment period expired on January 13, 2022. Following changes to the rules, a second public hearing was held on March 1, 2022, and the second public comment period expired on March 17, 2022. Due to their length, the Division’s two public comment summaries have been attached separately.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Section 3.02.01.1 (p. ADE 317-21) – Is the section number correct?

RESPONSE: No does not appear to be correct – should be 3.02.01.3.1.

(2) Sections 4-1.01.4, 4-2.01.7, 4-3.01.9, 4-5.01.5, 4-6.01.5, 4-8.01.6, 4-9.01.9, and 4-10.01.4 – What prompted the removal of the one-hour requirement for dyslexia awareness for the various permits and licenses?

RESPONSE: The dyslexia requirement is completed through an educator preparation provider and not specifically attached to licensure.

(3) Section 3-5.0 – Is this addition of the State Review Process the result of Ark. Code Ann. § 6-17-422(h)(2)(A)? If yes, did the PLSB obtain the assistance of DESE and the Division of Higher Education, as provided in the statute? **RESPONSE:** Yes and Yes. There was a taskforce created consisting of PLSB, DESE, DHE, as well as other stakeholders to create and review the process.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-402(b), the State Board of Education shall promulgate rules for the issuance, licensure, relicensure, and continuance of licensure of teachers in the public schools of this state that require at a minimum that each in-state applicant for teacher licensure completes an educator preparation program approved by the Division of Elementary and Secondary Education and demonstrates licensure content area knowledge and knowledge of teaching

methods and that require at a minimum that each in-state applicant for an administrator's license demonstrates knowledge of state-adopted competencies and standards for educational leaders. The State Board may further promulgate rules for a tiered system of licensure, which may include without limitation an emergency teaching permit; a technical permit; a provisional license; a novice or first-time license; a standard license; and a license with advanced requirements. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-17-410(i), which provides that the State Board shall adopt the necessary rules to fully implement the provisions of Ark. Code Ann. § 6-17-410, concerning the application, renewal application, revocation, suspension, and probation relating to teacher licensure. Additionally, the State Board of Education shall promulgate rules to implement the Highly Qualified Professor and Teacher Act, Ark. Code Ann. § 6-63-105, as amended by Act 657 of 2021, § 1.

The proposed changes include those made in light of:

Act 135 of 2021, which was sponsored by Senator Ricky Hill; established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021; and modified the automatic occupational licensure requirements for uniformed services members, returning uniformed services veterans, and their spouses;

Act 513 of 2021, which was sponsored by Representative DeAnn Vaughn and amended the laws concerning teaching licenses;

Act 657 of 2021, which was sponsored by Representative Fred Allen and established the Highly Qualified Professor and Teacher Act; and

Act 746 of 2021, which was sponsored by Representative Clint Penzo and authorized occupational or professional licensure for certain individuals.

f. **SUBJECT: Rules Governing School-Based AED Devices and CPR Programs**

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing School-Based Automated External Defibrillator ("AED") Devices and Cardiopulmonary Resuscitation ("CPR") Programs in Arkansas Public Schools. These rules establish the requirements and procedures for governing school-based AED and CPR programs. The rules amendments are necessary to incorporate Act 544 of 2021. Prior to Act 544, the law set forth the dates for the implementation of the original rule. Passage of the Act allows for updates as needed. The amendments update the dates from the original implementation year, 2011, to the

current year. They also change the job title of the individual to whom the required reports are sent. Lastly, “Department of Education” was changed to “Division of Elementary and Secondary Education.

Following the public comment period, non-substantive changes were made to clarify that AEDs may not be located or stored in a locked room or office, that AED maintenance requires ensuring that the pads and batteries have not expired, and that if a School Appointed Program Coordinator who performs duties related to AED use and CPR is not a healthcare provider, a healthcare provider, such as a school nurse, must oversee the activities.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 24, 2022. The Division provided the following summary of the comment that it received and its response thereto:

Commenter Name: Rhonda McDonald, Center for Local Public Health, Arkansas Department of Health, Camden (January 20, 2022)

Comment: I would like to make a comment about the AEDs. I think it is important to state that an AED shall never be locked up or stored in locked office. I have been a CPR Instruction since 2008. I have found that many schools will lock up their AED or have it locked in an office that is not available in an emergency. I have also found on several occasions that the AED pads are expired. Some administrations do not find that this is important to keep the pads up to date.

Division Response: Comments considered. Rules amended to clarify that AEDs may not be located or stored in a locked office or room, and that a component of the required AED equipment maintenance is ensuring that pads and batteries have not expired. Non-substantive changes made.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Arkansas Code Annotated § 6-10-123(a) provides that the State Board of Education, “after consultation with the Department of Health, shall develop rules based on guidelines for automated external defibrillator and cardiopulmonary resuscitation training.” Has the Division consulted with the Department of Health on these rules? **RESPONSE:** Yes.

(2) Section 9.0 – This section appears to track Ark. Code Ann. § 6-10-123(a)(2)-(5). Is there a reason that the rules do not also include subsections (1) of § 6-10-123(a), concerning healthcare provider oversight? **RESPONSE:** Language has been added to Section 8.0 to ensure the healthcare provider oversight requirement set forth in law. To ensure the proper oversight, the added language requires that if the

Program Coordinator is *not* a healthcare provider, a healthcare provider must oversee the activities related to AEDs and CPR.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 544 of 2021, which was sponsored by Senator Missy Irvin and amended various provisions of the Arkansas Code concerning public education. Pursuant to Arkansas Code Annotated § 6-10-122(a)(1), the State Board of Education shall promulgate rules to require that each school campus have an automated external defibrillator and appropriate school personnel be adequately trained on an ongoing basis. To enhance the potential life-saving capability of each automated external defibrillator, the rules shall also include without limitation provisions regarding the availability of the school's automated external defibrillator at school-related activities, such as athletic events. *See* Ark. Code Ann. § 6-10-122(a)(2). The State Board of Education, after consultation with the Department of Health, shall further develop rules based on guidelines for automated external defibrillator and cardiopulmonary resuscitation training that incorporates at least the following: healthcare provider oversight, including planning and review of the selection, placement, and maintenance of automated external defibrillators; appropriate training of anticipated rescuers in the use of the automated external defibrillator and in cardiopulmonary resuscitation; testing of psychomotor skills based on the American Heart Association scientific guidelines, standards, and recommendations for the use of the automated external defibrillator, as they existed on January 1, 2021, and for providing cardiopulmonary resuscitation as published by the American Heart Association or the American Red Cross as they existed on January 1, 2021, or equivalent course materials; coordination with the emergency medical services system; and an ongoing quality improvement program to monitor training and evaluate response with each use of the automated external defibrillator. *See* Ark. Code Ann. § 6-10-123(a)(1)–(5).

g. **SUBJECT: Rules Governing Visual and Performing Arts Instruction for Students in Grades 1-8**

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Visual and Performing Arts Instruction for Students in Grades One through Eight (1-8). The rules establish the requirements for public schools and open-enrollment public charter schools' visual art and music instruction. These proposed rule amendments incorporate provisions of

Act 644 of 2021, which updated language contained in Ark. Code Ann. § 6-16-130 concerning instructional requirements to include public schools and open-enrollment public charter schools whether or not configured as an elementary school. The changes also include the following: removed “Department of Education” and replaced with “Division of Elementary and Secondary Education”; added grades seven and eight to mirror the law; changed “art and music” to “visual and performing arts”; and amended definitions to include up to grade eight and removed outdated terminology.

Following the public comment period, the definition of “Licensed teacher” in 2.04 was clarified.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 24, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Jo Ann Koehler, Pulaski County Special School District (1/25/22)

Comment (1): In Section 1.01, change grades 1 - 6 to 1 - 8. If the fine arts requirement is extended in this way through 8th grade, secondary students will not have enough slots in the school day to participate in more than 1 full year elective, including athletics or performing arts electives such as band, choir, orchestra, dance, or theatre. This is a mathematical fact even in the event that a single building houses grades K-8. This will create classes instead of Performing Arts Programs.

Division Response: Comment considered. No changes made.

Comment (2): In Section 2.01, this proposed change includes “General Music” as a class that lends itself to large group instruction. General Music in the middle or junior high school is closer in resemblance to Elementary Music or Music Appreciation and does not lend itself to large group instruction as Band, Choir, or Orchestra does. In addition, most of the rotating 9 week wheels align General Music with General Art, PE, and Health. Because the other 3 rotations are bound by classroom limits, it is not logical to increase the General Music rotation to a number that cannot be seen in the other classes.

Division Response: Comments considered. It is a school decision to offer General Music in the wheel or rather as a yearlong class and utilize the large group provision. No changes made.

Comment (3): In Sections 2.02, 2.04, 2.05, changing the term “music” to “performing arts” in the 1-6 requirement leads to certification issues. The current proposal defines Performing Arts as Music, Dance, and Theatre. In the writing, it implies that 1-6 students will require 40 minutes per week

or the equivalent thereof for each of these disciplines. If the intent is to allow Music OR Dance OR Theatre to count for the instruction required, the proposal should be reworded and can only be offered from grade 5 and up. There is still a certification issue in that Arkansas does not have a certification for K-4 in Dance or Theatre. It must also be understood that certification is specific to Music OR Dance OR Theatre. It would be extremely rare to find one teacher certified for all three disciplines.

Division Response: Comment considered. The definition of “licensed teacher” in Section 2.04 amended to eliminate any confusion. Non-substantive changes made.

Comment (4): In Section 3.01, under Implementation, this rule reverts back to grades 1 - 6 instead of 1 - 8. This also continues to require instruction in Performing Arts with no definition as to which Performing Art or if the Performing Arts requirement will include all three disciplines of Music, Dance, and Theatre. This should be clarified.

Division Response: Comment considered. Performing Arts is defined in the definition section of the rules. Also, standards document clarifies which courses fulfill the performing arts requirements for K-8. These documents can be found at <https://dese.ade.arkansas.gov/Offices/learning-services/curriculum-support/fine-arts-standards-and-courses>. No changes made.

Comment (5): Concerning Section 3.02, THIS IS A GREAT CHANGE for Performing Arts programs in Arkansas. Students in grades 5 or 6 that are structured in a middle school or junior high building instead of an elementary building will follow the same requirement as grades 7 or 8 and shall participate in Visual Art instruction OR Performing Art instruction (please clarify that any one of the three Performing Arts will meet the requirement).

Division Response: Comment considered. Each standards document clarifies under the *Standards for Accreditation Information* section which courses fulfill the performing or visual arts courses required by the Standards for Accreditation. See e.g., page 15 in the Dance Standards (link above). No changes made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 644 of 2021, which was sponsored by Senator Kim Hammer and concerned visual art, music, and performing arts requirements in public schools; amended the requirement that students in grades five (5) and six (6) enrolled in public schools and open-enrollment

public charter schools that are not configured as elementary schools participate in visual art and music class; and required that students in grade six (6) enrolled in public schools and open-enrollment public charter schools that are not configured as elementary schools participate in visual arts or performing arts instruction. Pursuant to Arkansas Code Annotated § 6-11-105(a)(1), (7)(B), the State Board of Education shall have general supervision of the public schools of the state and shall take such other action as it may deem necessary to promote the organization and efficiency of the public schools of the state.

h. SUBJECT: Rules Governing the Arkansas Educational Support and Accountability Act

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes changes to its Rules Governing the Arkansas Educational Support and Accountability Act (“AESAA”). Specifically, the date in Section 5.02.5 of the rules was changed to reflect the date by which the Division must score and return statewide student assessments to school districts in accordance with Act 251 of 2021. Section 5.12 was changed to add the requirement of Act 319 of 2021 that any public school that serves students in grades 10-12 must include in the already required college and career readiness assessment a career readiness assessment that leads to a nationally recognized work readiness certificate.

PUBLIC COMMENT: A public hearing was held on February 7, 2022. The public comment period expired on February 24, 2022. The Division received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-15-2905(2), the State Board of Education shall promulgate rules to implement the comprehensive accountability system for Arkansas public schools and school districts and the Arkansas Educational Support and Accountability Act, Ark. Code Ann. §§ 6-15-2901 to -2918. The proposed changes include those made in light of Act 251 of 2021, which was sponsored by Senator James Sturch and amended provisions of the Arkansas Code concerning the Arkansas academic content standards and curriculum frameworks and amended provisions of the Arkansas Code concerning the statewide student assessment system; and Act 319 of 2021, which was sponsored by Senator Jane English and concerned a statewide

student assessment system and amended the components of a college and career readiness assessment.

i. **SUBJECT: Rules Governing Required Training for School Board Members**

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes changes to its Rules Governing Required Training for School Board Members. Act 182 of 2021 adds information regarding school safety and student discipline to the required training for school board members, removes language stating that required trainings for specific topics shall be required only one time, changes time allowed for making up deficient training hours from thirty (30) days from the date of the January board meeting to January 1 through thirty (30) days following the date of the January board meeting, and sets out requirements for how superintendents provide annual reports.

Regarding reporting requirements, superintendents must provide annual reports in table format with rows for each individual school board member and columns for the number of training hours the school board member received between January 1 and December 31 of the previous year, the number of training hours carried forward from the previous year that were eligible to be counted towards the previous year, the sum of those numbers, and the total number of hours the board member is required to receive.

Following the public comment period, only non-substantive clarifying and technical changes were made.

PUBLIC COMMENT: A public hearing was held on March 1, 2022. The public comment period expired on March 16, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Lucas Harder, Arkansas School Boards Association (2/22/2022)

Comment (1): 5.01.1.2: “Arkansas Division of Elementary and Secondary Education” could be abbreviated to “DESE” here.

Division Response: Comments considered. Non-substantive change made.

Comment (2): 5.01.1.4.2: “Division of Elementary and Secondary Education” could be abbreviated to “DESE.”

Division Response: Comments considered. Non-substantive change made.

Comment (3): 7.03.1.3: As written, this would only have the column include the hours received during the previous calendar year rather than those hours as well as those carried forward. As such, I would recommend amending this section to read “The sum of the number of training hours the school board member received under Section 7.03.1.1 and Section 7.03.1.2.”

Division Response: Comments considered. Non-substantive change made.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

Section 7.03.1.3 – This section appears to be premised upon Ark. Code Ann. § 6-13-629(a)(2)(A)(ii)(c), as amended by Act 182 of 2021, § 2. To that end, is the second portion of the sum language missing, *i.e.*, “and the number of training hours carried forward from the previous year that were eligible to be counted towards the previous year”? **RESPONSE:** Yes. Thank you for catching that.

The proposed effective date is May 31, 2022.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 182 of 2021, which was sponsored by Representative Brian Evans and concerned training requirements for members of a school district board of directors; required additional training on information regarding school safety and student discipline; standardized the format of the required report regarding training requirements; and increased the time by which a school board member may cure a training hour deficiency. Pursuant to Arkansas Code Annotated § 6-13-629(c)(1), the State Board of Education shall promulgate rules, which may be included in the Standards for Accreditation of Arkansas Public Schools and School Districts, requiring that a statement of the hours of training and instruction obtained by each member of a school district board of directors in the preceding year be: part of the comprehensive school plan and goals; published in the same way that other components of the comprehensive school plan and goals are required to be published; and made a part of the annual school performance report under § 6-15-1402. The State Board shall further promulgate rules as necessary to carry out the provisions and intent of Ark. Code Ann. § 6-13-629, concerning training, instruction, and reimbursement for members of local school district boards of directors. *See* Ark. Code Ann. § 6-13-629(c)(2).

j. **SUBJECT: Rules Governing the Right to Read Act**

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes changes to its Rules Governing the Right to Read Act. The proposed amendments incorporate the provisions of Act 606 of 2021. In summary, Act 606 added language prohibiting the use of certain reading instruction methods by public school districts for students in grades kindergarten through second grade, allowing the State Board to order the Division to withhold up to 10% of the monthly distribution of state foundation funding aid if the district does not comply within sixty (60) days of the State Board providing notice of a violation until the district is in compliance. Additionally, Act 606 of 2021 requires the Secretary of Education to hire and supervise an Education Ombudsman to assist with the enforcement of the Right to Read Act. It provides minimum qualifications, authority of the Ombudsman, and required reporting to the state board and legislature.

Following the public comment period, only non-substantive clarifying and technical changes were made.

PUBLIC COMMENT: A public hearing was held on March 1, 2022. The public comment period expired on March 24, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

Commenter Name: Joyce Sanders Haver, Van Buren School District (2/22/2022)

Comment (1): I have been working with a district team of top literacy teachers (K-6) since last year. We have been building capacity and knowledge as well as gathering information from many sources to help us make an informed decision concerning the adoption of a new reading program. Our team is concerned with the very small number of “approved” core programs on the state approved list. We are also concerned that of the very small number of “approved” programs, there are very few with “approval” in all core reading components: phonological awareness, phonics, vocabulary, comprehension, and fluency. There have to be more programs that meet all the components of reading and should be approved. When will an updated list of programs be published?

With districts moving forward with adoptions and purchases, it seems unwise to choose one of the limited number of programs on the approved list, just because it is on the list. I understand the need to provide support and sanctions to districts with struggling programs which result in very low test scores, but to do a blanket threat to sanction a district for the curriculum they choose to use to educate their students seems to be an extreme action.

Division Response: DESE has added Programs to the list of approved reading programs as they are reviewed and approved. Please check the DESE website for updates to the list. Districts have the autonomy to select core, supplemental, and intervention programs that meet the needs of their educational communities.

A public school district receiving Level 1: General Support or Level 2: Collaborative Support that chooses to purchase a curriculum program that is not from DESE's approved list of curriculum programs has the option to request program approval by submitting the following information to DESE:

- 1) the rationale for choosing the alternative curriculum program;
- 2) evidence-based research regarding the alternative curriculum program; and
- 3) a signed letter from the Superintendent and School Board President requesting approval of the alternative curriculum program.

Comments considered. No changes made.

Commenter Name: Lucas Harder, Arkansas School Boards Association (2/22/2022)

Comment (1): 10.00: All of the section numbers below "10.00" are instead "9.0." For consistency, all of the numbers after "9.01" have an extra zero in the second section number, such as "9.01.01."

Division Response: Comments considered. Non-substantive change made.

Comment (2): 9.01.04 The "l" is missing in "public" between "open-enrollment" and "charter."

Division Response: Comments considered. Non-substantive change made.

Comment (3): 9.01.06 The "l" is missing in "public" at "public school district."

Division Response: Comments considered. Non-substantive change made.

Comment (4): 9.01.07.01: The citation to "9.01.07" here should be "10.01.7."

Division Response: Comments considered. Non-substantive change made.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Section 3.01 – Should the reference to “Section 4.02” be to “3.02”?

RESPONSE: The reference to section 4.02 is correct. The first reference (3.03) refers to that PD should be based on literacy needs of the district and the science of reading after the requirements of 4.02 (proficiency and awareness) are completed.

(2) Sections 9.05 and 9.05.01 – Should the last reference to “the public school district” in both sections be followed by “or open-enrollment public charter school”? **RESPONSE:** Open-enrollment public charter schools are public school districts. We changed the language and plan to do so consistently so that it doesn’t sound misleading (as though they are two separate things).

(3) Section 9.05.02 – Should the initial reference to “public school” be followed by “district or open-enrollment public charter school” to track Ark. Code Ann. § 6-17-429(i)(3)(B)(ii)(b), as amended by Act 606 of 2021, § 2, on which the section appears to be based? **RESPONSE:** See above.

(4) Section 9.05.02 – Should the last reference in the section to “public school district” be followed by “or open-enrollment public charter school”? **RESPONSE:** No, because open-enrollment public charter schools are public school districts.

The proposed effective date is May 31, 2022.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-17-429(j), the Division of Elementary and Secondary Education shall enforce the Right to Read Act (“Act”), Ark. Code Ann. § 6-17-429, and promulgate rules to implement the Act. The proposed changes include those made in light of Act 606 of 2021, which was sponsored by Senator Alan Clark and concerned practices, interventions, and curriculum that are based on the science of reading; adjusted funding for public schools that offer certain types of reading practices, interventions, and curriculum that are not aligned with the science of reading; and created the Education Ombudsman within the Division.

k. **SUBJECT: Rules Governing Declining Enrollment and Student Growth Funding for Public School Districts**

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes changes to its Rules Governing Declining Enrollment and Student Growth Funding for Public School Districts. Act 909 of 2021 removed the restriction that a district could not receive declining enrollment and special needs isolated funding, allowing the most rural school districts in Arkansas to access both sources of funds to meet the needs of students. Prior to the passage of Act 909, a district could not receive both declining enrollment and special needs isolated funding; a district that was eligible for both, would receive the higher of the two amounts. The proposed change allows eligible districts, the most rural in the state, to receive both sources of funding to meet the needs of its students. The eligibility for special needs isolated funding is set forth in Ark. Code Ann. § 6-20-604 and is based on the number of students in the district and the density ratio of students per square mile.

Following the public comment period, non-substantive changes were made.

PUBLIC COMMENT: A public hearing was held on March 1, 2022. The public comment period expired on March 14, 2022. The Division provided the following summary of the comment that it received and its response thereto:

Name: Lucas Harder, ASBA

Comment:

- 1.01: The word “Education” is missing from between “of” and “promulgates.”
- 4.03-4.05: Due to the deletion of 4.02, these should all be one number lower.

Agency Response: Corrections made.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 909 of 2021, which was sponsored by Senator Missy Irvin and concerned public school funding and allowed a school district that has experienced a decline in average daily membership to receive both declining enrollment funding and special needs isolated funding. Pursuant to Arkansas Code Annotated § 6-20-2304(a), the State Board of Education shall have the authority, acting pursuant to its rulemaking

powers, to adopt rules for the implementation of the provisions of the Public School Funding Act of 2003, Ark. Code Ann. §§ 6-20-2301 to - 2309.

I. **SUBJECT: Rules Governing the Star-Spangled Banner Act**

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes its Rules Governing the Star-Spangled Banner Act. Act 958 of 2021 created a new code section, Ark. Code Ann. § 6-10-136, requiring school district boards of directors to adopt a policy requiring each school in the district to broadcast “The Star-Spangled Banner” at the beginning of each school-sanctioned sporting event and at least one time each week during school hours. Act 958 further specified that the district broadcast a recording that adheres to rules promulgated by the Division. These proposed rules identify as approved recordings the standard arrangement or standard instrumental version used by U.S. military bands or similar arrangement or version, or a recording that includes the lyrics from the first verse written by Francis Scott Key. There is no official version of The Star-Spangled Banner; however, these are the recordings most commonly used and referred to.

PUBLIC COMMENT: A public hearing was held on March 1, 2022. The public comment period expired on March 14, 2022. The Division received no comments.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

Section 3.03 – It appears that this section is premised upon Ark. Code Ann. § 6-10-136(c)(2), as amended by Act 958 of 2021, § 1. Is there a reason that the rule also permits the district or school to select the recording, when the statute appears to only provide that the school district board of directors do so? **RESPONSE:** The additional language in Sec. 3.03 was added to account for district policies that may authorize individual schools to select their own recordings; to make it clear that even if the board gives that authority, the district or school must adhere to requirements.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The Division states that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-10-136(e), as amended by Act 958 of 2021, § 1, the Division of Elementary and Secondary Education shall promulgate rules to implement

the Star-Spangled Banner Act, Ark. Code Ann. § 6-10-136. The proposed rules implement Act 958 of 2021, § 1, which was sponsored by Representative Mark Berry and created the Star-Spangled Banner Act.

m. SUBJECT: Rules Governing Student Special Needs Funding

DESCRIPTION: The Department of Education’s Division of Elementary and Secondary Education proposes changes to its Rules Governing Student Special Needs Funding. The proposed amendments incorporate the provisions of Act 322 of 2021, concerning enhanced student achievement (“ESA”) (formerly known as national school lunch) funds, and add provisions allowing districts to create an alternative learning environment hybrid program.

In 2019, the legislature passed Act 1082, which provided that the list of approved programs established by the State Board for the allowable use of ESA funds would expire on June 30, 2022. Act 322 of 2021 was then passed to eliminate the list of allowable expenditures in Ark. Code Ann. § 6-20-2305 and replace it with six broad categories: (1) teacher salaries; (2) academic supports and interventions; (3) social emotional and behavioral supports; (4) physical and mental health resources; (5) early intervention resources; and (6) access to postsecondary opportunities. Amendments to these rules further explain the allowable uses under each of these categories and set forth the requirements for a three-year plan that districts will have to submit detailing the use of ESA funds. This plan will be based on a needs assessment developed by the Division that uses district data to identify areas of need.

Additional revisions to these rules allow for the use of an alternative learning environment hybrid program that combines on-site and distance learning for students who meet qualifying criteria.

Following the public comment period, non-substantive changes were made. Also, proposed amendments to increase student-teacher ratios in ALE programs were removed after receiving public comment regarding the increase.

PUBLIC COMMENT: A public hearing was held on March 1, 2022. The public comment period expired on March 14, 2022. Due to their length, the Division’s two public comment summaries have been attached separately.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Sections 3.02, 4.01.1.5, 4.03.2.4, and 4.04.4.2 – On what authority does the Division rely for the addition of the hybrid program as an eligible method of providing an ALE? **RESPONSE:** Ark. Code Ann. 6-48-104 authorizes DESE to promulgate rules implementing Chapter 48 governing alternative learning environments, which, pursuant to 6-48-102, school districts are required to provide.

(2) Sections 4.03.2.1 and 4.03.2.2 – What is prompting the change in student/teacher ratios? **RESPONSE:** As a result of COVID, school districts began using more innovative ways of educating students in all settings, including ALEs, and increasing the utilization of paraprofessionals, which enables one teacher to more efficiently serve a slightly higher number of students. By increasing the ratios from 12 to 15 and 18 to 20, more students can receive the benefit of having access to a qualified teacher.

[Bureau Staff Note: As noted in the summary above, the Division removed the increased ratios following the public comment period.]

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The Division states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-20-2305(b)(4)(C)(i)(d), as amended by Act 322 of 2021, § 1, the State Board of Education shall promulgate rules for the implementation of Ark. Code Ann. § 6-20-2305(b)(4)(C)(i) that shall include without limitation the process for submitting an enhanced student achievement plan; the process for monitoring the expenditure of funds allocated under Ark. Code Ann. § 6-20-2305(b)(4); and the specific requirements, qualifications, and criteria for allowable supports and resources. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-20-2304(a), which provides that the State Board shall have the authority, acting pursuant to its rulemaking powers, to adopt rules for the implementation of the provisions of the Public School Funding Act of 2003, Ark. Code Ann. §§ 6-20-2301 to -2309. *See also* Ark. Code Ann. § 6-48-104(a) (providing that the Division shall promulgate rules to implement Title 6, Chapter 48 of the Arkansas Code, concerning alternative learning environments). The proposed changes include those made in light of Act 322 of 2021, which was sponsored by Senator Missy Irvin and amended provisions of the Arkansas Code concerning enhanced student achievement funding and school funding under the Public School Funding Act of 2003.

7. **DEPARTMENT OF FINANCE AND ADMINISTRATION, ARKANSAS
TOBACCO CONTROL BOARD (Greg Sled)**

a. **SUBJECT: Rules of the Arkansas Tobacco Control Board**

DESCRIPTION:

Purpose

Arkansas Tobacco Control (“ATC”) is seeking legislative review and approval of proposed amendments and changes to various ATC Rule sections. Rule sections are divided as follows: Section 1 through Section 20.

ATC is proposing its Rule amendments and other changes for the following key reasons:

- To incorporate statutory revisions made by the Arkansas General Assembly;
- To make provisions consistent with state law; and
- To make minor revisions to update or correct various typographical, stylistic, grammatical, and formatting errors throughout.

Pursuant to A.C.A. § 4-75-701 et seq., A.C.A. § 26-57-201 et seq., and A.C.A. § 5-27-227, ATC has the authority to promulgate rules pertaining to tobacco control in the State of Arkansas.

Rule Summary

In addition to minor revisions to update or correct various typographical, stylistic, grammatical, and formatting errors throughout, the proposed key rule changes include the following:

- A. **Changes to Section 7:** Update permit fee schedule to mirror fees contained in A.C.A. § 26-57-219.
 - Both Act 1235 of the 90th General Assembly, Regular Session, 2015 and Act 1071 of the 92nd General Assembly, Regular Session, 2019, amended the fee schedule in A.C.A. § 26-57-219.
- B. **Addition of Replacement Notice or Transfer Form:** Update rules to include a form for permittees to use to obtain “permission” pursuant to Act 386 of 2021.
 - Act 386 of the 93rd General Assembly, Regular Session, 2021, amends the prohibition on selling without a permit to allow a “person purchasing an existing permitted retail location” to “operate under the selling owner’s permit for no more than thirty

(30) days from the date of the sale[,]” with the permission of the Seller and the Division of Tobacco Control.

- C. **Changes to Section 9 and Section 16:** Update rebating language to harmonize with the language of Act 942 of 2021.
 - Act 942 of 2021 added a definition for “Rebate” and provided that rebating is not unlawful when a wholesaler gives “a rebate if the rebate is paid by check or electronic direct deposit and does not result in a sale at less than the cost to the wholesaler according to § 4-75-02(5)(A), less discounts that are received by the wholesaler from the manufacturer.”
- D. **Changes to Section 4:** Update retail permit language regarding online sales of cigars and related safe measures to prevent online sales and shipping to minors in light of Act 940 of 2021 and A.C.A. § 5-27-227 (Sales to Minors).
 - Act 940 of the 93rd General Assembly, Regular Session, 2021, amends the definition of “Retailer” under A.C.A. § 26-57-203(27), concerning the definitions used under the Arkansas Tobacco Products Act of 1977, to include and authorize permitted Arkansas-based cigar retailers to sell cigars online to customers inside and outside the state of Arkansas.
 - A.C.A. § 5-27-227 prohibits anyone from giving, bartering, or selling to a minor (a person under the age of 21) tobacco in any form, cigarette paper, vapor products, alternative nicotine products, e-liquid products, and any component of a vapor product, alternative nicotine product, or e-liquid product.
- E. **Formatting Changes.** Re-number paragraphs for uniformity throughout.
- F. **Removal of Unnecessary Rule Provisions.** Remove unnecessary and confusing rule provisions to comply and/or harmonize with applicable statutes.

In addition to the changes described above, ATC’s proposed rule changes include the following amendments:

Section 1 – General

- **1.1.** Change language to match language used in statute (A.C.A. § 26-57-255). Change “Chairman” to “Chair;” also change language “his” to “his/her.”
- **1.2.** Change sentence structure for clarity and better understanding; change “Chairman” language to match language used in statute (A.C.A. § 26-57-255).

Section 2 – Permit Applications – Generally

- **2.1.** Add language to better comply with language used in A.C.A. §§ 26-57-214, -219.

- **2.3.** Replace language for consistent terminology usage and clarity throughout:

“It shall be the obligation of all permit holders to keep on file with the Board a current address or the current address of an agent for service of process” to “All permit holders must keep a current address or the current address of an agent for service of process on file with the Agency.

Replace language “Board” with “Agency.”

- **2.4.** Replace “Arkansas Tobacco Control Board (the Board)” with “Agency” for consistent terminology usage throughout.
- **2.5.** Replace language “privilege tax” with “payment” for clarity and harmony with the intent of A.C.A. § 26-57-219.
- **2.6.** Add language/paragraph section. Act 386 of 2021 requires “permission of the seller and the Division of Tobacco Control.” This rule provides for a form to effectuate the permission component of Act 386. Authorized by A.C.A. § 26-57-256(a)(3).
- **2.7.** Change existing language for clarity and better understanding.
- **2.8.** Change language for clarity and better understanding; remove unnecessary and potentially confusing language that is sufficiently covered by statutory law.
- **2.9.** Remove language “being” and renumber paragraph.

Section 3 – Wholesale Permit Applications

- **3.3.** Add language to add clarity as to what type of “lease, rental, or ownership” documents are required.
- **3.4.** Change language for consistent terminology usage throughout.
- **3.5.** Remove language not mandated by statute and no longer useful in the wholesale application process.
- **3.9.** Remove paragraph/language regarding sales by wholesalers. This change is for clarity and better understanding, as such provisions are not mandated by statute and are otherwise adequately addressed by A.C.A. § 26-57-232.
- **3.10.** Remove paragraph/language regarding purchases by wholesalers. This change is for clarity and understanding, as such provisions are not mandated by statute and otherwise conflict with A.C.A. § 26-57-203(37).

Section 4 – Retail Permit Holders

- **4.1.** Change language to better harmonize with statute (A.C.A. §§ 26-57-256, -257).
- **4.3.** Add language regarding online cigar sales in light of Act 940 to ensure compliance with A.C.A. § 5-27-227 (Sales to Minors). Act 940 of 2021 added to the definition of a retailer a person who “[h]as a physical presence in Arkansas and that purchases cigars from

permitted wholesalers for the purpose the [sic] online sale of the cigars to buyers inside and outside the state.” The definition of “cigar” and “cigars” matches the definitions provided in Ark. Code Ann. § 26-57-260(4)(A)-(C) and the definition of “sale” or “sell” matches the definition provided in A.C.A. § 26-57-203(28)(A).

- **4.4.** Add language in light of Act 940 to ensure compliance with A.C.A. § 26-57-214.
- **4.5.** Add language in light of Act 940 to ensure compliance with A.C.A. § 5-27-227 (Sales to Minors).
- **4.6.** Add language in light of Act 940 to ensure compliance with A.C.A. § 26-57-230.
- **4.7.** Add language in light of Act 940 and to harmonize with A.C.A. § 26-57-255.
- **4.8.** Add language in light of Act 940 and to ensure compliance with applicable tax laws.
- **4.9.** Add the following language: “4.9. Collection of Taxes. A retailer selling cigars online pursuant to this rule is responsible for the applicable sales and excise taxes.”

Section 5 – Objections to the Issuance of Permits

- **5.1.** For clarity and better understanding, the phrase “must state the nature of the relevant facts” was moved from 5.3 to 5.1.
- **5.3.** Language changed to reduce redundancy and to ensure clarity and understanding, as such a provision is already addressed by Sections 5.1 and 5.2.

Section 6 – Expiration of Permits – Renewals

- **6.2.** Add language “cigarettes or other” and “or other tobacco products.”

Section 7 – Fees

- **7.1.** Replace outdated fees and fee-related language with updated fees and fee-related language provided by statute.

Section 9 – Rebates and Concessions

- Change and add language to definition of “rebate” to comply with Act 942 of 2021.
- Change and add language to harmonize with A.C.A. § 4-75-702 and - 708 and Act 942 of 2021. “Concession” has the same meaning as “rebate.”
- Change and add language to definition of “cost to wholesaler” to harmonize with statutes and Act 942 of 2021.

Section 10 – Hearing Procedures

- **10.2.** Add statutory citation for clarity and understanding.

- **10.3.** Change language for clarity, consistency, and better understanding.

Section 11 – Grounds for Revocation, Suspension, Nonrenewal of Permits or Issuance of a Civil Penalty

- **11.1.** Change to match lowercase language in statute (A.C.A. § 26-57-255(g)(2)) and add language “of a license or permit” for clarity as to what is being revoked, suspended, issued, or non-renewed.
- **11.1(A).** Replace language “Rules and Regulations of the Board” with “these Rules” for clarity, better understanding, and/or consistency with language used in ATC statutes.

Section 12 – Enforcement of Ark. Code Ann. § 5-27-227

- **12.1.** Change language for clarity, better understanding, and/or consistency.
- **12.2.** Replace language “Board” with “Agency” to mirror language used throughout Rules.
- **12.3(C).** Remove all language in 12.4, 12.4(A)-(F), and 12.5(A)-(C) pertaining to mitigating factors and affirmative defenses. This language was outdated, added confusion as written, and is unnecessary in light of statutory provisions related to mitigating factors and affirmative defenses contained in Ark. Code Ann. § 5-27-227. The phrase “and Regulations” is unnecessary and was removed for clarity and readability.

Section 15 – Unfair Cigarette Sales

- **15.1(D).** Replaced the term “affect” with “effect.”
- **15.2(C)(1)(b)-(e).** Formatting edits. The language itself was not changed.

Section 16 – Advisory Opinions

- **16.1.** Add language “an unlawful” before the terms “Rebate” and “Concession.” This change was made to comply with A.C.A. § 4-75-708 and Act 942 of 2021.

After the close of the public comment period, at the Arkansas Tobacco Control Board’s regularly scheduled meeting on April 14, 2022, Arkansas Tobacco Control staff requested the Board to pull the language contained in the proposed rule amendments pertaining to online cigar sales, Sections 4.3 through 4.9, in response to verbal comments made during the public notice period (those comments discussed further below). At that same April 14, 2022 regularly scheduled meeting, the Arkansas Tobacco Control Board unanimously passed a motion to approve the proposed Arkansas Tobacco Control Board Rule amendments, with Section 4.3 through 4.9 removed for further review and later promulgation, in response to the verbal comments made during the public notice period.

PUBLIC COMMENT: A public hearing was held on this rule on April 14, 2022. The public comment period expired on April 14, 2022. The Board provided the following summary of the comments that it received and its responses thereto:

The following people or organizations made comments at the public comment period hearing held by the Arkansas Tobacco Control Board on April 14, 2022:

- Mr. Steve Ferren, Executive Vice President, Arkansas Oil Marketers Association, spoke in favor of the proposed Arkansas Tobacco Control Board Rule amendments.

Response: Arkansas Tobacco Control acknowledges Mr. Ferren's comments made in favor of the proposed Arkansas Tobacco Control Board Rules.

No one else spoke for or against the Arkansas Tobacco Control Board Rules at the April 14, 2022 Public Comment Period Hearing.

Arkansas Tobacco Control does not have record of having received any written comments from persons or organizations during the public comment period.

The following two (2) people made comments over the phone to Arkansas Tobacco Control in opposition to the portion of the proposed rule amendments pertaining to online cigar sales and delivery:

- Phone Commenter: Mr. Brian Waters

Comments: Mr. Waters expressed concern with the online cigar sales portion of the proposed rule amendments, as drafted. In particular, Mr. Waters was concerned that Section 4.5, "Requirements for accepting order for delivery sale," and Section 4.6, "Requirements for shipping a delivery sale," placed a burden on Arkansas retailers that may not be equally placed upon non-Arkansas businesses or even other industries. Mr. Waters requested additional time to work with Arkansas Tobacco Control in addressing his concerns.

Response: Arkansas Tobacco Control pulled the sections of the proposed rules pertaining to online cigar sales, Sections 4.3 through 4.9, for further review and later promulgation. Upon motion and a second, on April 14, 2022, the Arkansas Tobacco Control Board approved the proposed rules without Sections 4.3 through 4.9.

- Phone Commenter: Arkansas State Representative

Comment: An Arkansas State Representative expressed concern with the online cigar sales portion of the proposed rule amendments, as drafted. In particular, the Arkansas State Representative was concerned that Section 4.5, “Requirements for accepting order for delivery sale,” and Section 4.6, “Requirements for shipping a delivery sale,” placed a burden on Arkansas retailers that may not be equally placed upon non-Arkansas businesses or even other industries and wanted to ensure the privacy of Arkansas consumers was adequately protected during the age verification process. The Arkansas State Representative requested additional time to work with Arkansas Tobacco Control in addressing their concerns, including the concerns of any constituent.

Response: Arkansas Tobacco Control pulled the sections of the proposed rules pertaining to online cigar sales, Sections 4.3 through 4.9, for further review and later promulgation. Upon motion and a second, on April 14, 2022, the Arkansas Tobacco Control Board approved the proposed rules without Sections 4.3 through 4.9.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Tobacco Control Board is tasked with promulgation of “rules for the proper enforcement and implementation of” the Arkansas Tobacco Products Tax Act of 1977 and the Unfair Cigarette Sales Act. Ark. Code Ann. § 26-57-256(a)(1). “The board may levy a civil penalty in an amount not to exceed five thousand dollars for each violation against a person found to be in violation of . . . the rules promulgated by Arkansas Tobacco Control.” Ark. Code Ann. § 26-57-255(g)(3)(C). This rule implements Acts 386 and 942 of 2021. Amendments relating to Act 940 of 2021 were withdrawn by the Board for further review and later promulgation.

Act 386, sponsored by then-Senator Lance Eads, amended the Arkansas Tobacco Products Tax Act of 1977 and provided a grace period for certain circumstances at a permitted business location.

Act 940, sponsored by Senator Bart Hester, permitted Arkansas-based cigar shops to sell cigars at retail online.

Act 942, sponsored by Senator Mark Johnson, amended the Unfair Cigarette Sales Act.

8. **DEPARTMENT OF FINANCE AND ADMINISTRATION, REVENUE DIVISION** (Keith Linder, Joel DiPippa)

a. **SUBJECT: 2022-1 Philanthropic Investment in Arkansas Kids Program Rules**

DESCRIPTION: Act 904 of 2021 created a program that provides nonrefundable income tax credits for donations to SGOs that are used to fund scholarships for students to attend private schools. The Act requires the Department of Finance and Administration (the Department) to promulgate rules and to coordinate with the Department of Education, Division of Elementary and Secondary Education (DESE) to create necessary forms.

The Department consulted with DESE regarding the requirements needed for DESE's administration of the Act's requirements for registration and oversight of the SGOs. The Department and DESE also consulted with stakeholders that planned to serve as SGOs for information on best practices and practical application procedures.

This Rule provides specific guidance for the SGOs to apply to DESE to handle the donated funds. The requirements are intended to harmonize the requirements with existing similar programs. Additionally, the Rule specifies how the SGOs will submit applications for tax credits to the Department and how the tax credits are to be awarded and claimed by the recipients.

PUBLIC COMMENT: A public hearing was held on this rule on March 18, 2022. The public comment period expired on February 28, 2022. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact. However, the agency stated that the total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$50,000 for the current fiscal year and \$100,000 for the next fiscal year and provided the following explanation:

Additional staff required to administer the program are required for both DFA and DESE. This does not include any reduction in state revenue from the tax credits claimed under this program.

LEGAL AUTHORIZATION: This rule implements Act 904 of 2021. The Act, sponsored by Senator Jonathan Dismang, created a tax credit for eligible contributions made to a sponsor-granting organization under the

Philanthropic Investment in Arkansas Kids Program. “The Revenue Division of the Department of Finance and Administration shall promulgate rules that are necessary to carry out the purposes of” Ark. Code Ann. § 6-18-2307, addressing the Department of Finance and Administration’s and Division of Elementary and Secondary Education’s duties under the Philanthropic Investment in Arkansas Kids Program Act. Ark. Code Ann. § 6-18-2307(d)(1), *as created by Act 904*.

9. **DEPARTMENT OF HEALTH, ARKANSAS BOARD OF PODIATRIC MEDICINE (John Robinette)**

a. **SUBJECT: Rules for the Board of Podiatric Medicine**

DESCRIPTION: The Board of Podiatric Medicine is proposing changes to its rules. The proposed changes include:

- Addition of language regarding fee waiver for eligible individuals listed in the Act 725 of 2021 (Attorney General’s office model language).
- Language update, licensure extension, and continuing education requirement wavier language pursuant to Act 135 of 2021 (Attorney General’s office model language).
- Removal of references to “permanently disqualifying offenses” pursuant to Act 748 of 2021 (Attorney General’s office model language).
- Licensure eligibility for individuals who hold work permits pursuant to Act 746 of 2021 (Attorney General’s office model language).

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 15, 2022. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have a financial impact, specifically, a positive financial impact for applicants eligible for fee waiver under Act 725 of 2021. The board also disclosed a potential loss of revenue to the agency, but was unable to forecast exact values due to lack of statistical information.

LEGAL AUTHORIZATION: The Board of Podiatric Medicine shall make and adopt all necessary rules and bylaws necessary or convenient to perform its duties and to transact business as required by law. Ark. Code Ann. § 17-96-202(a)(3)(A). This rule implements Acts 135, 725, 746, and 748 of 2021.

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses. *See Ark. Code Ann. § 17-4-105, as created by Act 135 of 2021.*

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See Ark. Code Ann. § 17-5-105(2).*

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. The Act provided that all occupational or professional licensing entities shall promulgate rules necessary to implement the Act. *See Act 746, § 2(a).*

Act 748 of 2021, which was sponsored by Representative Bruce Cozart, amended occupational criminal background checks. The Act allowed agencies to grant waivers for certain criminal offenses which would have previously resulted in permanent disqualification from occupational licensure. *See Ark. Code Ann. § 17-3-201(e), (g).*

10. DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH (Bernard Bevill, Charles Thompson)

a. SUBJECT: Rules Pertaining to Radiologic Technology Licensure

DESCRIPTION: The Rules Pertaining to Radiologic Technology Licensure are duly adopted and promulgated by the Arkansas Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas including, without limitation, the Consumer-Patient Radiation Health and Safety Act, specifically Ark. Code Ann. § 17-106-101 et seq.

The Radiation Control Section of the Department licenses individuals who apply ionizing radiation to humans for medical purposes. This involves the use of x-ray equipment and nuclear medicine procedures.

The Section licenses radiologic technologists with national professional credentials and medical staff who have passed national examinations allowing them to take limited radiographs.

During the 2021 Legislative Session, four (4) Acts required Radiologic Technology Licensure rule revision. These are:

- Act 135 – Modification for the automatic licensure requirements for uniformed service members
- Act 725 – Provision of waiver of initial fees associated with professional and occupational license
- Act 746 – Allows for licensing of individuals who fulfill the requirements to practice an occupations or profession and hold a Work Permit.
- Act 811 – “Earn to Learn” allows individuals to work and earn a paycheck while also fulfilling licensing requirements.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on March 21, 2022. The agency provided the following public comment summary:

Commenter’s Name: Crystal Vigue

COMMENT: I received the notice of proposed adoption of revisions and would like to comment.

I have been an RT for almost 10 years and have actively worked in my field. First I would like to comment on ACT 725 of 2021, I feel it is unfair to offer Fee Waiver to a select group. Many of us have paid our Fees even in financial hardship, I speak from personal experience. My personal opinion on the other ACTs listed in the Notice I received are also of concern to me personally. If we are giving work permits and handing out LT Licenses that hurt those of us that are RTs, if I decided to look for work elsewhere it will become hard for me to find work when they can hire LTs at a smaller pay scale. I went to school for 4 years and hold my AR state Licensure and an ARRT. Thank you for your time and consideration.

RESPONSE: The amendments to the Rules for Radiologic Technical Licensure are required by the Arkansas Legislature under Acts 725 of 2021 (“Workforce Expansion Act of 2021” for the fee waiver program), 135 of 2021 (“Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021”), and 811 of 2021 (“Earn and Learn Act”) and taken directly from the law.

Commenter's Name: Maureen Sandoval

COMMENT: I do not agree with ACT 725 of 2021, ACT 746 of 2021 and ACT 811 of 2021. You should not have your license fee waived if you are on government assistance. [sic] And I definitely do not agree that if you finish an approved apprenticeship then you get a license. You should have to take a test. I feel like it will be handed out to [sic] easily.

RESPONSE: Legislature under Acts 725 of 2021 ("Workforce Expansion Act of 2021"), 746 of 2021 (granting licensure for persons with work permits), and 811 of 2021 ("Earn and Learn Act") and taken directly from the law.

Specifically, under Act 811 of 2021, once an individual completes an apprenticeship program that has been approved by the United States Office of Apprenticeship or the Arkansas Department of Workforce Services and the individual completes the other requirements (including examinations, fees, background checks, if applicable), then the individual is eligible for a license under the Rules.

Commenter's Name: Becky Roberts

COMMENT: RE: ACT 811 of 2021

I think it would be beneficial to have licensees complete a radiologic apprenticeship program if they are to be licensed. I do not agree with someone being able to be limited licensed and falling under a physician's license only. The person needs to have proper training that a physician is normally not able to provide for them. Just because the state says a physician can do an X-ray does not mean they know how to position, set a good technic, and not overexpose patients. I think the state is more concerned with payments of licenses than the individual being knowledgeable about the field. I am old enough to remember when the state implemented the licensure for us. At the time. I recall it was supposed to be for our job security and to have people that are educationally trained performing X-rays, but it has turned into an avenue for revenue for the state. In the real world, there are individuals that should not be performing X-rays because they are not trained appropriately but have a "license". This is especially true at clinical sites. Bone Densitometry is another example of this. Employers just want a body to do the exams and generally do not care if someone actually knows the appropriate way of performing the exams or has any training. Bone Density is very precise and should be performed according to ISCD protocols but yet almost anyone can do these according to the state. This lack of training with a limited license also interferes with our job security as RT's.

RESPONSE: The amendments to the Rules for Radiologic Technical Licensure are required by the Arkansas Legislature under Acts 725 of 2021 (“Workforce Expansion Act of 2021”), 746 of 2021 (granting licensure for persons with work permits), and 811 of 2021 (“Earn and Learn Act”) and taken directly from the law.

Specifically, under Act 811 of 2021, once an individual completes an apprenticeship program that has been approved by the United States Office of Apprenticeship or the Arkansas Department of Workforce Services and the individual completes the other requirements (including examinations, fees, background checks, if applicable), then the individual is eligible for a license under the Rules.

With regard to your concerns for limited scope licensure on bone densitometry or other exemptions to the licensure requirements for licensed practitioners, the State Medical Board, State Board of Dental Examiners, State Board of Chiropractic Examiners, State Board of Podiatric Medicine, and related medical professional boards regulate the scope of practice and training requirements for applying ionizing radiation or administer radiopharmaceuticals. The State Board of Health and the Arkansas Department of Health do not regulate the practice of medicine.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The State Board of Health has authority to “[a]dopt standards for applicants wishing to take the licensing examination” necessary to obtain a radiologic technology license. Ark. Code Ann. §§ 17-106-105, -107. The Board has authority to promulgate rules “as may be necessary” to carry out its duties under the Arkansas Consumer-Patient Radiation Health and Safety Act. Ark. Code Ann. § 17-106-105(a)(1)(D). This rule implements Acts 135, 725, 746, and 811 of 2021.

Act 135, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021. Under the Act, “[a]n occupational licensing entity shall grant automatic occupational licensure to” certain specified individuals. *See* Ark. Code Ann. § 17-4-105, *as created by* Act 135.

Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and

professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 746, sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. The Act provided that all occupational or professional licensing entities shall promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

Act 811, sponsored by Representative Joshua Bryant, created the Earn and Learn Act and allowed individuals to work and earn a paycheck while also fulfilling licensing requirements and gaining the skills to fill the needs of an expanding workforce. Act 811 required all licensing entities affected by the Act to promulgate rules necessary to implement the Act. *See* Act 811, § 2(a).

11. **DEPARTMENT OF HEALTH, STATE KIDNEY DISEASE COMMISSION**
(Charles Thompson)

a. **SUBJECT:** Arkansas Kidney Disease Commission Rules

DESCRIPTION: The agency provided the following rule summary:

The Arkansas Kidney Disease Commission ("AKDC") is initiating the process for the revision of the Arkansas Kidney Disease Commission Rules. The following revisions are being proposed:

In accordance with Act 910 of 2019, language will be added to the Authority section of the rules stating that the Secretary of the Arkansas Department of Health is the disbursing officer of funds appropriated by the Arkansas General Assembly and any other funds made available to the Commission.

A residency requirement has been added to the eligibility requirements of applicants who wish to participate in the Commission's programs. In addition, financial eligibility of individuals who wish to participate will now be limited to those whose annual income does not exceed 250% of the Federal Poverty Level (FPL) percentage for the year in which they are applying for assistance.

If an Applicant has insurance coverage, they must provide proof of that coverage. Applicants shall be required to apply and provide evidence of acceptance/denial from all applicable pharmaceutical company patient

assistance programs. This is to ensure that the AKDC will only be the payor of last resort.

The revisions also create a formulary that will include nutritional supplements designed for kidney dialysis patients.

PUBLIC COMMENT: A public hearing was held on this rule on March 2, 2022. The public comment period expired on March 1, 2022. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. Is there a specific statute the Commission is relying on for the new provision regarding ad hoc committees (page 5)? **RESPONSE:** Not specific authority but ADH/AKDC thought it inherent in its powers and duties especially since the issues before the commission relate to medical issues and require applicable medical expertise e.g., development of the formulary and issues surrounding dialysis.

2. Will the “Appendix A Formulary” text at the end of the rule be a hyperlink in the final rule? **RESPONSE:** No hyperlink—it is in the CLEAN proposed final rule, but not in MARK-up. Will send revised MARK-Up rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The State Kidney Disease Commission has authority to establish a program to assist persons suffering from acute or chronic renal failure and to develop standards for determining eligibility for financial assistance. Ark. Code Ann. § 20-15-603(a)(1)-(2).

12. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS** (Mark White, Mary Franklin)

- a. **SUBJECT:** Medical Services Policy Section A-116, H-100, H-400, H-600, and H-700

DESCRIPTION:

Statement of Necessity

The Medical Services Policy has been updated to reflect new rules concerning Miller Income Trusts, patient liability and an estate recovery process change. The changes are implemented pursuant to Act 570 addressing estate recovery along with an update consistent with Act 530.

Miller Income Trust rule changes are that a client's income will no longer be required to be transferred, but instead only the amount necessary to make the client income eligible. Policy is also updated to allow for court-ordered child support and court-ordered spousal support as allowable deductions for patient liability in the Long-Term Services and Supports categories. Policy is updated to reflect that estate recovery can no longer be made from assets that are transferred by beneficiary deed. Finally, consistent with Act 530, DCO deleted the rule that a failure to pay a premium for three (3) consecutive months will result in a debt to the State of Arkansas.

The proposed rule:

- Aligns language to correspond with the implementation of the new ARIES system;
- Further defines what income must be included in a trust;
- Includes mandatory expenses as allowable deductions;
- Clarifies that only income above the eligibility cutoff must be placed in a trust;
- Removes property transferred by beneficiary deed from estate recovery; and
- Updates the rule consistent with Act 530.

Rule Summary

The following are the changes to Policy A:

A-116 Premiums for the Adult Expansion Group
Removed the sentence "Failure to pay the premium for three (3) consecutive months will result in a debt to the State of Arkansas."

The following are the proposed changes to Policy H:

1. H-100 Long-Term Services and Supports
 - a. Spelling and grammar corrected; and
 - b. Formatting adjusted.
2. H-111 Requirements for an Income Trust
 - a. Updated, rule change: not all income must go to trust;
 - b. Updated, rule change: court-ordered child support and court-ordered spousal support are an allowable deduction;
 - c. Updated, rule change: not all income must go to trust—only the amount that would make the client ineligible;
 - d. Verbiage and processes changed due to new system;
 - e. Business processes removed to be added to business process manual; and
 - f. Formatting adjusted.
3. H-112 Income Trust Application Process
 - a. Business processes removed; and
 - b. Formatting adjusted.
4. H-113 Post Eligibility Procedures
 - a. Verbiage and processes changed due to new system;
 - b. Business processes removed to be added to business process manual; and
 - c. Formatting adjusted.
5. H-114 Changes to an Income Trust
 - a. Verbiage and processes changed due to new system; and
 - b. Formatting adjusted.
6. H-115 Reevaluations with an Income Trust
 - a. Updated, rule change: not all income must go to trust—only the amount that would make the client ineligible;
 - b. Verbiage and processes changed due to new system; and
 - c. Formatting adjusted.
7. H-116 Termination of an Income Trust
 - a. Verbiage and processes changed due to new system;
 - b. Business processes removed to be added to business process manual; and
 - c. Formatting adjusted.
8. H-400 Post-Eligibility
 - a. Spelling and grammar corrected; and
 - b. Formatting adjusted.
9. H-402 Consideration of Income
 - a. Spelling and grammar corrected; and
 - b. Formatting adjusted.
10. H-403 Rebutting Consideration of Income
 - a. Verbiage and processes changed due to new system; and
 - b. Formatting adjusted.
11. H-410 Factors Used to Determine the Cost of Care
 - a. Updated, rule change: court-ordered child support and court-ordered spousal support are an allowable deduction;

- b. Updated to reflect process changes; and
 - c. Formatting adjusted.
- 12. H-412 Contribution to the Cost of Care for Assisted Living Facilities
 - a. Updated, rule change: mandatory expenses are an allowable deduction; and
 - b. Formatting adjusted.
- 13. H-413 Contribution to the Cost of Care for PACE
 - a. Updated, rule change: mandatory expenses are an allowable deduction; and
 - b. Formatting adjusted.
- 14. H-416 Verification or Refusal of Contributions
 - a. Updated to reflect process changes; and
 - b. Formatting adjusted.
- 15. H-430 Earnings of Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) Facility Residents
 - a. Spelling and grammar corrected; and
 - b. Formatting adjusted.
- 16. H-440 Effective Eligibility Dates for Nursing Homes
 - a. Spelling and grammar corrected; and
 - b. Formatting adjusted.
- 17. H-450 Approval of an Applicant Who is in a Medicare Bed
 - a. Formatting adjusted.
 - b. Changed “Medicaid” to “Health Care.”
- 18. H-481 Case Adjustments for Lump Sum Payments in Prior Months
 - a. Spelling and grammar corrected; and
 - b. Formatting adjusted.
 - c. Changed “Medicaid” to “Health Care.”
- 19. H-490 Absences from Long-Term Care Facilities
 - a. Spelling and grammar corrected; and
 - b. Formatting adjusted.
- 20. H-493 Operations Plan - Relocation of Recipients
 - a. Spelling and grammar corrected; and
 - b. Formatting adjusted.
- 21. H-600 Estate Recovery
 - a. Updated, rule change: estate recovery can no longer be made from assets transferred by beneficiary deed; and
 - b. Formatting adjusted.
- 22. H-630 Recovery Procedures
 - a. Updated, rule change: estate recovery can no longer be made from assets transferred by beneficiary deed; and
 - b. Formatting adjusted.
- 23. H-640 Application for a Hardship Waiver
 - a. Formatting adjusted.
 - b. Changed “Medicaid” to “Health Care.”
- 24. H-700 Undue Hardship Waiver

- a. Formatting adjusted.
- 25. H-710 Hardship Waiver for Home Equity
 - a. Language and processes updated; and
 - b. Formatting adjusted.
- 26. H-720 Hardship Waiver for Transfer of Resources/Income
 - a. Language and processes updated; and
 - b. Formatting adjusted.
- 27. H-730 Hardship Waiver for Estate Recovery
 - a. Language and processes updated; and
 - b. Formatting adjusted.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on April 9, 2022. The agency indicated that it received no public comments.

The proposed effective date is August 29, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the total cost to implement this rule is \$7,947,327 for the current fiscal year (\$2,255,451 in general revenue and \$5,691,875 in federal funds) and \$9,356,792 for the next fiscal year (\$2,655,458 in general revenue and \$6,701,335 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$2,255,451 for the current fiscal year and \$2,655,458 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

This rule change allows Long Term Services and Supports (LTSS) applicants/recipients the added deductions of court-ordered child support and spousal support in their patient liability budget. Also, there is an adjustment to Miller Income Trust requirements. Individuals no longer have to place all income into a Miller Income Trust, only the amount that causes the individual to be ineligible must be transferred. In addition, this rule change prohibits estate recovery from assets that are transferred by beneficiary deed.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

This rule is required due to an agreement between DHS and the legislature concerning the patient liability update and the Miller Income Trust update. Legislation was proposed but was pulled due to the agreement. Act 570 addresses the change to the estate recovery process.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

This rule change is a result of legislation that was proposed for the Miller Income Trust and Act 570 for the estate recovery change.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

There are no less costly alternatives.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

N/A

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

The existing rule did not allow a deduction in the patient liability budget for court-ordered child support and spousal support and does not allow for partial income to be placed in a Miller Income Trust. Changes to the estate recovery process for beneficiary deeds is mandated by Act 570. These changes will have a positive impact on LTSS applicants and recipients.

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

The agency will develop a plan to review the impact of this rule within a designated time frame to ensure that there is still a positive impact to the LTSS applicants/recipients.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b). This rule implements Acts 530 and 570 of 2021.

Act 530, sponsored by Senator Missy Irvin, amended Title 23 of the Arkansas Code to ensure the stability of the insurance market in Arkansas and created the Arkansas Health and Opportunity for Me Act of 2021 and the Arkansas Health and Opportunity for Me Program. The Department of Human Services shall adopt rules necessary to implement the Health and Opportunity for Me Act. Act 530, § 1, *codified at* Ark. Code Ann. § 23-61-1012.

Act 570, sponsored by Representative John Maddox, amended the law concerning beneficiary deeds and prohibited the recovery of benefits against an interest acquired from a deceased recipient by a grantee of a beneficiary deed in certain circumstances.

13. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Mark White, Elizabeth Pitman)**

a. **SUBJECT: Non-Emergency Ambulance Transport Payments**

DESCRIPTION:

Statement of Necessity

The Department of Human Services, Division of Medical Services is required by Act 444 of 2021 to amend the state plan page 4.19-B page 8aa to remove the exception language (nonemergency ambulance services). The language (nonemergency ambulance services) must also be removed from the Manual Section 241.200. DMS will include the nonemergency

payment codes on the Ambulance UPL model. By adding these codes there will be a fiscal impact.

Rule Summary

State Plan page 4.19-B page 8aa: Remove the exception language (nonemergency ambulance services)

Transportation Medicaid Provider Manual Section 241.200: Remove the exception language (nonemergency ambulance services)

The state share of the fiscal impact will be paid by the ambulance providers through the assessment fee.

PUBLIC COMMENT: A public hearing was held on this rule on March 30, 2022. The public comment period expired on April 10, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the estimated cost to implement this rule is \$207,985 for the current fiscal year (\$0 in general revenue, \$189,129 in federal funds, and \$18,856 in assessment fees) and \$793,660 for the next fiscal year (\$0 in general revenue, \$567,388 in federal funds, and \$226,272 in assessment fees). The total estimated cost by fiscal year to any private individual, entity, and business subject to the proposed rule is \$18,856 for the current fiscal year and \$226,272 for the next fiscal year. Per the agency, private ambulance providers are assessed the ambulance assessment fee to cover the non-federal share and this rule will result in no cost to state, county, or municipal government.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

The rule establishes the Non-Emergency Medical Transportation Access Payment.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

Act 444 of the 2021 regular session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transports in Arkansas.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

Act 444 of the 2021 regular session required the agency to implement this rule. The rule seeks to improve the quality and timeliness of medical transports in Arkansas.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

No less costly alternatives were identified.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

No alternatives are proposed at this time.

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

The Agency monitors state and federal rules and regulations for opportunities to reduce and control costs.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 444 of 2021. Act 444, sponsored by Senator Larry Teague, amended the assessment fee and program on medical transportation providers within the Arkansas Medicaid program.

b. **SUBJECT:** Outpatient Behavioral Health Services (OBHS) and School-Based Mental Health Services (SBMHS) Manuals

DESCRIPTION:

Statement of Necessity

The 93rd General Assembly enacted Act 886. Arkansas Medicaid shall not require a beneficiary to first obtain a referral from a primary care provider (PCP) before receiving the first ten (10) visits for mental health counseling. The Division of Medical Services (DMS) is revising Section 217.100 (Primary Care Physician (PCP) Referral) of the Outpatient Behavioral Health Services (OBHS) Provider Manual and Section 211.300 (Primary Care Physician (PCP) Referral) of the School-Based Mental Health Services (SBMHS) Manual to reflect changes enacted in Act 886.

Rule Summary

Outpatient Behavioral Health Services Manual, Section 217.100

- Replaced “three (3)” with “ten (10)”
- Added “...referral”

School-Based Mental Health Services Manual, Section 211.300

- Replaced “three (3)” with “ten (10)”

PUBLIC COMMENT: A public hearing was held on this rule on March 17, 2022. The public comment period expired on April 9, 2022. The agency provided the following public comment summary:

Commenter's Name: Joel P. Landreneau, Esq., on behalf of Arkansas Behavioral Health Council

COMMENT: We note that the proposed rule changes restate the provisions in Act 886. We also note that Act 886 became effective on or about July 28, 2021, and that the proposed rule changes do not address whether or not the claims for services that should have been payable under the act that were denied payment prior to February 19, 2022 are going to be payable.

Please find attached to this email a survey of Council members which indicates that there are at least \$100,000 in denied claims by only 11 Council members that should have been paid had Act 886 been given the force and effect of law.

Please indicate which provision of Arkansas law allows the Department to disregard the effectiveness of enacted legislation for over seven months. In the absence of said citation, please indicate how those providers who provided services to Medicaid beneficiaries in good faith reliance on the passage of Act 886 can receive payment for the services they have rendered.

RESPONSE: Thank you for your comment. The Department of Human Services will retroactively implement this rule to July 28, 2021. Details and timeline for implementation will be provided via standard notification methods when available.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the total cost to implement this rule is \$286,512 for the current fiscal year (\$81,312 in general revenue and \$205,200 in federal funds) and \$3,438,149 for the next fiscal year (\$975,747 in general revenue and \$2,462,403 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$81,312 for the current fiscal year and \$975,747 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

To extend the number of mental health counseling visits a client may have prior to obtaining a PCP referral.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

To ensure the availability and quantity of mental health counseling sessions for Medicaid clients. This rule is required by Act 886 of 2021.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

To ensure the availability and quantity of mental health counseling sessions for Medicaid clients. This rule is required by Act 886 of 2021. The cost is justified by allowing more outpatient mental health visits which reduces the need for inpatient stay.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

None.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

None at this time.

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

The agency monitors state and federal rules and policies for opportunities to reduce and control costs.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 886 of 2021. The Act, sponsored by Representative Lee Johnson, prohibited requiring certain referrals from a primary care provider in order for a beneficiary in the Arkansas Medicaid Program to receive mental health counseling.

c. **SUBJECT: Hospital, Physician and Nurse Practitioner Provider Manuals and SPA to Add PANS/PANDAS Treatment**

DESCRIPTION: This proposed rule amends Section II of the Hospital, Physician, and Nurse Practitioner Medical manuals to comply with Act 637 of the 93rd General Assembly. DMS makes corresponding changes to the Medicaid State Plan Amendment.

The amendments authorize the use of off-label drug treatments to treat Medicaid beneficiaries with Pediatric Acute-Onset Neuropsychiatric Syndrome (PANS) and Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infection (PANDAS). The off-label treatments include, but are not limited to, use of intravenous immunoglobulin (also known as “IVIG”) and they must be included in a Treatment Plan.

The sole provider for creating the Treatment Plans and providing the treatments will be the Postinfectious Autoimmune Encephalopathy Center of Excellence, as required by Act 637 (the approved provider). A Prior Authorization (PA) will be required for these treatments so that the Treatment Plan can be submitted to the Quality Improvement Organization (QIO) with the PA request.

PUBLIC COMMENT: A public hearing was held on this rule on March 24, 2022. The public comment period expired on April 9, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the total cost to implement this rule is \$900,000 for the current fiscal year (\$255,420 in general revenue and \$644,580 in federal funds) and \$3,600,000 for the next fiscal year (\$1,021,680 in general revenue and \$2,578,320 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government as a result of this rule is \$255,420 for the current fiscal year and \$1,021,680 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, local government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

To authorize off-label use of drug treatments to treat Medicaid beneficiaries with pediatric acute-onset neuropsychiatric syndrome (PANS) and pediatric autoimmune neuropsychiatric disorders (PANDAS) associated with streptococcal infection.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

To comply with Act 637 which authorizes off-label use of drug treatments to treat Medicaid beneficiaries with pediatric acute-onset neuropsychiatric syndrome (PANS) and pediatric autoimmune neuropsychiatric disorders (PANDAS) associated with streptococcal infection.

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

This advances treatment options for beneficiaries diagnosed with PANS/PANDAS.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

None at this time.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

None

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

DMS reviews all rules periodically.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). See Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 637 of 2021. The Act, sponsored by Senator Kim Hammer, authorized off-label use of drug treatments to treat Medicaid beneficiaries diagnosed with pediatric acute-onset neuropsychiatric syndrome (PANS) and pediatric autoimmune neuropsychiatric disorders associated with streptococcal infection (PANDAS).

d. **SUBJECT: Medicaid Limits on Lab/Radiology and SPA 2022-0003**

DESCRIPTION:

Statement of Necessity

The 93rd General Assembly enacted Act 891, which modifies the annual cap on diagnostic laboratory services in the Medicaid program. The existing Medicaid cap is five hundred dollars (\$500) for diagnostic laboratory procedures, including radiology services. Grouping radiology and diagnostic laboratory procedures within the same cap reduces the services a Medicaid beneficiary can receive.

Act 891 reduces the disparity in services by requiring a separate annual cap for each group and creating an exception for essential health benefit procedures. Diagnostic laboratory services now have an annual cap of five hundred dollars (\$500), and radiology services have a separate annual cap of five hundred dollars (\$500). Any laboratory or diagnostic procedure that is an essential health benefit will not count towards either annual cap.

Rule Summary

The Division of Medical Services (DMS) revises Section II of several provider manuals and the Medicaid State Plan to comply with Act 891. In general, the following changes were made:

- Replaced the term X-ray with radiology throughout each provider manual.
- Changed laboratory to diagnostic laboratory throughout each provider manual.
- Exempted laboratory or diagnostic procedures that are an essential health benefit as defined by the U.S. Preventive Services Task Force (USPSTF) from counting toward either of the two new annual caps. A hyperlink has been added to direct the provider to the listing of codes for the services.
- Made technical corrections to grammar and removed vendor names throughout each provider manual.
- Replaced procedure codes with a hyperlink throughout each provider manual.

The specific manual changes are as follows:

Physician/Independent Lab/CRNA/Radiation Therapy Center Provider Manual

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting. Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).
- Additional information will be requested as needed to process a benefit extension request. Reconsiderations of additionally requested information are not available. Failure to provide requested information within the specified time will result in a technical denial.
- Correspondence regarding benefit extension requests and requests for reconsideration of denied benefit extension requests do not constitute documentation or proof of timely claim filing.

Ambulatory Surgical Center

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).

Certified Nurse-Midwife

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.

- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).

Hospital/Critical Access Hospital (CAH)/End-Stage Renal Disease (ESRD)

Manual revised by adding the following language:

- Opioid Use Disorder (OUD) when treated with Medication Assisted Treatment (MAT). Designated laboratory tests will be exempt from the diagnostic laboratory services benefit limit when the diagnosis is OUD.
- Obstetric (OB) ultrasounds and fetal non stress tests have benefit limits which are not exempt from Extension of Benefits request requirements. *See* Section 215.041 for additional coverage information.
- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).
- A separate claim must be filed for the tissue typing.
- Claims for the donor must be forwarded to the Transplant Coordinator.

Chiropractic

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).
- Documentation requirements include emergency room records, diabetic and blood pressure flow sheets, obstetrical record, clinical indication for laboratory and radiology services, and ultrasound reports.

Federally Qualified Health Center

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).

Nurse Practitioner

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).
- Clarification of benefit limits for Opioid Use Disorder and Obstetric ultrasounds.
- Clarification on extension of benefit requests.

Occupational, Physical, Speech-Language Therapy

Minor grammar corrections to manual.

Podiatrist

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).
- Updated exemption list to include pregnancy and Opioid Use Disorder.

Portable X-Ray Services

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).
- Updated requirements for extension of benefits and reconsideration requests.

Rehabilitative Hospital General Information

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).

Rural Health Clinic

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).

Visual Care

Manual revised by adding the following language:

- The Medicaid Program's diagnostic laboratory services and radiology/other services benefit limits apply to the outpatient setting.
- Diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY/July 1 through June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY.
- Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).

State Plan Amendment (SPA)

Attachment 3.1-A, Page 1f:

- Updated to indicate diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY, July 1-June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY, unless specifically exempt from one or both of the limits. Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).
- Updated language for extensions and exemptions of benefit limits.

Attachment 3.1-B, Page 2f:

- Updated to indicate diagnostic laboratory services benefits are limited to five hundred dollars (\$500) per State Fiscal Year (SFY, July 1-June 30), and radiology/other services benefits are separately limited to five hundred dollars (\$500) per SFY, unless specifically exempt from one or both of the limits. Radiology/other services include, but are not limited to, diagnostic X-rays, ultrasounds, and electronic monitoring/machine tests, such as electrocardiograms (ECG or EKG).
- Updated language for extensions and exemptions of benefit limits.

PUBLIC COMMENT: A public hearing was held on this rule on March 24, 2022. The public comment period expired April 9, 2022. The agency provided the following public comment summary:

Commenter's Name: Deirdre E. Flannery, on behalf of Quest Diagnostics

COMMENT: I appreciate the opportunity to offer comments on the proposed modification to the annual cap on diagnostics laboratory services in the Medicaid program to implement Act 891 of the 93rd General Assembly. As a long-standing Arkansas Medicaid Provider, Quest Diagnostics greatly supports a separate annual benefit for laboratory services to address the disparity in access to care for individuals when

diagnostic laboratory services are grouped with radiology services as a combined Medicaid State Plan benefit. We applaud the Division of Medical Services (DMS) for its thoughtful benefit design, which recognizes exclusions to an annual cap for diagnostic insights that either: align with the United States Preventive Task Force guidelines; or are for the primary diagnosis of cancer, HIV, renal failure, opioid use disorder; or are for pregnancy to promote healthy maternal health outcomes. Further, we appreciate DMS' consideration for an extension of benefits for laboratory services in cases when an individual requires medically necessary diagnostic testing beyond the \$500 annual cap. However, we are concerned that the documentation requirements for a lab testing extension of benefit is not practicable for an Independent Laboratory and the contemplated process will always result in a denial of the request purely on administrative grounds. We respectfully ask DMS to consider the indirect provider perspective as it seeks to finalize Section 229.120 Documentation Requirements for Independent Labs.

Quest Diagnostics is the world's leading provider of diagnostic information services and serves one in three adult Americans and half the physicians and hospitals in the United States annually. We proud serve as an Arkansas Medicaid Provider and are committed to powering affordable care that reduces health disparities. With our infrastructure in Arkansas of over 210 employees and 10 patient service centers, we service over 3,800 physicians and 43 hospitals, and handle 9,000 patient specimens daily. Quest's commitment to Arkansas has only strengthened in response to the COVID-19 pandemic. To date, we have conducted statewide over 400,000 viral PCR tests and nearly 54,000 serology tests to detect antibodies.

Section 229.120 Documentation Requirements - Quest Diagnostics urges DMS to accept the laboratory test requisition form as the sole documentation requirement for consideration of a laboratory extension of benefit request as independent clinical laboratories do not have access to the ordering physician's patient medical record. For example, the prevalence of electronic laboratory orders has significantly grown with the advancement and migration towards electronic medical records (EMR). However, the EMR often does not capture a physician signature. Consequently, it is increasingly difficult for an independent laboratory to produce a signed test order as contemplated in Section 229.120 (2)(B). It should be noted that federal guidelines under CMS no longer require the signature for a clinical diagnostic laboratory test paid under the clinical laboratory fee schedule for Medicare purposes. This policy was retracted in the Vol. 76, No. 228 federal register published on Nov. 28, 2011. Further, clinical laboratories are increasingly unable to obtain signed medical records with an indication for diagnostic services from the ordering physician due to HIPAA minimum necessary concerns. The laboratory test requisition captures the clinical indication and can be used

as the basis by which to evaluate for medical necessity. Accordingly, we ask that DMS remove documentation requirements related to signed test orders and medical records and evaluate medical necessity based on the test requisition.

Please include this letter and request as part of the formal rulemaking record. If it would be helpful, we will be happy to discuss this request in greater detail and can be reached at deirdre.e.flannery@questdiagnostics.com. Thank you for your consideration.

RESPONSE: We thank you for your comment. AR Medicaid has a current procedure in place for obtaining extension of benefits for Lab, Xray, or both. Physician Office and Outpatient Hospital Services. This Act increases the availability to allow five hundred dollars (\$500) for lab and five hundred dollars (\$500) for Xray. Your comments are important, and it may be possible to revisit for review with future manual updates.

The proposed effective date is July 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the cost to implement this rule is \$5,973,405 for the current fiscal year (\$1,695,252 in general revenue and \$4,278,152 in federal funds) and \$5,973,405 for the next fiscal year (\$1,695,252 in general revenue and \$4,278,152 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$1,695,252 for the current fiscal year and \$1,695,252 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

(1) a statement of the rule's basis and purpose;

The purpose is to separate Lab and X-Ray maximum expenditure caps.

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

To be able to reimburse providers without additional administrative burden based on Act 891 of 2021.

*(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule; and
(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;*

Act 891 was legislatively mandated. Reimbursement is less than administrative costs.

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

None.

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

None at this time.

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

N/A

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

The Agency monitors State and Federal rules and policies for opportunities to reduce and control costs.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). See Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code

Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 891 of 2021. The Act, sponsored by Senator Missy Irvin, modified the annual cap on diagnostic laboratory services in the Arkansas Medicaid Program.

e. **SUBJECT: Pharmacy Manual Update 3-21 and SPA 2022-0001**

DESCRIPTION:

Statement of Necessity

The 93rd General Assembly enacted Acts 406, 407, 408, and 503, which give pharmacists a new scope of practice to prescribe certain vaccines, immunizations, and certain prescriptions. They also allow for prescription of over the counter (OTC) drugs and testing for certain infections and viruses per protocol. These Acts were put into place officially in compliance with the Prep Act due to COVID-19 U.S. Department of Health and Human Services (HHS) regulation, but also expand other prescribing and testing allowances for pharmacists individually. Legislation did not address reimbursement to pharmacists for these services but rather allows pharmacists to be the prescriber on the pharmacy and medical claims in the pharmacy. The Division of Medical Services is revising Section 201.100 of the Pharmacy Manual to comply with the Acts. The Medicaid State Plan Amendment (SPA) has been updated to reflect the changes in the Acts.

Rule Summary

Pharmacy Manual Section II, Section 201.100

- Renamed the section title
- Added, “The Arkansas Medicaid Program will allow pharmacists to enroll individually as atypical providers to prescribe and administer specified drugs and test and screen for certain health conditions, per current allowable protocols. Pharmacists are not billing providers, but they may be rendering providers on medical claims. Pharmacists will be allowed as prescribing providers on pharmacy claims for drugs identified in current protocol.”
- Changed seven (7) to three (3)
- Deleted “...to eighteen (18) years of age under a general written...”
- Added “...and older under current...”
- Deleted “The Arkansas Medicaid Program will continue to reimburse pharmacies the cost and administration fee of selected

vaccines for Medicaid beneficiaries nineteen (19) years of age and older.”

State Plan Amendment (SPA)

- Page 3.1-A, page 3b: Added “(7) Pharmacists. Pharmacists may enroll individually as atypical providers to prescribe and administer specified drugs and test and screen for certain health conditions, per current allowable protocols. Pharmacists are not billing providers, but they may be rendering providers on medical claims. Pharmacists will be allowed as prescribing providers on pharmacy claims for drugs identified in current protocol.”
- Page 3.1-B, page 3d: Added “(7) Pharmacists. Pharmacists may enroll individually as atypical providers to prescribe and administer specified drugs and test and screen for certain health conditions, per current allowable protocols. Pharmacists are not billing providers, but they may be rendering providers on medical claims. Pharmacists will be allowed as prescribing providers on pharmacy claims for drugs identified in current protocol.”

PUBLIC COMMENT: A public hearing was held on this rule on March 24, 2022. The public comment period expired on April 11, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the total cost to implement this rule is \$9,167 for the current fiscal year (\$2,602 in general revenue and \$6,565 in federal funds) and \$110,000 for the next fiscal year (\$31,218 in general revenue and \$78,782 in federal funds). The total estimated cost by fiscal year to state, county, and municipal government as a result of this rule is \$2,602 for the current fiscal year and \$31,218 for the next fiscal year.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b). This rule implements Acts 406, 407, 408, and 503 of 2021.

Act 406, sponsored by Representative Justin Boyd, allowed pharmacists to prescribe, administer, deliver, distribute, or dispense vaccines, immunizations, and medications to treat adverse reactions to administered vaccines.

Act 407, also sponsored by Representative Boyd, authorized pharmacy technicians to administer vaccines and immunizations.

Act 408, sponsored by Representative Aaron Pilkington, amended the provisions of the Arkansas Code concerning the practice of pharmacy and authorized pharmacists to provide access to and administration of oral contraceptives.

Act 503, sponsored by Representative Lee Johnson, allowed pharmacists to treat certain health conditions, modified physician dispensing and allowed delegation of physician dispensing.

14. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF PROVIDER SERVICES AND QUALITY ASSURANCE** (Mark White, Martina Smith)

a. **SUBJECT:** Behavioral Health Agency Certification Manual Update Pursuant to Act 760

DESCRIPTION:

Statement of Necessity

This rule implements the requirements of Act 760. Act 760 allows outpatient behavioral health agencies to co-locate with other facility types.

Rule Summary

The Division of Provider Services and Quality Assurance updates the Behavioral Health Agency Certification Manual by amending the definition of “site” to include adjunct and colocated sites such as schools, a daycare facility, a long-term care facility, or the office or clinic of a physician or psychologist. DPSQA also updates website information with hyperlinks to the appropriate webpage.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on April 9, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 760 of 2021. The Act, sponsored by Representative Lee Johnson, authorized colocation for outpatient behavioral health agencies.

b. SUBJECT: Long-Term Care Facility Licensure and Change of Ownership, and Medication Assistant

DESCRIPTION:

Statement of Necessity

Act 721 of the 93rd General Assembly amends provisions for Long Term Care (LTC) facility licensure, including requiring approval for changes to ownership groups and management companies, and repeal of the annual renewal requirement. Act 759 of the 93rd Arkansas General Assembly allows education programs for licensed practical nurses in certain facilities. DPSQA amends Nursing Homes, Assisted Living Facility Level I, and Assisted Living Facility Level II Provider Manuals to incorporate the requirements of Acts 721 and 759.

Rule Summary

DPSQA amends the Nursing Home, Assisted Living Facility Level I, and Assisted Living Facility Level II Provider Manuals to incorporate the requirements of Acts 721 and 759.

Act 721 amends provisions for Long-Term Care facility licensure, including requiring approval for changes to ownership groups and management companies, and repeal of the annual renewal requirement.

These amendments are summarized as follows:

- Specifies the requirements for notifying the Department regarding changes of ownership or management.
- Clarifies the reasons the Department may deny a license.
- Clarifies the application process and materials and information required by the Department for licensure application.
- Identifies the responsibilities of the seller and buyer.
- Describes the requirements for renewal of application for licensure, issuance of license, and provisional licensure.

Act 759 allows training courses for medication assistive persons to be provided by a post-secondary education institution, a hospital, or a consortium of five (5) or more skilled nursing facilities, to Licensed Practical Nurses.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on April 10, 2022. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. Nursing Homes manual, § 203 states, “Annual licensure fees shall be tendered with each application for a new long-term care facility license and with each long-term care facility license renewal application annually thereafter” The underlined language was removed from A.C.A. § 20-10-224(h) by Act 721. Why was it maintained in the proposed rules?

RESPONSE: Thank you for bringing this to our attention. You are correct. We have removed “with each long-term care facility license renewal application”, so now it reads, “. . . for a new long-term care facility license and annually thereafter”

2. The proposed rules state that annual licensure fees consist of a \$250 annual fee plus \$10 per bed. I see the \$10/bed fee in A.C.A. § 20-10-224(g)(3). Where does the \$250 fee come from? **RESPONSE:** Act 1230 of 2001 established the Arkansas Assisted Living Act.

<https://www.arkleg.state.ar.us/Acts/FTPDocument?type=PDF&file=1230&ddBienniumSession=2001%2FR>. On page 5, under section 5, it indicates we are allowed to charge fees “to cover administrative costs associated with licensing, inspection and the regulation of assisted living facilities.” It also says we will promulgate the rules necessary for charging of administrative fees.

Over the years, the statement from Act 1230 of 2001 is repeated, and the language granting us the ability to charge fees “to cover administrative

costs associated with licensing, inspection and the regulation of assisted living facilities” has remained unchanged.

We found that the fee was first promulgated between 2001 and 2004 and in December of 2004 is when the \$250 fee appeared in the ALF Manual. Here is that version:

https://www.sos.arkansas.gov/uploads/rulesRegs/Arkansas%20Register/2004/dec_2004/016.06.04-078.pdf.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services, Office of Long-Term Care¹ has the authority to inspect, regulate, and license long-term care facilities. Ark. Code Ann. § 20-10-203(a). The Office may promulgate rules “as it shall deem necessary or desirable to properly and efficiently carry out the purposes of” Title 20, Chapter 10 of the Arkansas Code, addressing long-term care facilities and services. Ark. Code Ann. § 20-10-203(b). This rule implements Acts 721 and 759 of 2021.

Act 721, sponsored by Senator Scott Flippo, expanded the review of license applications for long-term care facilities, eliminated annual renewal for long-term care facility licenses, and required notification of changes in long-term care management.

Act 759, sponsored by Representative Mary Bentley, amended the laws concerning medication assistive persons and allowed education programs for licensed practical nurses in certain facilities.

c. **SUBJECT: Definition of Long-Term Care Facility**

DESCRIPTION:

Statement of Necessity

Act 905 of 2021 updated the definition of a long-term care (LTC) facility. The Act provides that facility does not include an adult day care program that provides care and supervision to meet the need of twelve (12) or fewer functionally impaired adults at any time in a place other than the

¹ The Office of Long-Term Care is located within the Division of Provider Services and Quality Assurance.

adult's home; or provides services to clients for periods of four (4) hours or less per day for no more than two (2) days a week.

Rule Summary

The Division of Provider Services and Quality Assurance (DPSQA) updates the definitions in the Rules for Adult Day Care Providers to comply with the provisions of Act 905, and replaces Office of Long-Term Care throughout the manual with Department, which is defined as the division with the Department of Human Services responsible for the licensure, certification, and regulation of long-term care facilities. The rule also defines long-term care facility resident and program director and deletes definitions no longer applicable.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on April 9, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services, Office of Long-Term Care² has the authority to inspect, regulate, and license long-term care facilities. Ark. Code Ann. § 20-10-203(a). The Office may promulgate rules “as it shall deem necessary or desirable to properly and efficiently carry out the purposes of” Title 20, Chapter 10 of the Arkansas Code, addressing long-term care facilities and services. Ark. Code Ann. § 20-10-203(b).

This rule implements Act 905 of 2021, sponsored by Senator Missy Irvin, which amended the definition of “long-term care facility.”

d. **SUBJECT: In-Home Caregiver Background Checks**

DESCRIPTION:

Statement of Necessity

Act 717 passed during the Arkansas General Assembly of 2021 requires and clarifies registry records checks and criminal background checks of caregivers and applicants to become a caregiver, including without

² The Office of Long-Term Care is located within the Division of Provider Services and Quality Assurance.

limitation the Child Maltreatment Central Registry and the Adult and Long-Term Care Facility Resident Maltreatment Central Registry.

Rule Summary

Section 260.420 of the Independent Choices provider manual is revised consistent with Act 717's clarifications of registry checks and criminal background checks.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on April 9, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements Act 717 of 2021. The Act, sponsored by Representative Josh Miller, required in-home caregivers for Medicaid beneficiaries to pass registry records checks in order to be paid with Medicaid funds and clarified requirements for registry records checks and criminal background checks for in-home caregivers of Medicaid beneficiaries.

e. **SUBJECT: Waiver of Licensure Fees**

DESCRIPTION:

Statement of Necessity

Act 725 of the 93rd General Assembly created the Workforce Expansion Act of 2021. The Act provides license fee waivers for individuals and applicants for licensure due to specified economic hardships.

Rule Summary

DPSQA amends the Rules for the Arkansas Long-Term Care Facility Nursing Assistant Training Program Manual and the Rules for Licensure of Nursing Home Administrators Manual to incorporate the requirements of Act 725. Act 725 waives initial filing fees, permit fees, and licensing fees for individuals and applicants meeting specified requirements: (a) receiving assistance through the Arkansas Medicaid Program, the Supplemental Nutrition Assistance Program, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Temporary Assistance for Needy Families Program, or the Lifeline Assistance Program; (b) approved for unemployment within the last twelve (12) months; or (c) income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.

The waiver of the initial fees does not include fees for: (a) a criminal background check; (b) an examination or a test; or (c) a medical or drug test. A signed consent form from the applicant may be required for verification of eligibility.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on April 9, 2022. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, the estimated cost to implement this rule is \$717 for the current fiscal year and \$8,600 for the next fiscal year. The total estimated cost to state, county, and municipal government as a result of this rule is \$717 for the current fiscal year and \$8,600 for the next fiscal year.

LEGAL AUTHORIZATION: The Department of Human Services, Office of Long-Term Care³ has the authority to inspect, regulate, and license long-term care facilities. Ark. Code Ann. § 20-10-203(a). The Office may promulgate rules “as it shall deem necessary or desirable to properly and efficiently carry out the purposes of” Title 20, Chapter 10 of the Arkansas Code, addressing long-term care facilities and services. Ark. Code Ann. § 20-10-203(b).

³ The Office of Long-Term Care is located within the Division of Provider Services and Quality Assurance.

This rule implements Act 725 of 2021. Act 725, sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

15. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF LABOR, HVACR LICENSING BOARD** (Denise Oxley)

a. **SUBJECT:** Administrative Rules Pertaining to the Licensing of Heating, Ventilation, Air Conditioning, and Refrigeration Contractors

DESCRIPTION: The Heating, Ventilation Air Conditioning, and Refrigeration ("HVACR") Licensing Board is proposing changes to its rules, which:

- Amend the board's rule on license and examination fees to provide for an initial fee waivers for certain individuals pursuant to Act 725 of 2021;
- Amend the board's rule on the responsibilities of licensees to require the maintenance of liability insurance for certain classes of licensees, as authorized by Arkansas Code § 17-33-202(8);
- Amend the board's rule on automatic licensure for military personnel and their spouses to conform to Act 135 of 2021;
- Create a new requirement for four (4) hours of annual continuing education hours as authorized by Act 978 of 2021; and
- Create a new requirement for the recognition of apprenticeship programs pursuant to Act 811 of 2021.

PUBLIC COMMENT: A public hearing was held on April 13, 2022. The public comment period expired on April 13, 2022. The board reported that the only comments received were recommended corrections from the Bureau of Legislative Research Code of Arkansas Rules staff that included the following:

- The current HVACR rules cite to "Act 277, of 1991, as amended" four separate times. The Code of Arkansas Rules recommended that the Rules cite to the Arkansas Code as opposed to the Act for stylistic purposes. **RESPONSE:** The new citation is "Arkansas Code Ann. §17-33-101" et seq. instead of "Act 277, of 1991, as amended." The new citations in the rules can be found on pages: 2 (under "SECTION II. PURPOSE"); 11 (under "SECTION XIV. CORRECTION OF VIOLATIONS"); 11 (under "SECTION XV. INSPECTION FEES"); and 11 (under "SECTION XVII. PENALTIES" subsection (a)).

- Similarly, the HVACR rules cite to “Act 414, of 1961, as amended...” instead of the Arkansas Code. **RESPONSE:** The new citation replacing “Act 414, of 1961, as amended...” is Arkansas Code Ann. §20-9-213. This citation can be found on page 13 under “SECTION XIX. EXEMPTIONS.” subsection (2)(F).
- The last correction concerns the use of “and/or” in the current rules. The use of “and/or” can be ambiguous and the Code of Arkansas Rules style is to avoid “/” use when possible. **RESPONSE:** The correction replaced “and/or” with “or” on page 11 under “SECTION XV. INSPECTION FEES” subsection (2).

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Concerning the proposed liability insurance requirement added for Classes A, B, C, D, and E licensees,

(a) Please explain the rationale for this requirement. **RESPONSE:** The board believes that this is important to provide some level of consumer protection. Action against a license, such as revocation, is an action that protects future consumers, but does nothing to help an injured complainant. There is no surety bond requirement or recovery fund.

(b) Please explain how the \$360 cost to obtain this insurance was calculated. **RESPONSE:** The board appointed a subcommittee to examine this issue. They had testimony from Mr. Heath Sharon, an insurance agency owner/agent, as well as Mr. Tom Hunt, President, Arkansas HVACR Association. They also had information from another insurance agent verbally through the department’s Chief HVACR Inspector. The average cost amount was based on a standard amount for an average commercial customer. Mr. Sharon stated that this could vary based on the contractor’s credit rating, size of company and previous claims. His statement was verified by contacting a commercial customer who had 1,000,000.00 coverage at a cost of \$968.00 per year. Mr. Wesley Tolliver stated that Heath Sharon’s statements were accurate. Board Member Connie Creed and Alan Dean stated their policy amounts were in the 1,000.00 range.

(c) Please provide the rule-making authority that the agency is relying upon to promulgate this portion of the rules. **RESPONSE:** Ark. Code Ann. § 17-33-202(8) authorizes the board to establish by “rule a minimum level of general liability insurance coverage for a license if the board determines that a specific class of license requires insurance coverage.”

2. The rules adopt the definition of “uniformed service veteran” as defined in Act 135. However, the term “uniformed service member” is

used but not specifically defined in the rules. Is the agency relying upon the statutory definition of this term as contained in Act 135, when the term is utilized in the rules? **RESPONSE:** “Uniformed service member” is not specifically defined, so to that extent, the board is relying on the statutory definition in Ark. Code Ann. § 17-4-103(4). I would also note that this is the model language prepared for licensing boards by the Attorney General’s Office.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated the amended rules have a financial impact. Specifically, the agency disclosed estimated costs of \$0-400 for both the current fiscal year and the upcoming fiscal year. The agency explained that the costs to individual licensee will be 4 hours of continuing education per year. The cost is estimated between \$0 to \$40, depending on whether free training can be obtained from the Arkansas HVACR Association or a vendor. For certain classes of licenses, there will be the cost of maintaining general liability insurance in the amount of \$250,000. This cost is currently being born by many HVACR contractors, but for those that do not have the coverage, the cost is estimated to be \$360 annually. The rule providing a fee waiver for certain low income individuals pursuant to Act 725 of 2021 will have a negative impact on revenues. The extent or amount is unknown, as the board has no historical data concerning the economic status of its applicants.

LEGAL AUTHORIZATION: The HVACR Licensing Board has authority to adopt certain rules to ensure the proper administration and enforcement of Title 17, Chapter 33 of the Arkansas Code concerning heating, ventilation, air conditioning, and refrigeration workers; adopt a mechanical code and standards for the conduct of HVACR work; review applications for examination for a Class A, Class B, Class C, Class D, Class E, and Class L license; establish by board rule a minimum level of general liability insurance coverage for a license if the board determines that a specific class of license requires insurance coverage; and establish by board rule a maximum of four (4) hours per year of continuing education if the board determines that a specific class of license requires continuing education. *See* Ark. Code Ann. § 17-33-202. The proposed rules implement Acts 135, 725, 811 and 978 of 2021.

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses. *See* Ark. Code Ann. § 17-4-105, as created by Act 135 of 2021.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

Act 811 of 2021, which was sponsored by Representative Joshua Bryant, created the Earn and Learn Act and allowed individuals to work and earn a paycheck while also fulfilling licensing requirements and gaining the skills to fill the needs of an expanding workforce. Act 811 provided that all licensing entities as required under the Act shall promulgate rules necessary to implement the Act. *See* Act 811, § 2(a).

Act 978 of 2021, which was sponsored by Representative Roger Lynch, authorized the HVACR Licensing Board to establish by board rule a maximum of four (4) hours per year of continuing education if the board determines a specific class of license required continuing education. *See* Act 978 of 2021, *codified as* Ark. Code Ann. § 17-33-202(9).

b. **SUBJECT: Repeal of Administrative Rules Pertaining to the Certification of Heating, Ventilation, Air Conditioning, and Refrigeration Mechanical Inspectors**

DESCRIPTION: The Heating, Ventilation, Air Conditioning, and Refrigeration ("HVACR") Licensing Board is repealing a rule regarding certification of HVACR mechanical inspectors and associated annual licensure fees. It will not be replaced. The board provided the following explanation for the repeal:

The HVACR Board had been issuing and charging license fees for an HVACR inspector license since approximately 2004. The board appears to have relied on its general power to "[e]stablish HVACR code inspection programs." Ark. Code Ann. § 17-33-202(5). There is no specific statutory authority to issue this class of license or to charge a fee.

During the 93rd General Assembly, there was a proposed a bill which would have corrected the lack of statutory authorization, SB 259. It failed in the House Public Health, Welfare, and Labor Committee. Effective April 22, 2021, the HVACR Licensing Board voted to discontinue issuing this license for municipal inspectors, as well as the \$25 annual license fee, pending an administrative rule change reflecting the same. This is the proposed rule change.

PUBLIC COMMENT: A public hearing was held on April 13, 2022. The public comment period expired on April 13, 2022. The board received no comments.

The proposed effective date in June 1, 2022.

FINANCIAL IMPACT: The agency indicated that the repealed rules have a financial impact. Specifically, the board disclosed a loss of revenue of approximately \$7,550 annually with respect to loss of the \$25 license fee.

LEGAL AUTHORIZATION: The HVACR Licensing Board has authority to adopt certain rules to ensure the proper administration and enforcement of Title 17, Chapter 33 of the Arkansas Code concerning heating, ventilation, air conditioning, and refrigeration workers. *See Ark. Code Ann. § 17-33-202(1).*

c. **SUBJECT:** Section XXIII – The International Mechanical Code

DESCRIPTION: The Heating, Ventilation Air Conditioning, and Refrigeration (“HVACR”) Licensing Board is proposing changes to its rules to update the mechanical code and standards for the conduct of HVACR work from the 2010 International Mechanical Code to the 2021 International Mechanical Code.

PUBLIC COMMENT: A public hearing was held on April 13, 2022. The public comment period expired on April 13, 2022. The board received no comments.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The board indicated that the amended rules have a financial impact.

1. Concerning estimated cost to private individual, entity, and business subject to the amended rule, the board stated that there is no annual cost to a citizen unless there is new construction. Additional costs will vary greatly depending on the options selected by the homeowner or builder. There is one new test required which the department anticipates will increase the cost of a new single-family dwelling by \$150. In some instances, construction costs will decrease.

2. Concerning estimated cost to state, county, and municipal government, the board stated that there will be no costs to state, county, or municipal government to implement this rule. There may be additional costs of new construction if such is undertaken. It will vary depending on the size of the construction project and the options selected by the government agency or builder. In some cases, construction costs may decrease. There

is a new test required, which will increase the costs of construction of a new building by approximately \$150.

LEGAL AUTHORIZATION: The HVACR Licensing Board has authority to adopt certain rules to ensure the proper administration and enforcement of Title 17, Chapter 33 of the Arkansas Code concerning heating, ventilation, air conditioning, and refrigeration workers, and to adopt a mechanical code and standards for the conduct of HVACR work. *See Ark. Code Ann. § 17-33-202(1) and (2).*

16. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, ARKANSAS ABSTRACTERS' BOARD (Miles Morgan)**

a. **SUBJECT:** Rules of the Arkansas Abstracters' Board

DESCRIPTION: The purpose and necessity of the proposed amendments to the Rules of the Abstracters' Board are to comply with changes from the 2019 and 2021 legislative sessions. The proposed amendments would accomplish the following:

1. Amend the board's rule on license and examination fees to provide for an initial fee waiver for certain individuals pursuant to Act 725 of 2021;
2. Amend the board's rule to provide automatic licensure for military personnel and their spouses to conform to Act 135 of 2021;
3. Amend the board's rule on reciprocity to comply with Act 1011 of 2019; and
4. Make various grammatical and stylistic changes recommended by the Bureau of Legislative Research as part of the codification process of Arkansas rules.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on April 13, 2022. The agency indicated that it received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions, and received the following responses:

1. In Section 8, No. 7:
 - (a) The word "Application" appears before the definition begins. Should this word be deleted? **RESPONSE:** Yes.
 - (b) The word "abstractor" appears to be misspelled. Should it be "abstracter" instead? **RESPONSE:** Yes.
 - (c) Should the open quotation mark after the word "Registration" be changed to closed quotation? **RESPONSE:** Yes.

2. In Section 8, No. 8:

(a) Should the open quotation mark after the word “Registration” be changed to closed quotation? **RESPONSE:** Yes.

3. In Section 8, No. 9:

(a) Should the open quotation mark after the word “Authority” be changed to closed quotation? **RESPONSE:** Yes.

(b) The word “abstractor” appears to be misspelled. Should it be “abstracter” instead? **RESPONSE:** Yes.

The proposed effective date is June 1, 2022.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. The agency stated that Act 725 of 2021, concerning a fee waiver for certain low-income individuals, will have a negative impact on revenues. The extent or amount is unknown, as the board has no historical data concerning the economic status of its applicants. The rule itself will have no economic impact.

LEGAL AUTHORIZATION: The Arkansas Abstracters’ Board has authority to adopt rules for the proper administration of its powers and duties and the carrying out of the purposes of its subchapter. *See* Ark. Code Ann. § 17-11-403(b). This rule implements Acts 135 and 725 of 2021.

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses. *See* Ark. Code Ann. § 17-4-105, as created by Act 135 of 2021.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act’s implementation. *See* Ark. Code Ann. § 17-5-105(2).

17. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF
OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND
COMMISSIONS, ARKANSAS MOTOR VEHICLE COMMISSION** (Sandy
Stroope, Miles Morgan, Denise Oxley)

- a. **SUBJECT:** AMVC Rule 3 – Advertising; AMVC Rule 7 – Off-Premise Sales, Displays and/or Events; and AMVC Rule 10 – Education and Grant Training Program

DESCRIPTION: The Arkansas Motor Vehicle Commission is proposing amendments to the following rules:

- Rule 3 – the purpose of the proposed rule is to protect consumers by ensuring that dealers have the vehicles they advertise either physically on the lot or have the manufacturer’s invoice guaranteeing delivery of the advertised vehicle to the dealer.
- Rule 7 – the purpose of the proposed rule is to remove reference to a licensing fee for out-of-state salespersons as Act 504 of 2021 removed licensing requirements for a motor vehicle salesperson.
- Rule 10 – the purpose of the proposed rule is to repeal Rule 10 regarding the administration of Education and Grant Training Program which was amended by Act 504 of 2021. Rule 10, as written, is no longer accurate and the changes made by Act 504 specify all the necessary provisions of the grant program in statute.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on April 14, 2022. The agency received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The commission indicated that the amended rules have a financial impact. Specifically, the commission stated that Act 504 of 2021 removed its ability to charge for motor vehicle salespersons licenses, and hence, the commission will lose a stream of revenue.

LEGAL AUTHORIZATION: The Arkansas Motor Vehicle Commission has authority to prescribe, issue, amend, and rescind, pursuant to the Administrative Procedure Act, such reasonable rules as may be reasonably necessary or appropriate to carry out the provisions of Title 23, Chapter 112 of the Arkansas Code concerning the Arkansas Motor Vehicle Commission Act. *See* Ark. Code Ann. § 23-112-204. This rule implements Act 504 of 2021, sponsored by Representative Jim Dotson, which amended the Arkansas Motor Vehicle Commission Act, amended the Recreational Vehicle Franchise Act, removed licensing requirements for a motor vehicle salesperson, created the Automotive

Technologist Education Grant program, and created the Automotive Technologist Education Grant Fund. *See* Act 504 of 2021.

18. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, ARKANSAS REAL ESTATE COMMISSION** (Andrea Alford, Miles Morgan)

a. **SUBJECT:** Rule 3.4 – Waiver of Application Fees

DESCRIPTION: The Arkansas Real Estate Commission is adding section 3.4 concerning waiver of application fees to its Rule 3. Section 3.4 establishes a waiver of initial application fees for certain individuals and outlines the waiver’s qualifying criteria. Rulemaking is required pursuant to Act 725 of 2021.

PUBLIC COMMENT: A public hearing was held on April 11, 2022. The public comment period expired on April 11, 2022. The agency received no comments.

The proposed effective date is July 1, 2022.

FINANCIAL IMPACT: The agency indicated that the proposed impact is yet unknown, but that the impact is expected to be modest.

LEGAL AUTHORIZATION: The Arkansas Real Estate Commission has authority to do all things necessary and convenient for carrying into effect the provisions of Title 17, Chapter 42 of the Arkansas Code concerning real estate license law, and from time to time promulgate necessary or desirable rules. *See* Ark. Code Ann. § 17-42-203(a). This rule implements Act 725 of 2021, sponsored by Senator Ben Gilmore, which created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act’s implementation. *See* Ark. Code Ann. § 17-5-105(2).

b. **SUBJECT:** Rule 4.5 – Automatic Licensure for Uniformed Service Members, Veterans and their Spouses; Rule 6.1 – Renewal Applications; and Rule 11.1 – Requests for Waiver or Extension; Exemptions for Uniformed Service Members and their Spouses

DESCRIPTION: The Arkansas Real Estate Commission is amending its rules concerning licensure for uniformed service members, veterans, and their spouses. Pursuant to Act 135 of 2021, the proposed changes will:

- Streamline certain terminology identifying uniformed service members;
- Expand and clarify automatic licensure provisions for uniformed service members, veterans and spouses; and
- Allow extended license expiration dates and full exemptions from certain education requirements for deployed uniformed service members or spouses during deployment and up to 180 days after return.

PUBLIC COMMENT: A public hearing was held on April 11, 2022. The public comment period expired on April 11, 2022. The agency received no comments.

The proposed effective date is July 1, 2022.

FINANCIAL IMPACT: The agency indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Real Estate Commission has authority to do all things necessary and convenient for carrying into effect the provisions of Title 17, Chapter 42 of the Arkansas Code concerning real estate license law, and from time to time promulgate necessary or desirable rules. *See Ark. Code Ann. § 17-42-203(a).* This rule implements Act 135 of 2021, sponsored by Senator Ricky Hill, which established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses. *See Ark. Code Ann. § 17-4-105, as created by Act 135 of 2021.*

c. **SUBJECT: Rule 4.6 – Pre-Licensure Criminal Background Check and Waiver Request**

DESCRIPTION: The Arkansas Real Estate Commission is amending Rule 4.6 concerning pre-licensure criminal background checks and waiver requests. Rule 4.6 is being amended to reflect changes made by Act 748 of 2021. Offenses that were previously considered to be permanently disqualifying for occupational or professional licensure are now considered offenses for which an applicant must obtain a waiver.

PUBLIC COMMENT: A public hearing was held on April 11, 2022. The public comment period expired on April 11, 2022. The agency received no comments.

The proposed effective date is July 1, 2022.

FINANCIAL IMPACT: The agency indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Real Estate Commission has authority to do all things necessary and convenient for carrying into effect the provisions of Title 17, Chapter 42 of the Arkansas Code concerning real estate license law, and from time to time promulgate necessary or desirable rules. *See* Ark. Code Ann. § 17-42-203(a). This rule implements Act 748 of 2021, sponsored by Representative Bruce Cozart, which amended occupational criminal background checks. The Act allowed agencies to grant waivers for certain criminal offenses which would have previously resulted in permanent disqualification from occupational licensure. *See* Ark. Code Ann. § 17-3-201(e), (g).

d. **SUBJECT:** Rule 4.7 – Work Permits Accepted

DESCRIPTION: The Arkansas Real Estate Commission is adding section 4.7 concerning work permits to Rule 4. Rule 4.7 establishes that the Commission will grant a license to an applicant who meets licensure requirements and holds a Federal Form I-766 USCIS-issued Employment Authorization Document, or “work permit.”

PUBLIC COMMENT: A public hearing was held on April 11, 2022. The public comment period expired on April 11, 2022. The agency received no comments.

The proposed effective date is July 1, 2022.

FINANCIAL IMPACT: The agency indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Real Estate Commission has authority to do all things necessary and convenient for carrying into effect the provisions of Title 17, Chapter 42 of the Arkansas Code concerning real estate license law, and from time to time promulgate necessary or desirable rules. *See* Ark. Code Ann. § 17-42-203(a). This rule implements Act 746 of 2021, sponsored by Representative Clint Penzo, which authorized occupational or professional licensure for certain individuals holding federal work permits. Act 746 provided that all occupational or professional licensing entities shall promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

e. **SUBJECT:** Rule 13.1 – Registration, Renewal, and Fees

DESCRIPTION: The Arkansas Real Estate Commission is amending Rule 13.1 of its rules. The amended rule will establish the registration and

renewal fees, as well as the bond requirement amounts for time-share interest transfer services providers, as specified in Act 733 of 2021.

PUBLIC COMMENT: A public hearing was held on April 11, 2022. The public comment period expired on April 11, 2022. The agency received no comments.

The proposed effective date is July 1, 2022.

FINANCIAL IMPACT: The agency indicated that the amended rule has a financial impact which is unknown, but that it expects a very minor impact to agency revenue.

LEGAL AUTHORIZATION: The Arkansas Real Estate Commission has authority to set fees, as well as adopt, amend, and repeal rules pursuant to the Arkansas Time-Share Act. *See* Ark. Code Ann. § 18-14-201(a). The rule implements Act 733 of 2021, sponsored by Representative Clint Penzo, which amended the Arkansas Time-Share Act. Pursuant to Act 733, a time-share interest transfer service provider shall furnish to the commission evidence of a bond in the amount determined by the commission not to exceed twenty-five thousand dollars (\$25,000) placed with a surety company, and pay a filing fee not to exceed one hundred fifty dollars (\$150) for registration and renewal. *See* Ark. Code Ann. § 18-14-202(j).

19. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, STATE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS** (Miles Morgan, Kelli Black)

a. **SUBJECT:** Rules of the State Board of Registration for Professional Geologists

DESCRIPTION: The Arkansas State Board of Registration for Professional Geologists is proposing revisions to its administrative rules. The board is striking the reference to the term “regulation” pursuant to Act 315 of 2019. The board is adding language to deal with military spouse licensure and criminal background checks pursuant to Acts 820 and 990 of 2019 respectively. The language for the latter two will also comply with Acts 135 and 746 of 2021 respectively. It is also adding sections for a fee waiver for certain applicants with financial hardships (Act 725 of 2021) and language for temporary permits for reciprocal licensure applicants (Act 1011 of 2019).

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2022. The board indicated that it received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

QUESTION: In section 7.2 of the rules, a late renewal penalty “up to a maximum penalty... of \$500” is added.

(a) Could you please provide the statutory authority for this?

(b) What is the basis of the \$500 amount as the maximum?

RESPONSE: [A revised markup was submitted deleting the language.]

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the amended rules have a financial impact, specifically, a positive financial impact for applicants eligible for fee waivers under Act 725 of 2021. However, the board was unable to forecast exact values due to lack of statistical information.

LEGAL AUTHORIZATION: The Arkansas State Board of Registration for Professional Geologists has authority to adopt, modify, repeal, promulgate, and enforce rules reasonably necessary to: implement or effectuate its powers and duties, regulate proceedings before the board, and define terms which are not defined in Title 17, Chapter 32 of the Arkansas Code concerning geologists. *See Ark. Code Ann. § 17-32-204(1).* The proposed rules implement Acts 135, 725, and 745 of 2021:

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses. *See Ark. Code Ann. § 17-4-105*, as created by Act 135 of 2021.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The Act required licensing entities to promulgate rules as necessary for the Act’s implementation. *See Ark. Code Ann. § 17-5-105(2).*

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Act 746 provided that all occupational or

professional licensing entities shall promulgate rules necessary to implement the Act. *See* Act 746, § 2(a).

20. DEPARTMENT OF PARKS, HERITAGE, AND TOURISM, DIVISION OF ARKANSAS HERITAGE (Leslie Fiskén)

a. SUBJECT: Arkansas Cultural Institutions Trust Fund Act Rules

DESCRIPTION: The Department of Parks, Heritage, and Tourism, Division of Arkansas Heritage is promulgating rules implementing Act 777 of 2021, the Arkansas Cultural Institutions Trust Fund Act. The purpose of these rules is to create an application process for the administration of a grant program for the Arkansas Cultural Institutions Trust Fund, and to otherwise effectuate the purposes of Act 777 of 2021. The rule includes items such as who is eligible to apply for the grant, how applications are evaluated, documentation required by the applicant, and the time line for application and decision. This rule is needed to establish a grant program for administration and distribution of funds of the Arkansas Cultural Institutions Trust Fund Act.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on April 6, 2022. The agency received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: Act 777 of 2021, which was sponsored by Senator Jonathan Dismang, established the Arkansas Cultural Institutions Trust Fund Act. Pursuant to the Act, the Division of Arkansas Heritage shall promulgate rules to implement the Act that shall include criteria for the distribution of grant funds, including without limitation the following factors:

- (1) Estimated economic and tourism impact of the project;
- (2) Availability of other project funding sources; and
- (3) Overall project cost.

See Ark. Code Ann. § 13-8-303, *as created by* Act 777 of 2021.

21. **DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS
STATE POLICE** (Joan Shipley, items a-b; Major Lindsey Williams, Captain
Mike Moyer, items a-c)

a. **SUBJECT:** Rules for Licensing and Regulation of Private
Investigators, Private Security Agencies, Alarm Systems Companies,
Polygraph Examiners, and Voice Stress Analysis Examiners

DESCRIPTION: The Department of Public Safety, Division of Arkansas
State Police is proposing the following changes to its rules concerning
licensure of the above-mentioned individuals:

Rule 2.17 regarding the expedited licensure process for certain military-
affiliated applicants is modified in accordance with Act 135 of 2021.

Rule 2.18 regarding initial licensing fee waivers for certain individuals is
promulgated in accordance with Act 725 of 2021.

PUBLIC COMMENT: Because this rule recommends an expedited
process for military personnel to attain occupational licensure, this rule
underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by
Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting
of April 20, 2022. A public hearing was not held in this matter. The
public comment period expired on February 22, 2022. The agency
received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked
the following questions and received the following responses thereto:

1. The Markup does not indicate which rule is being amended. Is it the
Rules for Licensing and Regulations of Private Investigators, Private
Security Agencies, Alarm Systems Companies, Polygraph Examiners, and
Voice Stress Analysis Examiners? **RESPONSE:** Yes, it is the Rules for
Licensing and Regulations of Private Investigators, Private Security
Agencies, Alarm System Companies, Polygraph Examiners, and Voice
Stress Analysis Examiners.

2. Rule 9.0(b)(v) and Rule 9.1(b)(v) referenced Electrical Academy –
Level 1. What is this (Who is it offered by; How often; How long does it
take to complete)? **RESPONSE:** The Electrical Academy is another
course, as the ones listed in Rule 9.0(b)(i) – (iv), that must be completed
for the requirements of the Alarm Technician or Alarm Agent. Major
Lindsey Williams requested this be added to give another choice for the
applicant.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed amendments do not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Division of Arkansas State Police has the authority to promulgate rules relating to the granting, denial, suspension or revocation of any license, credential or commission issued under Chapter 40 of the Arkansas Code, concerning private investigators and private security agencies. *See Ark. Code Ann. § 17-40-207(a)(5).* In addition, the Director may also promulgate rules to permit efficient administration of Title 17, Chapter 39, Subchapter 2 of the Arkansas Code concerning licensure of polygraph examiners and voice stress analysis examiners. *See Ark. Code Ann. § 17-39-215.* The proposed rules implement Acts 135, 725, and 746 of 2021.

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses. *See Ark. Code Ann. § 17-4-105*, as created by Act 135 of 2021. Pursuant to Ark. Code Ann. § 17-4-106, agencies may also submit proposed rules recommending an expedited process for the attainment of occupational licensure, which are subject to legislative review under Ark. Code Ann. § 17-4-109. *See Ark. Code Ann. §§ 17-4-106, 17-4-109, and 17-4-110.*

Act 746 of 2021, which was sponsored by Representative Clint Penzo, authorized occupational or professional licensure for certain individuals holding federal work permits. Act 746 provided that all occupational or professional licensing entities shall promulgate rules necessary to implement the Act. *See Act 746, § 2(a).*

b. SUBJECT: Used Motor Vehicle Dealer Licensing Rules

DESCRIPTION: The Department of Public Safety, Division of Arkansas State Police is proposing the following changes to its rules concerning used motor vehicle dealer licensing:

Rule 2.14 regarding initial licensing fee waivers for certain individuals is promulgated in accordance with Act 725 of 2021.

Rule 5.4 regarding the expedited licensure process for certain military-affiliated applicants is modified in accordance with Act 135 of 2021.

PUBLIC COMMENT: Because this rule recommends an expedited process for military personnel to attain occupational licensure, this rule

underwent review pursuant to Ark. Code Ann. § 17-4-109, as amended by Act 135 of 2021, by the Administrative Rules Subcommittee at its meeting of April 20, 2022. A public hearing was not held in this matter. The public comment period expired on February 22, 2022. The agency received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following question and received the following answer thereto:

In Question 1 of the Financial Impact Statement, you indicated that the proposed rules have a financial impact, but you do not disclose an impact anywhere else in the Financial Impact Statement. Is there a financial impact? If so, could you please explain the financial impact?

RESPONSE: We don't anticipate the financial impact to be significant, and not having kept statistics for the number of persons who apply for licenses that will fall under the exempt categories, there really isn't a way to predict how much of an impact, if any. We anticipate that it will certainly be less than \$25,000.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency estimates that the amended rule has a financial impact less than \$25,000, stating that it has not kept statistics for license applicants who may qualify for a fee waiver.

LEGAL AUTHORIZATION: The Department of Arkansas State Police may promulgate rules that are necessary to implement, enforce, and administer the Used Motor Vehicle Buyers Protection subchapter of the Arkansas Motor Vehicle Commission Act. *See* Ark. Code Ann. § 23-112-604(a). The proposed rules implement Acts 135 and 725 of 2021.

Act 135 of 2021, which was sponsored by Senator Ricky Hill, established the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, and modified the automatic occupational licensure requirements for uniformed service members, returning uniformed service veterans, and their spouses. *See* Ark. Code Ann. § 17-4-105, as created by Act 135 of 2021. Pursuant to Ark. Code Ann. § 17-4-106, agencies may also submit proposed rules recommending an expedited process for the attainment of occupational licensure, which are subject to legislative review under Ark. Code Ann. § 17-4-109. *See* Ark. Code Ann. §§ 17-4-106, 17-4-109, and 17-4-110.

Act 725 of 2021, which was sponsored by Senator Ben Gilmore, created the Workforce Expansion Act of 2021 and required waiver of initial occupational and professional licensure fees for certain individuals. The

Act required licensing entities to promulgate rules as necessary for the Act's implementation. *See* Ark. Code Ann. § 17-5-105(2).

c. **SUBJECT: 2021 Arkansas Fire Prevention Code**

DESCRIPTION: The Department of Public Safety, Division of Arkansas State Police is promulgating rules to amend the Arkansas Fire Code. The 2012 Arkansas Fire Prevention Code is revised and updated to include provisions found in the 2021 editions of the International Fire Code, International Building Code, and International Residential Code. The Arkansas Fire Prevention Code is made up of three volumes. Volume I, commonly known as the "Fire Code," is based on the International Fire Code. Volume II, frequently referred to as the "Building Code," is based on the International Building Code. Volume III, commonly called the "Residential Code," is based on the International Residential Code. All three volumes contain Arkansas amendments. The current Arkansas Fire Prevention Code is the 2012 Edition, based on the 2012 editions of the International Fire Code, International Building Code, and International Residential Code. The International Codes were amended and adopted, effective January 1, 2014, by the Arkansas State Police. The Arkansas Fire Prevention Code applies statewide and is the fire and building code for all jurisdictions within Arkansas.

While the International Codes are revised every three years, it is not practical for Arkansas to revise our code that often. In recent years, Arkansas has revised the Arkansas Fire Prevention Code every six years. Due to a number of factors, we are actually three years past the desired revision point. This delay actually has some benefits to Arkansas because the changes to several provisions in the 2021 International Codes are beneficial to our State. Several modifications to various provisions in the International Codes are being proposed to make them better suited to address fire and safety issues in Arkansas.

Key changes proposed in the rules include:

- The threshold for requiring automatic fire sprinkler systems in self-service storage units has been modified. Currently, self-service storage units without automatic fire sprinkler systems are limited to 2,500 square feet if they contain upholstered furniture or mattresses. The proposed rule will allow self-service storage units to be up to 12,000 square feet if they are one story and accessed directly from the exterior. The proposed rule will also allow self-service storage units with interior access to be as large as 5,000 square feet without an automatic fire sprinkler system.
- The current requirement for a fire hydrant to be located within 100 feet of the fire department connection (FDC) for an automatic fire sprinkler system is being deleted.

- The proposed rule eliminates the automatic fire sprinkler system requirement in R-2 Live/work units and R-3 Lodging houses with five or fewer guestrooms.
- The proposed rule will require installation of an automatic fire sprinkler system in existing Assembly Group A-2 Occupancies where alcoholic beverages are consumed and the occupant load is 300 or more. The effective date of this provision will be January 1, 2027.
- A sixth exception was added to the “Scope” of the Earthquake Loads section. The added exception recognizes Ark. Code Ann. § 12-80-104(a)(2). This statute allows for alternate seismic design standards in certain situations.
- The vast majority of changes proposed involve simple changes to a term or phrase and have no impact on the intent of the Code.
EXAMPLE: Replacing the term “International Building Code” with “Arkansas Fire Prevention Code, Volume II.”

PUBLIC COMMENT: A public hearing was held on March 31, 2021. The public comment period expired on April 6, 2022. The agency provided the following summary of comments it received from Mr. Brian Gerdwagen and its responses thereto:

General Comment: Childcare is not a defined term in the Fire or Building Code. This can lead to misapplications of rules meant for Day Care into a K-12 setting. There is an entire Appendix O for childcare facilities, but no direction where it should be or should not be used. **RESPONSE:** While the term “Child care” is not defined in the International Fire Code, the International Building Code, or the Arkansas Fire Prevention Code, neither is the term “Day Care.” “Day care” is a term used in the description of both Educational Occupancies and Institutional Group I-4 Occupancies. The term “Childcare” will be replaced with the term “Day care.”

Volume I, 907.1.2 – As-Built drawings should never be submitted for review. Shop Drawings should be submitted prior to installation, but As-Built drawings are a record of the installation and while pedantic, it is an important distinction to make sure that drawings are received and reviewed prior to installation. **RESPONSE:** 907.1.2 is not allowing “As-Built” drawings to be submitted in lieu of “Shop Drawings.” The provision actually requires “Shop Drawings” to be submitted for review and approval. The proposed Arkansas language change allows an authority having jurisdiction to see if there are differences between the “Shop Drawings” and what was actually installed (As-Built Drawings). The provision further provides that the AHJ will approve the “As-Built” drawings. Since not all AHJs utilize the “As-Built” drawings, we will modify the proposed Arkansas language to read as follows: “Final as-built

drawings shall be submitted for review as required by the authority having jurisdiction.”

Volume I, 907.1.2 (11(h), 11(k), and (12)) – Correct the spelling of fire alarm device to “device.” It is currently spelled as “devise.”

RESPONSE: The correction will be made.

Volume I, 907.2.3.1 – This comment will refer to the need for the definition of Childcare. This section is under the group E section and would not apply to Pre-K, but it seems that now all group E (K-12) with 30 or more students would require these detectors unless there is a definition of Child Care. This should be duplicated under I-4 if it is to protect Pre-K and remain here if applicable to Kindergarten.

RESPONSE: This provision was intended to apply to day care facilities not required by other provisions to have actual fire alarm systems. The term “Child care” will be replaced with the term “Day care.”

Volume I, 913.6 – These items will change depending on whether the fire pump is electric or diesel. Diesel fire pumps do not have phase loss or phase reversal, but diesel pumps do have overspeed and other conditions to be monitored. This section might be better if it references NFPA 20 12.4.2 for diesel pumps and 10.4.7 for electric drive pumps, or just reference NFPA 20, or add the specific conditions for diesel pumps with a note that indicates “as appropriate for the type of pump supervised. Some of these conditions are also “Trouble” conditions, not “Supervisory” conditions and may lead to confusion. **RESPONSE:** The language, “as appropriate for the type of pump supervised” will be added.

Volume I, 2301.1 – Section needs to be rewritten. Currently, without the strikethroughs, it reads:

2301.1 Scope. Automotive motor fuel-dispensing facilities, marine motor fuel-dispensing facilities, fleet vehicle motor fuel-dispensing facilities, aircraft motor-vehicle fuel-dispensing facilities and repair garages shall be in accordance with this chapter and the International Mechanical Code. Arkansas Fire Prevention Code, Volume II, Arkansas Gas Code, Such operations facilities shall include both those that are open to the public and private operations.

IMC should be Arkansas Mechanical code, and the comma agreements need to be fixed to read:

2301.1 Scope. Automotive motor fuel-dispensing facilities, marine motor fuel-dispensing facilities, fleet vehicle motor fuel-dispensing facilities, aircraft motor-vehicle fuel-dispensing facilities and repair garages shall be in

accordance with this chapter and the Arkansas Mechanical Code, Arkansas Fire Prevention Code, Volume II, and Arkansas Gas Code. Such operations facilities shall include both those that are open to the public and private operations.

RESPONSE: The grammar issue involving the comma and the “and” will be corrected. The term “International Mechanical Code” will not be changed. The Arkansas Department of Labor and Licensing has decided to refer to the mechanical code for Arkansas as “The International Mechanical Code.”

Volume I, 2306.2.1.1 – This elimination does not increase the level of environmental protection and its inclusion does not put an undue burden on those that operate these facilities. A more conscientious approach for the “Natural State” would be to change the “daily” requirement to a “weekly” requirement. **RESPONSE:** This provision has been deleted from the last several editions of the Arkansas Fire Prevention Code. Underground tanks are primarily regulated by the Department of Energy and Environment, Division of Environmental Quality (formerly the Department of Environmental Quality). Inventory Control is no longer recognized as an acceptable or approved form of leak detection. Therefore, Section 2306.2.1.1 will remain deleted.

Volume I, 2306.2.3(2) – The first strikethrough allows all of the rules regarding indoor storage of flammable and combustible liquids to be ignored. If the argument is that it is redundant because the section heading is “Outdoor Storage Tanks,” what is the harm in leaving it in? **RESPONSE:** The strikethrough does not impact “indoor” storage. The first sentence of item #1 states in part, “Above-ground tanks used for outdoor, above grade storage.” The proposed language has been in the Arkansas Fire Prevention Code for at least the last four editions (dating back to at least the 1999 Arkansas Fire Prevention Code). No issues have resulted from this language, therefore, the language will remain as proposed.

Volume I, 2306.2.3(2) – The second set of strikethrough and rewrite allows the same conditions as the exception. This seems redundant and should revert to the model code text. **RESPONSE:** The proposed language has been in the Arkansas Fire Prevention Code for at least the last four editions (dating back to at least the 1999 Arkansas Fire Prevention Code). No issues have resulted from this language, therefore, the language will remain as proposed.

Volume I, 5704.2.12.2 – This strikethrough and removal of having the fire code official makes no sense. There is no safety or construction expediency gained. **RESPONSE:** The language, “in the presence of the

fire code official,” was first deleted from the 2012 edition of the Arkansas Fire Prevention Code. Underground tanks are primarily regulated by the Department of Energy and Environment, Division of Environmental Quality (formerly the Department of Environmental Quality). DEQ has measures in place (both Federal and State laws and Rules) to ensure underground tanks and piping are tested and approved. DEQ is the more appropriate agency to address this matter. The proposed amendment will remain as written.

Volume II, 907.1.2 – As-Built drawings should never be submitted for review. Shop Drawings should be submitted prior to installation, but As-Built drawings are a record of the installation and while pedantic, it is an important distinction to make sure that drawings are received and reviewed prior to installation. **RESPONSE:** 907.1.2 is not allowing “As-Built” drawings to be submitted in lieu of “Shop Drawings.” The provision actually requires “Shop Drawings” to be submitted for review and approval. The proposed Arkansas language change allows an authority having jurisdiction to see if there are differences between the “Shop Drawings” and what was actually installed (As-Built Drawings). The provision further provides that the AHJ will approve the “As-Built” drawings. Since not all AHJs utilize the “As-Built” drawings, we will modify the proposed Arkansas language to read as follows: “Final as-built drawings shall be submitted for review as required by the authority having jurisdiction.”

Volume II, 907.1.11 – This section mentions one and two-family dwellings, but this Volume does not apply. Remove the sections that do not apply and put the applicable language in Volume III. **RESPONSE:** It is correct that one and two-family dwellings are not regulated by Volume II of the Arkansas Fire Prevention Code. The 2012 Arkansas Fire Prevention Code, Volume II, contains the same language that is being proposed for the 2021 Arkansas Fire Prevention Code. There have been no issues resulting from this language being in Volume II of the 2012 Arkansas Fire Prevention Code. The language does not impose additional requirements and actually makes smoke detector requirements more visible. The concern/comment is appreciated but the proposed language will remain.

Volume II, 913.6 – These items will change depending on whether the fire pump is electric or diesel. Diesel fire pumps do not have phase loss or phase reversal, but diesel pumps do have overspeed and other conditions to be monitored. This section might be better if it references NFPA 20 12.4.2 for diesel pumps and 10.4.7 for electric drive pumps, or just reference NFPA 20, or add the specific conditions for diesel pumps with a note that indicates “as appropriate for the type of pump supervised.” Some of these conditions are also “Trouble” conditions, not “Supervisory”

conditions. **RESPONSE:** The language, “as appropriate for the type of pump supervised” will be added.

Volume III – I do not agree with removing the requirement for residential fire sprinklers. There is not any evidence to support revenue loss for homebuilders and an overwhelming amount of evidence to show that home fire sprinklers save lives. With the tax incentives and skyrocketing price of wooden construction materials, it is pure stubbornness that fuels this discourse. While I have nothing to gain professionally from the inclusion or exclusion of residential fire sprinklers, I find it antithetical and embarrassing for a group with so many Fire Marshals and Fire Safety Professionals to release this document giving in to the business lobby at the expense of those citizens we made it our job to protect. If we are not going to require residential fire sprinklers, we should at least adopt a strategy that other states have done and require a new homebuilder to provide the cost and an option for sprinklers along with an informational packet prepared by the State Fire Marshal’s office extolling the virtues of the system. **RESPONSE:** The points made in the comment are duly noted and recognized as valid. All things considered, the State Fire Marshal’s Office has determined that it is not the appropriate time to push for a mandatory sprinkler requirement for new one and two family dwellings.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following answers thereto:

1. Do the rules submitted for promulgation adopt the International Residential Code, the International Building Code, and the International Fire Code in their entirety? In the alternative, are only portions of each of these adopted? **RESPONSE:** I would say that they are adopted in their entirety, subject to the changes noted in the “Mark-Up” version of the Rule we submitted to BLR.

2. Does the markup include all of the Arkansas Fire Code or only the portions being amended? **RESPONSE:** Only the portions being amended. As we have done with past revisions, we provided a copy of the International Fire Code, the International Building Code, and the International Residential Code to BLR when we submitted the “Mark-Up.”

3. Are any parts of the Arkansas Fire Code being changed pursuant to Acts of the 2021 legislative session? If so, please identify the portions and the corresponding acts. **RESPONSE:** No proposed changes are related to Acts from the 2021 legislative session.

4. What do the letters in brackets at the beginning of some sections, like [A], [BG], [M] mean? **RESPONSE:** A bracketed letter designation indicates what code development committee (at the International Code Council level) proposed a change or provision. For example, [BE] indicates the provision was considered by the International Building Code Egress Code Development Committee. [A]=Administrative Code Development Committee, [BE]=IBC-Egress Code Development Committee, [BF]=IBC Fire Safety Code Development Committee, [BG]=IBC-General Code Development Committee, [BS]=IBC-Structural Code Development Committee, [EB]=International Existing Building Code Development Committee, [FG]=International Fuel Gas Code Development Committee, [M]=International Mechanical Code Development Committee, [P]= International Plumbing Code Development Committee, [E]=International Energy Conservation Code Development Committee, [F]=International Fire Code Development Committee, and [RB]=IRC-Building Code Development Committee.

5. Page 5, paragraph 1 – Should there be a strikethrough on 2012 in the last line of the first paragraph? **RESPONSE:** Yes.

6. Page 5, paragraph 2 – At the end of paragraph 2, the rule provides, “These rules shall be effective TBD.” Could you please provide a revised markup with the proposed effective date included? **RESPONSE:** Yes.

7. Page 7-8 – It appears that this Memorandum of Understanding references the 2021 edition and contains new personnel for the Departments that are party to it.

(a) Is this a new MOU or a revision? **RESPONSE:** With the exception of some parties signing the MOU, this is the same MOU that is found in the 2012 Arkansas Fire Prevention Code. Technically, I suppose this is a “new” MOU since different individuals signed the one that will appear in the 2021 Arkansas Fire Prevention Code.

(b) Please provide a revised markup indicating accordingly.

RESPONSE: I will provide a new MOU with the updated signatures.

8. Page 9, 104.10.3 – The rule states that “*When acceptable to the building official, the most current edition of the ICC Performance Code for Buildings and Facilities or the SFPE Engineering Guide to Performance Based Fire Protection may be followed.*”

(a) Could you please provide some context for the Performance Based Options? **RESPONSE:** Many times projects encounter practical difficulties with respect to strict compliance with codes (Arkansas Fire Prevention Code). This provision provides two options for addressing those difficulties. Both publications consider “outcomes” as opposed to “prescriptive rules.” In other words, Performance requirements rather than prescriptive requirements are considered. They both allow broader

options for meeting the intent of the International Codes through the use of new design methods. Both of these publications allow various solutions to address safety concerns as opposed to a single solution.

(b) What are the other codes referenced? RESPONSE: The ICC Performance Code for Buildings and Facilities is published by the International Code Council and is one of at least two widely recognized publications for dealing with “Performance Based Options.” The SFPE Engineering Guide to Performance Based Fire Protection is from the “Society of Fire Protection Engineers” and is a second widely recognized publication for dealing with “Performance Based Options.”

(c) Are they any of the three that were provided in the promulgation packet? RESPONSE: No.

(d) Who is the building official referenced? RESPONSE: In most cases, it will be the local (usually municipal) building official. In cases where there is not a local building official, it will be the State Fire Marshal.

9. Page 12, 201.3 – Should there be a comma after “International Mechanical Code?” RESPONSE: Yes.

10. Page 21, 5704.2.12.2 – The rule provides that “the system shall not be covered until it has been *approved*.” However, it removed the requirement of testing in front of the fire code official. Who must approve the system before it is covered? RESPONSE: Underground tanks are primarily regulated by the Department of Energy and Environment, Division of Environmental Quality. DEQ has measures in place (both Federal and State laws and Rules) to ensure underground tanks and piping are tested and approved. DEQ is the more appropriate agency to address this matter and grant approvals.

11. Page 22, Chapter 61 – The rule provides text stating, “Delete this chapter its entirety. Refer instead to the Arkansas Liquefied Petroleum Gas Code.”

(a) Is this section being replaced with anything? RESPONSE: No.

(b) Will the section numbering following this sections need to be revised? RESPONSE: No.

(c) Will the text referenced in quotation marks above appear in the Code? RESPONSE: Yes.

12. Page 22, Appendix A – Similar to above, the text next to Appendix A states “Delete in its entirety.” Will the other Appendices following A need to be assigned new letters? RESPONSE: No. The answer given for question 11(c) will apply.

13. Concerning the entire markup, there are sections included (for example p. 24) where there are no changes, but the section is provided. Am I understanding it correctly that those sections were in the

last version of the fire code, but are not being changed? **RESPONSE:** Page 24 is the second page of Appendix O. The 2012 Arkansas Fire Prevention Code contained information similar to what is in Appendix O but it was identified as Appendix K. Appendix O is a complete revision of Appendix L and contains some new information. Appendix O starts on page 23 and ends on page 58. Actually, all of Appendix O should be underlined.

14. Page 62 – Should there be a strikethrough on 2012 in the last line of the second paragraph under the *Definitions* section? **RESPONSE:** Yes.

15. Page 62 – At the end of paragraph 2 under the *Definitions* section, the rule provides, “These rules shall be effective TBD.” Could you please provide a revised markup with the proposed effective date included? **RESPONSE:** Yes.

16. Page 64 – Will the words “Deleted in its entirety” appear in Fire Code Section 101.4.4? If not, could you please provide a revised markup removing the words in quotations? **RESPONSE:** No. We will provide a revised markup. Also, sections following 101.4.4 will be renumbered when the Arkansas Fire Prevention Code is actually published by the International Code Council.

17. Pages 65-66 – It appears that this Memorandum of Understanding references the 2021 edition and contains new personnel for the Departments that are party to it.

(a) Is this a new MOU or a revision? **RESPONSE:** Please see answer to question number 7.

(b) Please provide a revised markup indicating accordingly.

RESPONSE: Please see answer to question number 7.

18. Page 78 – Chapter 27 and 29 are being deleted in their entirety.

(a) Will these be replaced with anything? **RESPONSE:** No.

(b) Will these deletions necessitate renumbering of the remaining chapters? **RESPONSE:** No. Pages will be provided identifying the deleted chapters and noting that they are deleted.

19. Pages 87-91 – Concerning all the chapters being deleted,

(a) Will these be replaced with anything? **RESPONSE:** No.

(b) Will these deletions necessitate renumbering of the remaining chapters? **RESPONSE:** No. Pages will be provided identifying the deleted chapters and noting that they are deleted.

20. The markup provided was difficult to understand because it appears that only the sections being amended and certain other sections were provided. Depending on the length, could you please provide a markup

including the entirety of the Arkansas Fire Prevention Code, that shows changes, so that context is provided for the changes? **RESPONSE:** That is not practical. BLR has approved us (in the past and this time) to just submit the changes along with original copies of the International Fire Code, International Building Code, and International Residential Code. Providing unchanged portions would result in excess of approximately 1,500 pages.

21. Concerning local and municipal jurisdictions, may they adopt fire prevention codes that are either more restrictive or less restrictive than the Arkansas Fire Prevention Code? **RESPONSE:** No. Local jurisdictions shall only adopt and enforce the provisions found in the 2021 Arkansas Fire Prevention Code. They are allowed to adopt more stringent individual provisions, after receiving approval from the State Fire Marshal's Office. 101.1.1 on page 6 addresses this matter.

22. During the public hearing, it was mentioned that the 2021 Arkansas Fire Prevention Code will likely be published at the end of 2022, and become effective on January 1, 2023. Is that still the anticipated timeline? **RESPONSE:** Yes. This is based on anticipated review by the Administrative Rules Sub-Committee on May 18, 2022, along with estimated publishing time frames provided by the International Code Council.

The proposed effective date is January 1, 2023.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. The agency stated that cost to the state, individuals, entities, and businesses will vary depending on the type of construction, type of occupancy, and other features incorporated into building design in the state. In addition, there will also be a cost to state, county, and municipal governments to purchase new editions of the Arkansas Fire Prevention Code. However, the agency provided that the cost has not yet been determined and will vary based on the number of editions purchased by the entity.

LEGAL AUTHORIZATION: The Director of the Division of Arkansas State Police has authority to adopt reasonable rules for the effective administration of Title 12, Chapter 13, Subchapter 1 of the Arkansas Code concerning the Fire Prevention Act to accomplish its intents and purposes, and to safeguard the public from fire hazards. *See Ark. Code Ann. § 12-13-107(b).* In addition, the State Fire Marshal Enforcement Section has the responsibility to periodically revise and update the Arkansas Fire Prevention Code. *See Ark. Code Ann. § 12-13-105(5).*

22. **TREASURER OF STATE, ARKANSAS FINANCIAL EDUCATION COMMISSION (T.J. Fowler, Fran Jansen)**

a. **SUBJECT: Rules of the Arkansas Financial Education Commission**

DESCRIPTION:

Background

Pursuant to Act 1025 of the 93rd General Assembly, the Arkansas Financial Education Commission was created and formed to be administered by and under the direction of the Arkansas Treasurer of State through the adoption of rules. The commission has authority to adopt such rules as it deems necessary and proper to administer its mission and programs. The commission voted to adopt the proposed rules on January 11, 2022.

Key Points

The proposed rule:

- Guides the commission in its mission and duties
- Gives authority to the commission to establish non-profit status
- Establishes elections for its board of directors
- Sets a location and time for its meetings

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on April 11, 2022. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. Act 1025 states that the board may request information “from any state agency or political subdivision of the state that receives state funds” to enable the commission to perform its duties. Section 6(b) of the proposed rules omits the phrase “that receives state funds.” Why was this language omitted from the proposed rules? **RESPONSE:** This is a drafting error and will be corrected. It will not be omitted in the future.

2. The Act uses the phrase “financial literacy education” while the proposed rules use the phrase “financial education.” Is there a specific reason for the difference? **RESPONSE:** Since the legislation was drafted, we have learned that the colloquial or everyday language preference is the word “education.” That is the only reason we changed it from “literacy.”

3. Section 7(a)(1) of the proposed rules allows the commission to appoint an independent director. Act 1025 allows the commission to appoint an independent director “if necessary.” Why was this phrase omitted from the proposed rules? **RESPONSE:** This is also a drafting error and will be corrected.

4. Section 8(a) of the proposed rules states, “Members shall receive reimbursement for travel and personal expenses made on behalf of the board.” Is this provision only intended to apply “if funds are appropriated for expense reimbursement,” as stated in Act 1025? **RESPONSE:** Yes.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: This rule implements Act 1025 of 2021. The Act, sponsored by Senator Missy Irvin, established the Arkansas Financial Education Commission. “The board of directors of the Arkansas Financial Education Commission shall adopt rules to implement and administer” Ark. Code Ann. §§ 6-1-701 to -706, regarding the Arkansas Financial Education Commission. Act 1025, *codified at* Ark. Code Ann. § 6-1-706.

E. Proposed Rules Recommending Expedited Process for Occupational Licensure Pursuant to Ark. Code Ann. § 17-4-109, as Amended by Act 135 of 2021.

1. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF LABOR, STATE ATHLETIC COMMISSION (Miles Morgan)

a. Administrative Rules Pertaining to the State Athletic Commission

F. Monthly Written Agency Updates Pursuant to Act 595 of 2021.

G. Adjournment.