

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

**Room A, MAC
Little Rock, Arkansas**

**Monday, October 17, 2016
9:00 a.m.**

Sen. David J. Sanders, Co- Chair
Sen. Bruce Maloch, Vice-Chair
Sen. David Johnson
Sen. Jonathan Dismang
Sen. Ronald Caldwell
Sen. Jane English
Sen. Bobby J. Pierce
Sen. Jim Hendren
Sen. Bill Sample, ex-officio
Sen. Terry Rice, ex-officio
Sen. Eddie Joe Williams, Alternate
Sen. Eddie Cheatham, Alternate

Rep. Andy Davis, Co-Chair
Rep. Lane Jean, Vice-Chair
Rep. Ken Henderson
Rep. Jeff Wardlaw
Rep. Nate Bell
Rep. Chris Richey
Rep. Joe Jett
Rep. Lanny Fite
Rep. David L. Branscum, ex-officio
Rep. Mark Lowery, ex-officio
Rep. John T. Vines, Alternate

Rep. Mary P. “Prissy” Hickerson, Alternate
Rep. Charles Armstrong, Alternate
Rep. John Baine, Alternate
Rep. David Hillman, Alternate
Rep. Deborah Ferguson, Alternate
Rep. Rebecca Petty, Alternate
Rep. Clarke Tucker, Alternate
Rep. Tim Lemons, Alternate
Rep. Bob Johnson, Alternate
Rep. Dave Wallace, Alternate

A. Call to Order.

B. Report of the Executive Committee Concerning Emergency Rules.

C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.

**1. DEPARTMENT OF CAREER EDUCATION, ARKANSAS
REHABILITATIVE SERVICES (Sha Burke-Stephens and Alan McClain)**

a. SUBJECT: Three-Year State Plan for Independent Living

DESCRIPTION: This plan sets the parameters of Independent Living Services for individuals with disabilities, and directs the collaboration between Department of Career Education – Arkansas Rehabilitation Services Division, Department of Human Services – Division of State Services for the Blind, Arkansas Independent Living Council, and four independent living centers in the state.

The document is based on substantial input from the Centers for Independent Living (CILs), providers, Arkansas Rehabilitation Services (ARS), Division of Services for the Blind (DSB) and persons with disabilities residing throughout the state. It is mandated that the State Plan

be signed by the chairperson of the ARSILC, the Designated State Entity (DSE) and 51% of the Centers for Independent Living (CILs) within the state.

The overall mission of the State Plan is to increase the ability of Arkansans with significant disabilities to lead productive and independent lives by improving the quality and collaborative nature of independent living (IL) services. The objective is to empower Arkansans with disabilities to live as independently with as much choice as possible.

The goals and objectives under Section 1 of the Arkansas SPIL are consistent and support the purposes stated in the Act:

“... to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society”

PUBLIC COMMENT: Public hearings were held on August 10, August 12, and August 19, in Little Rock, Fayetteville, and Hot Springs, respectively. The public comment period expired on September 4, 2016. The Department received no public comments. It did, however, discover and correct an incorrect figure that had been entered in the table for Fiscal Year 2018 for the State portion of funds; \$40,756 had been entered, but the correct figure was \$41,571.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: The cost to implement the federal rule for the current fiscal year (2016) is \$1,997,197 (\$251,979 general revenue and \$1,745,218 federal funds) and for the next fiscal year (2017) is \$2,006,055 (\$233,602 general revenue and \$1,772,453 federal funds).

LEGAL AUTHORIZATION: All authorities and responsibilities defined in the Rehabilitation Act of Arkansas (“Act”), codified at Arkansas Code Annotated §§ 20-79-201 through 20-79-216, shall be administered by the Arkansas Rehabilitation Services under the direction of the Career Education and Workforce Development Board, except those transferred to the Division of State Services for the Blind of the Department of Human Services (“DHS”) by Ark. Code Ann. §§ 25-10-201 through 25-10-209. *See* Ark. Code Ann. § 25-30-202(a). Pursuant to the Act, the appropriate division of the DHS, through the Arkansas

Rehabilitation Services, is empowered and directed to cooperate with the federal government, pursuant to agreements, in carrying out the purposes of any federal statutes pertaining to the purposes of the Act. *See Ark. Code Ann. § 20-79-207(2)*. It is also authorized to adopt such methods of administration as are found to be necessary for proper and efficient operation of the agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of federal statutes and appropriations. *See Ark. Code Ann. § 20-79-207(2)(A)*. The federal Rehabilitation Act of 1973 requires that for a state to be eligible to receive financial assistance, the state shall submit to the federal Administrator of the Administration for Community Living of the Department of Health and Human Services, and obtain approval of, a state plan developed and signed in accordance with subsection (a)(2) of the statute, containing such provisions as the Administrator may require, including, at a minimum, the provisions required by section 796c. *See 29 U.S.C.A. § 796c(a)(1)*.

2. **DEPARTMENT OF HUMAN SERVICES, AGING AND ADULT SERVICES (Craig Cloud)**

a. **SUBJECT: Section 206 – Nutrition**

DESCRIPTION: Division of Aging and Adult Services (DAAS) policy at section 206 is amended to align policy with guidance received from the Administration for Community Living. The amendments include:

1. At the discretion of the Area Agency on Aging (AAA), individuals eating meals at senior centers may carry home leftovers from their own plate as long as they provide their own containers. AAAs may require the individual to sign a liability waiver holding the food program harmless concerning food-borne pathogens once the food leaves the dining room. The food program is required to include proper food handling in their quarterly education.

2. Home-delivered meals are not to be left at the participant's door, but may be left with a designee for one day if specific arrangements have been made.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 5, 2016. The department received no comments.

The proposed effective date is November 1, 2016.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule has been promulgated so that state rules align with federal nutritional policies.

The Department of Human Services is authorized to “make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith.” Arkansas Code Annotated § 20-76-201 (12).

b. SUBJECT: Section 501 – State Older Worker Community Service Employment Plan

DESCRIPTION: Aging and Adult Services (DAAS) policy at section 501 is amended to comply with Act 295 of 2015 (A.C.A. §§ 20-80-202 through 20-80-204). This amendment removed the income standard and income methodologies from policy, but continues to require the individual to show economic need. Judgement of economic need will be left to the Area Agencies on Aging (AAA) based on criteria listed in policy (e.g., the individual’s other financial assistance, urgency, etc.).

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 5, 2016.

The proposed effective date is November 1, 2016.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The purpose of this rule is to implement the changes made by Act 295 of 2015. Arkansas Code Annotated § 20-80-204 (3) authorizes the Division of Aging and Adult Services to make, issue, and amend rules and policies necessary to effectively carry out the Older Worker Community Service Employment Act.

3. DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES (Michael Crump)

a. SUBJECT: State Plan #2016-002 and Supplemental Rebate Agreement

DESCRIPTION: The Arkansas Medicaid State Supplemental Rebate Program along with the State Supplemental Rebate Agreement (SSRA)

was approved by CMS in the State Plan Amendment (SPA 04-04) with an effective date of October 15, 2004. The State Plan Amendment indicated that any additional versions of the State Supplemental Rebate Agreement negotiated between the state and manufacturer(s) after November 16, 2004 would need to be submitted to CMS for authorization. Arkansas's State Supplemental Rebate Agreement has not changed since the initial approval which uses the state's pharmacy reimbursement methodology to calculate State Supplemental Rebate Payment by manufacturers. Due to the final Outpatient Drug Rule moving to a reimbursement model based on actual acquisition cost, Arkansas Medicaid is revising the SSRA to transition to the more standard WAC based State Supplemental Rebate Payment calculation. In addition, Arkansas Medicaid is updating the entire SSRA to include additional definitions and process consistent with other Medicaid State's SSRAs in which Magellan Medicaid Administration has standings.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on September 6, 2016. The department received no comments.

The proposed effective date is November 1, 2106.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12).

4. **DEPARTMENT OF LABOR, ELEVATOR SAFETY DIVISION** (Denise Oxley)

a. **SUBJECT:** Rule 010.05 Rules of the Elevator Safety Board

DESCRIPTION: A summary follows:

Rule 010.05-002. This rule would be amended to update contact information for the board.

Rule 010.05-006 and -007. These rules, dealing with rule-making, would be amended to comply with Act 1258 of 2015. The proposed amendments provide for approval of any proposed rule, including emergency rules, by

the Legislative Council or other legislative committee pursuant to Ark. Code Ann. § 10-3-309.

Rule 010.05-010(N). These rules, dealing with license renewal generally, would be amended to add a new subsection on reinstatement of licenses in order to comply with Act 1066 of 2015. An examination would be required if the applicant's license has been expired for more than six months. The Department of Labor's Code Enforcement Manager is charged with expediting the process for reinstatement.

Rule 010.05-010(R). These rules would repeal the rule citing the grandfather provision, as it is no longer applicable. That subsection is replaced with one dealing with active duty service members, returning military veterans, and their spouses. The purpose is to comply with Act 848 of 2015. The proposed rule deals with temporary licensure; an expedited process for full licensure; a provision to accept substantially similar military experience and training; an extension of a license for at least 180 days following return from active deployment; and partial exemption from continuing education for at least 180 extra days from return from active deployment outside the state; or at least 180 extra days dating one year from discharge for returning military veterans discharged from active duty. Spouses have the same timeframes and expedited process.

Rule 010.05-020(C). This would amend the rules to provide an effective date of March 1, 2017, and to appropriately list the history of the board's rules.

PUBLIC COMMENT: A public hearing was held on September 15, 2016, and the public comment period expired on that date. No public comments were submitted to the agency. The proposed effective date is March 1, 2017.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: Any active duty service member, veteran, or spouse wishing an extension of licensure or time to obtain CEUs will have to provide a copy of paperwork showing deployment dates or discharge date. This cost should be minimal and is the basis for the cost estimate of \$1. There is no cost to the state, county, or municipal government to implement the rule.

LEGAL AUTHORIZATION: The Elevator Safety Board is authorized to promulgate rules pursuant to Ark. Code Ann. § 20-24-106. These rules implement Act 848 of 2015 (concerning licensure, certification, or permitting of active duty service members, returning military veterans,

and spouses); Act 1066 of 2015 (concerning reduced requirements for reinstatement of licenses); and Act 1258 of 2015 (concerning approval of rules by Legislative Council).

5. **MANUFACTURED HOME COMMISSION** (Aaron Howard and Chris Boggs)

a. **SUBJECT: Certification and Licensing, Sections 300-302**

DESCRIPTION: The proposed rule change would amend the process for which applicants obtain their certification for a retailer, establishing the need to provide documented assurance the applicant is experienced and financially responsible to fully comply with the code. The rule change is intended to help ensure Arkansans are protected from entities who may be unreliable or untrustworthy.

Items concerning trustworthiness:

In accordance with the proposed rule change, it will be necessary for applicants for a new retailer certification to provide a list of all directors, officers, limited and general partners, controlling shareholders if the application is made on behalf of a corporation or partnership, or a list of all principal owners [320(A)(2)(f)]. A general employment history is to be provided for each person identified on the application, including a sworn statement these persons have not been found guilty, pleaded guilty or entered a plea of nolo contendere or suffered a judgment in a civil action in this state or any other jurisdiction for forgery, embezzlement, obtaining funds under false pretenses, extortion, conspiracy to defraud, bribery, fraud, misrepresentation of moral turpitude; or had a license, permit or certification suspended or revoked by any government agency in this state or any other jurisdiction for violation of Federal or state laws or regulations [302(A)(2)(g)].

Items concerning fiscal responsibility:

In accordance with the proposed rule change, it will be necessary for applicants for a new retailer certification to provide evidence of a net worth of at least \$100,000; and include a financial statement compiled or reviewed by an independent, third-party accounting firm, prepared within six months of the application date for each owner or partner, if the applicant is a sole proprietor or partnership, or the business, if the applicant is a corporation, LLC, or LLP [320(A)(2)(h) and (i)].

Items concerning reliability:

In accordance with the proposed rule change, it will be necessary for applicants for a new retailer certification to provide evidence of having at least two years of experience as a licensed retailer or salesperson, working

for a licensed retailer, in this state or any other jurisdiction. An exemption is allowed for applicants purchasing a retail location currently licensed by the Commission [302(A)(2)(j)].

PUBLIC COMMENT: A public hearing was held on September 16, 2016. The public comment period expired on August 31, 2016. J.D. Harper, Executive Director of the Arkansas Manufactured Housing Association, submitted comments in support of the proposed rule change. The proposed effective date is December 13, 2016.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Manufactured Home Commission is directed to promulgate rules setting the requirements for (A) licensing and certification of manufacturers of manufactured homes or modular homes in this state and manufacturers of manufactured homes or modular homes in other states selling them in this state; (B) licensing and certification of any retailer, salesperson, and others engaged in the sale of manufactured homes or modular homes for sale in this state; and (C) licensing, training, and certification of any installer engaged in the installation of manufactured homes or modular homes in this state. Ark. Code Ann. § 20-25-106(a)(2).

6. **ARKANSAS TOBACCO CONTROL BOARD** (Steve Goode and Roland Darrow)

a. **SUBJECT:** Safe Manufacture of Vapor Products, Alternative Nicotine Products, and E-Liquids and Consumer Safety

DESCRIPTION: This proposed rule sets out basic safe handling requirements when mixing or re-sizing e-liquids, vapor products, and alternative nicotine products. It also establishes Arkansas Tobacco Control's ability to obtain samples of product, test same, and if necessary, cause their removal from public sale.

PUBLIC COMMENT: A public hearing was held on February 22, 2016. The public comment period expired on March 18, 2016. The agency received no comments.

The proposed effective date is November 1, 2016.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule implements parts of Act 1235 of 2015. Section 24 of Act 1235 amended Arkansas Code Annotated § 26-57-257 and gave the Director of Arkansas Tobacco Control the specific authority to “adopt safety and hygiene rules for persons that prepare or mix e-liquid products or alternate nicotine products.”

D. Adjournment.