

DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH

SUBJECT: Rules for Declaratory Orders

DESCRIPTION:

Background

The Department of Health is tasked with adopting rules for declaratory orders under Ark. Code Ann. § 25-15-206. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

Proposed Rules

The proposed rules implement the required rules regarding declaratory orders, pursuant to Ark. Code Ann. § 25-15-206, and implement the model rules outlined in Ark. Code Ann. § 25-15-215.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on July 29, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

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

LEGAL AUTHORIZATION: "Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by it." Ark. Code Ann. § 25-15-206. The proposed rules implement model rules published by the Arkansas Attorney General. *See* Ark. Code Ann. § 25-15-215(b)(1) ("Each agency created after August 13, 2001, shall adopt, in accordance with the provisions of this subchapter, those model rules that are practicable.").

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency’s statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (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;
- (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;
- (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;
- (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
- (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.



Arkansas Department of Health

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Governor Sarah Huckabee Sanders

Renee Mallory, RN, BSN, Interim Secretary of Health

Jennifer Dillaha, MD, Director

PROPOSED RULES FOR DECLARATORY ORDERS

PURPOSE

The Arkansas Department of Health (Department) is seeking review and approval of proposed amendments to the Rules for Declaratory Orders.

BACKGROUND

The Department of Health is tasked with adopting rules for declaratory orders under Ark. Code Ann. §25-15-206. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

PROPOSED RULES

The proposed rule implements the required rules regarding declaratory orders, pursuant to Ark. Code Ann. §25-15-206, and implements the model rules outlined in Ark. Code Ann. §25-15-215.

ARKANSAS STATE BOARD OF HEALTH



RULES FOR DECLARATORY ORDERS

Promulgated Under the Authority of
Arkansas Code Annotated §§ 25-15-206 and 25-15-215

Renee Mallory, RN, BSN,
Interim Secretary of Health

Jennifer Dillaha, MD
Director and State Health Officer

Effective _____

100. AUTHORITY AND DEFINITIONS

101. PURPOSE AND AUTHORITY

- (a) The Department of Health is tasked with adopting rules for declaratory orders under Ark. Code Ann. §25-15-206, and may use model rules under §25-15-215.

102. DEFINITION

- (a) “Declaratory Order” means a manner of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.

200. DECLARATORY ORDERS

201. PURPOSE AND USE OF DECLARATORY ORDERS

- (a) A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances.
- (b) A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency.
- (c) A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner’s interests.

202. FILING A PETITION FOR DECLARATORY ORDERS

- (a) The process to obtain a declaratory order is begun by filing with Office of General Counsel, Department of Health, a petition that provides the following information:
 - (1) The name, address, telephone number, and facsimile number of the petitioner;
 - (2) The name, address, telephone number, and facsimile number of the attorney of the petitioner;
 - (3) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory order is sought;
 - (4) A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner’s particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order;
 - (5) The signature of the petitioner or petitioner’s attorney;
 - (6) The date; and
 - (7) Request for a hearing, if desired.

203. DEPARTMENT DISPOSITION

- (a) The Department may hold a hearing to consider a petition for declaratory order.
- (b) If a hearing is held, it shall be conducted in accordance with Ark. Code Ann. § 25-15-208 and § 25-15-213, and the Department’s rules for adjudicatory hearings.
- (c) The Department may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.
- (d) Within ninety (90) days of the filing of the petition, the Department will render a final order denying the petition or issuing a declaratory order.

CERTIFICATION

This will certify that the foregoing revisions to the Rules for Declaratory Orders were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the _____.

Jennifer Dillaha, MD
Secretary of Arkansas State Board of Health
Director of the Arkansas Department of Health