

DEPARTMENT OF HEALTH, HEALTH FACILITY SERVICES

SUBJECT: Rules for Perfusionists in Arkansas

DESCRIPTION: The Department of Health is updating these rules as follows:

- Eliminate the word “regulations” throughout the document as required by Act 315 of 2019;
- Add military licensing requirements and a definition of “returning military veteran” as per Act 820 of 2019;
- Add “in good standing” to reciprocity rules as per Act 1011 of 2019;
- Add criminal history background disqualifications as per Act 990 of 2019;
- Add a severability clause for continuity with other Department of Health.

PUBLIC COMMENT: The agency held a public hearing on this rule on January 15, 2020. The public comment period expired January 15, 2020. The agency indicated that it received no public comments.

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

COMMENT #1: The word “her” (as in “his or her”) is missing from § 4(C)(1)(b). **RESPONSE:** Changed.

COMMENT #2: The proposed rules require an applicant to submit evidence that he or she holds ABCP certification. The relevant Act requires that the applicant hold a “substantially similar” license in another state. How do these two things compare? Do most other states use ABCP certification? **RESPONSE:** Perfusionists operate heart-lung bypass equipment during open-heart surgeries. Board certification is a common method for states to assure that licensees are current in knowledge and practice skills.

Review of *American Board of Cardiovascular Perfusion’s Annual Report 2018:*
The following states currently require the ABCP to supply certification information for licensure: Arkansas; Connecticut; Georgia; Illinois; Louisiana; Maryland; Massachusetts; Missouri; Nebraska; Nevada; New Jersey; New York; North Carolina; Oklahoma; Pennsylvania; Tennessee; Texas; and Wisconsin.

COMMENT #3: Does the phrase “or its successor” in the first sentence of § 4(F) modify “the ABCP” or “a current certification”? I assume it modifies “the ABCP,” but I wanted to double-check as the sentence structure seems slightly odd. **RESPONSE:** Modifies “the ABCP”.

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 Board of Health has authority to promulgate rules that it deems necessary to carry out the Perfusionist Licensure Act. Ark. Code Ann. § 17-104-103. The Department of Health is authorized to issue and renew perfusionist licenses and collect licensure fees. Ark. Code Ann. § 17-104-104(4) and (5). These proposed amendments implement Acts 426, 820, 990, and 1011 of 2019.

Act 426, sponsored by Representative Bruce Cozart, created the Red Tape Reduction Expedited Temporary and Provisional Licensure Act and authorized occupational licensing entities to grant expedited temporary and provisional licensing for certain individuals. The Act required occupational licensing entities to promulgate rules adopting “the least restrictive requirements” for occupational licensure for certain individuals. *See* Act 426, § 3(b).

Act 820, sponsored by Senator Missy Irvin, amended the law concerning the occupational licensure of active duty service members, returning military veterans, and their spouses to provide for automatic licensure. The Act required occupational licensing agencies, including the Department of Health, to grant automatic occupational licensure to certain individuals. *See* Act 820, § 2(b).

Act 990, sponsored by Senator John Cooper, amended the laws regarding criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. The Act required licensing entities to promulgate rules to implement the Act. *See* Act 990, § 2.

Act 1011, sponsored by Representative Jim Dotson, amended the law concerning licensing, registration, and certification for certain professions and established a system of endorsement, recognition, and reciprocity for licensing, registration, and certification for certain professions.

SUMMARY/INDEX
Perfusionist Rules
092619

Section, page, and change	Source of specific authority with page & line or reason for change
Eliminate word "Regulations" -throughout document	Act 315 of 2019
3(I) Add definition of "returning military veteran" P 3-2	Act 820 of 2019
4 (C) Added military licensing requirements P 4-2, 3	Act 820 of 2019
4(F) Reciprocity - add "in good standing" P 4-6, 4-7	Act 1011 of 2019
4(J)(6) Add criminal history background disqualifications P 4-9	Act 990 of 2019
6 Add severability clause p. 6-1	Adding to all ADH rules for continuity

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Health Facility Services
DIVISION DIRECTOR Connie Melton, Branch Chief
CONTACT PERSON Becky Bennett, Section Chief
ADDRESS 5800 W. 10th Street, Suite 400, Little Rock, AR 72204
PHONE NO. (501) 661-2201 **FAX NO.** (501) 661-2165 **E-MAIL** rebecca.bennett@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Laura Shue, General Counsel
PRESENTER E-MAIL Laura.shue@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Rules for Perfusionists in Arkansas

2. What is the subject of the proposed rule? licensing standards for perfusionists in Arkansas

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

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

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No

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

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

In addition to striking "regulations" throughout, we defined "returning military veteran;" added requirements for reciprocal licensing; added military licensing provisions; added and clarified criminal history background provisions; and added a severability clause.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Ark. Code Ann. §§17-104-101 et seq.

7. What is the purpose of this proposed rule? Why is it necessary?

Mandated by 2019 Acts of Arkansas:
315 (strike "regulation");
426 (expedite temporary occupational licensing);
820 (military licensing);
990 (criminal history background checks for professions and occupations); and
1011 (reciprocal licensing)

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.healthy.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

01/01/2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

NONE KNOWN

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health

DIVISION Health Facility Services

PERSON COMPLETING THIS STATEMENT Becky Bennett, Section Chief

TELEPHONE NO. (501) 661-2201

FAX NO. (501) 661-2165

EMAIL: rebecca.bennett@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules for Perfusionists in Arkansas

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 an agency is proposing a more costly rule, please state the following:

- 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 more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

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

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and 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.

