

## DEPARTMENT OF HEALTH, CENTER FOR HEALTH PRACTICE

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**SUBJECT:** Rules for the Administration of Vital Records

**DESCRIPTION:** These amendments to the Rules for the Administration of Vital Records address the change in the death medical certification and registration process as required by Act 975 of 2019; the reporting of an abortion that results in a live birth as required by Act 801 of 2019; and the removal of the term “regulation” as required by Act 315 of 2019.

**PUBLIC COMMENT:** A public hearing was held on this rule on September 10, 2019. The public comment period expired on October 7, 2019. 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 does not have a financial impact.

**LEGAL AUTHORIZATION:** “The State Board of Health may adopt, amend, and repeal rules for the purpose of carrying out” the Vital Statistics Act. Ark. Code Ann. § 20-18-202. Some of these changes implement Act 975 of 2019, sponsored by Representative Mark Perry, which amended the Vital Statistics Act by amending the death certificate registration process for the signature of the medical certificate of death. *See* Ark. Code Ann. § 20-18-601(c)(1)(A), *as amended by* Act 975.

Other changes implement Act 493 of 2019, sponsored by Representative Robin Lundstrum, which created the Cherish Act and prohibited abortions after eighteen weeks’ gestation except in a medical emergency. The Act set forth certain reporting requirements for a physician who “performs or induces an abortion on an unborn human whose gestational age is greater than eighteen (18) weeks,” *see* Ark. Code Ann. § 20-16-2004(c)(1), *as created by* Act 493, and it required the Department of Health to create certain forms “[w]ithin thirty (30) days of the effective date of this subchapter[.]” Ark. Code Ann. § 20-16-2005(a), *as created by* Act 493.

Still other changes implement Act 801 of 2019, sponsored by Senator Gary Stubblefield, which amended laws concerning abortion facilities and abortion reporting and amended the born-alive infant protection laws. Specifically, if an abortion performed in a hospital results in a live birth, Act 801 requires the attending physician to report that abortion resulting in a live birth to the Department of Health. *See* Ark. Code Ann. § 20-16-604(2)(D), *as amended by* Act 801.



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

DEPARTMENT/AGENCY Arkansas Department of Health  
DIVISION Center of Health Practice  
DIVISION DIRECTOR Shirley Louie  
CONTACT PERSON Lynda Lehing  
ADDRESS 4815 W, Markham Street, Little Rock, AR 72205  
PHONE NO. 501-661-2231 FAX NO. 501-661-2544 E-MAIL Lynda.lehing@arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Laura Shue  
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 Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Rules for the Administration of Vital Records

2. What is the subject of the proposed rule? Amending induced abortion reporting & death certificate registration process.

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 regulation. \_\_\_\_\_

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."**

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

Act 493 of 2019, An Act to Create the Cherish Act; To Prohibit Abortions After Eighteen Weeks' Gestation Except in a Medical Emergency; And for Other Purposes

Act 801 of 2019, An Act To Amend Laws Concerning Abortion Facilities And Abortion Reporting; To Amend the Born-Alive Infant Protection Laws; and to Require An Addition Acknowledgement Under The Women's Right-To-Know Act

Act 975 of 2019, An Act To Amend the Death Certificate Registration Process For The Signature Of The Medical Certificate Of Death; And For Other Purposes.

Act 315 of 2019, An Act To Eliminate Unnecessary References to Regulations Throughout The Arkansas Code.

7. What is the purpose of this proposed rule? Why is it necessary? Addresses the reporting of an induced abortion resulting in a live birth required by Act 801 of 2019 and reporting of induced abortion after 18 weeks' gestation required by Act 493 of 2019. In addition, it addresses the change in the death medical certification and registration process as required by Act 975 of 2019 and cleans up language including the removal of "regulation" reference as required by Act 315 of 2019.

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: 9/10/2019

Time: 9:00 AM

Arkansas Department of Health  
4815 W. Markham St., Room L137

Place: Little Rock, AR 72205

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.)

11/1/2019

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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. Copy attached.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library 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. \_\_\_\_\_

Planned Parenthood - Against  
3729 N. Crossover Rd, #107  
Fayetteville, AR 72703  
(855) 841-7526

Planned Parenthood of Arkansas and Eastern Oklahoma, Incorporated -Against  
5921 W. 12th St, #C  
Little Rock, AR 72204  
(501) 801-0001

Little Rock Family Planning Services - Against  
4 Office Park Drive  
Little Rock, AR 72211  
501 -225-3836

Arkansas Right to Life - For  
1515 S. University Ave.  
Little Rock, AR 72204  
501-663-4237

Arkansas Hospital Association  
419 Natural Resources Dr.  
Little Rock, AR 72205  
501-224-7878



**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Health

**DIVISION** Center of Public Health Practice

**PERSON COMPLETING THIS STATEMENT** Lynda Lehing

**TELEPHONE** 501-661-2231 **FAX** 501-661-2544 **EMAIL:** Lynda.lehing@arkansas.gov

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

**SHORT TITLE OF THIS RULE** Rules for the Administration of Vital Records

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**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_





Total \_\_\_\_\_

Total \_\_\_\_\_

(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) \_\_\_\_\_  
 Total \_\_\_\_\_

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, 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**

\$ 0 \_\_\_\_\_

\$ 0 \_\_\_\_\_

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**

\$ 0 \_\_\_\_\_

\$ 0 \_\_\_\_\_

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.



**Summary of Proposed Rule  
Rules for the Administration of Vital Records**

The amendment to the Rules for the Administration of Vital Records addresses the change in the death medical certification and registration process as required by Act 975 of 2019; the reporting of an abortion that results in a live birth required by Act 801 of 2019; and the removal of the “regulation” reference as required by Act 315 of 2019. Below is a chart of the specific changes by section, page number and the supporting information for the change.

<b>Revision by Section</b>	<b>Supporting Information</b>
<b>Whole Document</b>	<b>Whole Document</b>
Eliminated the reference to regulation throughout the document. The word “regulation” was deleted or replaced with the word “rule.”	Act 315 of 2019, An Act To Eliminate Unnecessary References to Regulations Throughout The Arkansas Code
<b>Rule 1.3 Paragraph 2 (c), page 6</b>	<b>Rule 1.3 Paragraph 2 (c), page 6</b>
Be attested to be correct by a qualified funeral director or certifier who has personally accessed the record with a previously assigned user identification and complex password.	Not Applicable – grammar change only
<b>Rule 6.0, page 13</b>	<b>Rule 6.0 Death Registration, page 12</b>
(Reference: Section 14 and 25 of Act 1254 of 1995 and Section 1 of Act 975 of 2019) The funeral director <del>who has been assigned a user identification and password</del> shall electronically <u>(or by system designated by the State Registrar)</u> file a fact of death within <del>five</del> <u>three</u> days of death. This shall consist of the legal name, date and time of death, county of death, date of birth, Social Security Number, and resident address of the deceased. <u>Medical certification shall be completed and returned to the funeral home electronically (or by a system designated by the State Registrar) within three business days after receipt of the death certificate by the medical certifier except when inquiry is required by § 1212-315, § 12-12-318, or § 14-15-301 et seq.</u>	Act 975 of 2019, An Act To Amend The Death Certificate Registration Process For The Signature Of The Medical Certificate Of Death; And For Other Purposes.
<b>Rule 12.1, page 18</b>	<b>Rule 12.1, page 18</b>
RULE 12.1 REPORT OF SPONTANEOUS FETAL DEATH, (MISCARRIAGES) OF LESS THAN <del>20</del> <u>12</u> WEEKS	Not Applicable – correction only

<b>Revision by Section</b>	<b>Supporting Information</b>
<b>Rule 14.1, page 19</b>	<b>Rule 14.1 , page 19</b>
Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions on birth certificates may be made within the first year after the date of birth upon request of persons defined in <del>Regulation</del> <u>Rule No. 14.2.</u>	Not Applicable – clean-up

<b>APPENDIX A – REPORT OF INDUCED TERMINATION OF PREGNANCY</b>	
<b>Revision by Section</b>	<b>Supporting Information</b>
<b>Whole Report Form</b>	<b>Whole Report Form</b>
The “Report of Induced Termination of Pregnancy” was reformatted and some of the information blocks were re-numbered. Because the form became unreadable with the reformatting, attached is a copy of the current form with strike-outs and a draft form underlined where language was changed or added.	The “Report of Induced Termination of Pregnancy” was reformatted to accommodate the additional information required by Act 493, An Act To Create The Cherish Act; To Prohibit Abortions After Eighteen Weeks’ Gestation Except In A Medical Emergency.
<b>FRONT OF REPORT FORM - REVISIONS</b>	
<b>Draft Form Block 17</b>	<b>Draft Form Block 17</b>
Added language: <u>17. DID THE ABORTION RESULT IN A LIVE BIRTH?</u> <input type="checkbox"/> NO <input type="checkbox"/> YES	Act 801 of 2019, An Act To Amend Laws Concerning Abortion Facilities and Abortion Reporting; To Amend The Born Alive Infant Protection Laws; To Require An Additional Acknowledgment Under the Woman’s Right to Know Act; To Increase Penalties And To Clarify Penalties Relating To Abortion; And For Other Purposes.
<b>Draft Form Block 18 &amp; 19</b>	<b>Draft Form Block 18 &amp; 19</b>
Numbering Change: <del>17-18.</del> NAME OF ATTENDING PHYSICIAN <del>18-19.</del> NAME OF STAFF PERSON COMPLETING REPORT	Formatting only.
<b>BACK OF REPORT FORM</b>	
<b>Revision by Section</b>	<b>Supporting Information</b>
<b>Instructions: Draft Form, Line 17</b>	<b>Instructions: Draft Form, Line 17</b>

<p>Additional Language  <u>No. 17 References(s) Act 801 of 2019 (§20-16-604)</u>  <u>17. Did Abortion Result in a Live Birth</u>  <u>Check Yes or No</u></p>	<p>Act 801 of 2019, An Act To Amend Laws Concerning Abortion Facilities and Abortion Reporting; To Amend The Born Alive Infant Protection Laws; To Require An Additional Acknowledgment Under the Woman’s Right to Know Act; To Increase Penalties And To Clarify Penalties Relating To Abortion; And For Other Purposes.</p>
<p><b>Instructions: Draft Form, Lines 18 &amp; 19</b></p>	<p><b>Instructions: Draft Form, Line 18 &amp; 19</b></p>
<p>Numbering Change  <del>17</del> 18. Enter name of attending physician  <del>18</del> 19. Enter name and telephone number of staff person completing report.</p>	<p>Formatting only.</p>

